

# Washington State Register

May 1, 2002

OLYMPIA, WASHINGTON

ISSUE 02-09



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## CITATION

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

## PUBLIC INSPECTION OF DOCUMENTS

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

## REPUBLICATION OF OFFICIAL DOCUMENTS

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

## CERTIFICATE

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

DENNIS W. COOPER  
Code Reviser

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## STATE MAXIMUM INTEREST RATE

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

The maximum allowable interest rate applicable for the month of May 2002 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 eight sections:

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

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

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

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

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

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

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

## 4. EFFECTIVE DATE OF RULES

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

## 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].

2001-2002

DATES FOR REGISTER CLOSING, DISTRIBUTION, AND FIRST AGENCY ACTION

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

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

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

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

<sup>4</sup> A minimum of forty-five days is required between the distribution date of the Register giving notice of the expedited adoption and the agency adoption date. No hearing is required, but the public may file written objections. See RCW 1.12.040 and 34.05.353.

## **REGULATORY FAIRNESS ACT**

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

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

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

### **Mitigation**

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

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

When:

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

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

When:

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

There is less than minor economic impact on business;

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

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

The rule is pure restatement of state statute.



**WSR 02-09-004****PREPROPOSAL STATEMENT OF INQUIRY  
DEPARTMENT OF LICENSING**

[Filed April 3, 2002, 3:28 p.m.]

Subject of Possible Rule Making: Chapter 308-96A WAC, Vehicle licensing, to include but not limited to WAC 308-96A-062, 308-96A-064, and 308-96A-005.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 46.01.110.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Rule making may be required as result of this review in accordance with Executive Order 97-02.

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

Process for Developing New Rule: Negotiated rule making.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting by mail Katherine Iyall Vasquez, Rules Manager, Title and Registration Services, Vehicle Services, Mailstop 48001, P.O. Box 2957, Olympia, WA 98507-2957, or by phone (360) 902-3718, fax (360) 664-0831, TTY (360) 664-8885, e-mail kvasquez@dol.wa.gov.

April 2, 2002

D. McCurley, Administrator  
Title and Registration Services

**WSR 02-09-027****WITHDRAWAL OF  
PREPROPOSAL STATEMENT OF INQUIRY  
DEPARTMENT OF HEALTH**

[Filed April 9, 2002, 1:35 p.m.]

WITHDRAWAL OF CHAPTER 246-50 WAC - WSR 98-20-066

This memo serves as notice that the department is withdrawing the CR-101 for chapter 246-50 WAC, which was filed October 2, 1998, and published in WSR 98-20-066. The original proposal was to clarify language without changing any of the requirements. Since the filing of the WSR 98-20-066, the department has begun working on legislative proposal to amend the current statutory language. For this reason, the CR-101 for chapter 246-50 WAC is no longer needed.

Individuals requiring information on this rule should contact Anh Berry at (360) 236-4028.

Mary C. Selecky  
Secretary

**WSR 02-09-032****PREPROPOSAL STATEMENT OF INQUIRY  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Filed April 10, 2002, 3:09 p.m.]

Subject of Possible Rule Making: Definition of "residency."

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

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The current definition of "resident" does not reflect what the status is of a resident license if a person is no longer a state resident.

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

Process for Developing New Rule: Agency study.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Jim Lux, Business Services, Assistant Director, 600 Capitol Way North, Olympia, WA 98501-1091, phone (360) 902-2444. Contact by June 18, 2002, expected proposal filing June 19, 2002.

April 10, 2002

Evan Jacoby  
Rules Coordinator

**WSR 02-09-033****PREPROPOSAL STATEMENT OF INQUIRY  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Filed April 10, 2002, 3:11 p.m.]

Subject of Possible Rule Making: Fees for duplicate licenses.

Statutes Authorizing the Agency to Adopt Rules on this Subject: Chapter 222, Laws of 2002.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The legislature has instructed the department to set the fee for issuance of duplicate licenses.

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

Process for Developing New Rule: Agency study.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Jim Lux, Business Services, Assistant Director, 600 Capitol Way North, Olympia, WA 98501-1091, phone (360) 902-2444. Contact by June 18, 2002, expected proposal filing June 19, 2002.

April 10, 2002

Evan Jacoby  
Rules Coordinator

**WSR 02-09-034**  
**PREPROPOSAL STATEMENT OF INQUIRY**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Filed April 10, 2002, 3:14 p.m.]

Subject of Possible Rule Making: Gear requirements and definitions in the coastal commercial pink shrimp fishery.

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

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: By-catch of marine fish has become an increasing problem coast-wide particularly for those species in rebuilding status and for those species fully exploited in other marine fish target fisheries. Developing rules that can reduce such interceptions as by-catch in the pink shrimp fishery can provide major benefits to the conservation of certain marine fish and provide larger harvest opportunity in other directed groundfish fisheries.

Process for Developing New Rule: Agency study.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Morris Barker, State Marine Resource Manager, 600 Capitol Way North, Olympia, WA 98501-1091, phone (360) 902-2826. Contact by June 14, 2002, expected filing date is June 19, 2002.

April 9, 2002  
 Evan Jacoby  
 Rules Coordinator

**WSR 02-09-047**  
**PREPROPOSAL STATEMENT OF INQUIRY**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Aging and Adult Services Administration)

[Filed April 12, 2002, 3:55 p.m.]

Subject of Possible Rule Making: The Residential Care Services Division is amending WAC 388-78A-265 Limited nursing services and related sections to conform to current chapter 18.79 RCW, Nursing care.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 18.20.090.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Amending WAC 388-78A-265 to be consistent with current statute (chapter 18.79 RCW) regarding nurse delegation. To update outdated references in WAC.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: Washington State Department of Health.

Process for Developing New Rule: The public is welcome to take part in the rule-making process. Upon drafting the rule, mailings will go to boarding home providers and other interested stakeholders included on the mailing list. Any communication can be directed to the staff person indicated below.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Sherri Wills, Residential Care Services, Aging and Adult Services Administration, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-2348, fax (360) 438-7903, e-mail willssk@dshs.wa.gov.

April 11, 2002  
 Brian H. Lindgren, Manager  
 Rules and Policies Assistance Unit

**WSR 02-09-048**  
**PREPROPOSAL STATEMENT OF INQUIRY**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Medical Assistance Administration)

[Filed April 12, 2002, 3:55 p.m.]

Subject of Possible Rule Making: Chapter 388-532 WAC, Family planning services.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 74.08.090, 74.09.520, 74.09.800.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The rules are needed to better identify medical assistance administration (MAA) clients who are eligible for family planning services; to state what family planning services will be available to the eligible clients; how the services will be delivered and how the service providers will be paid.

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

Process for Developing New Rule: The department invites the interested public to review and provide input on the draft language of this rule. Draft material and information about how to participate may be obtained from the department representative listed below.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Myra Davis, Medical Assistance Administration, Program Manager, P.O. Box 45533, Olympia, WA 98504-5533, phone (360) 725-1325, e-mail davismm@dshs.wa.gov, fax (360) 586-9727, TDD 1-800-848-5429.

April 11, 2002  
 Brian H. Lindgren, Manager  
 Rules and Policies Assistance Unit

**WSR 02-09-049**  
**PREPROPOSAL STATEMENT OF INQUIRY**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Economic Services Administration)

[Filed April 12, 2002, 3:56 p.m.]

Subject of Possible Rule Making: WAC 388-450-0075 Income from time-loss compensation and related WAC.

Time loss income is currently treated differently for each type of assistance. These rules will be simplified to create a consistent policy across all programs.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 74.08.090 and 74.04.510.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The current version of the rule is confusing and often results in a misapplication of policy. The amendment of this and related rules will simplify the policy and increase payment accuracy.

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

Process for Developing New Rule: The Department of Social and Health Services (DSHS) welcomes the public to take part in developing the rule(s). Anyone interested in participating should contact the staff person indicated below. After the rule(s) is drafted, DSHS will file a copy with the Office of the Code Reviser with a notice of proposed rule making, and send a copy to everyone currently on the mailing list and anyone else who requests a copy.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by Veronica Barnes, Program Manager, Division of Employment and Assistance Programs, P.O. Box 45470, Olympia, WA 98504-5470, (360) 413-3071, fax (360) 413-3493, TTY (360) 413-3001, e-mail BarneVS@dshs.wa.gov.

April 11, 2002

Brian H. Lindgren, Manager  
Rules and Policies Assistance Unit

#### WSR 02-09-050

#### PREPROPOSAL STATEMENT OF INQUIRY DEPARTMENT OF SOCIAL AND HEALTH SERVICES (Medical Assistance Administration)

[Filed April 12, 2002, 3:57 p.m.]

Subject of Possible Rule Making: WAC 388-513-1365 Evaluating the transfer of an asset made on or after March 1, 1997, for long-term care (LTC) services.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: As a cost-saving measure, the department is planning to change the way it determines a client's penalty period for transferring assets without adequate consideration. The department will propose including partial months in determining a client's penalty period. Under current rule, the department considers only "whole" months when determining the length of the penalty period.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: Aging and Adult Services Administration.

Process for Developing New Rule: The department invites the interested public to review and provide input on the draft language of this rule. Draft material and informa-

tion about how to participate may be obtained from the department representative listed below.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Mary Beth Ingram, Medical Assistance Administration, P.O. Box 45534, Olympia, WA 98504-5534, phone (360) 725-1327, e-mail ingramb@dshs.wa.gov, fax (360) 664-0910, TDD 1-800-848-5429.

April 11, 2002

Brian H. Lindgren, Manager  
Rules and Policies Assistance Unit

#### WSR 02-09-068

#### PREPROPOSAL STATEMENT OF INQUIRY DEPARTMENT OF REVENUE

[Filed April 16, 2002, 8:46 a.m.]

Subject of Possible Rule Making: WAC 458-20-208 Accommodation sales.

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

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The department anticipates revising WAC 458-20-208 to incorporate chapter 258, Laws of 2001, which provides a business and occupation (B&O) tax exemption for wholesale sales of new motor vehicles between new car dealers of the same make for purposes of inventory adjustment. The department also anticipates revising this rule to explain that the B&O tax exemption for accommodation sales is available for sales/exchanges of fungible goods if the statutory requirements of RCW 82.04.425 are satisfied. This incorporates information now provided in Excise Tax Advisory 064.04.208 and 428.04.103/208. This will allow the department to address issues related to accommodation sales in one comprehensive document.

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

Process for Developing New Rule: Modified negotiated rule making.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. Written comments may be submitted by mail, e-mail, fax, or at the public meeting. Oral comments will be accepted at the public meeting. A preliminary discussion draft of a possible new or revised rule(s) is available upon request. Written comments on and/or requests for copies of the draft may be directed to JoAnne Gordon, Legislation and Policy, P.O. Box 47467, Olympia, WA 98504-7467, phone (360) 570-6121, e-mail joaneg@dor.wa.gov, fax (360) 664-0693.

Date and Location of Public Meeting: Capital Plaza Building, 4th Floor Large Conference Room, 1025 Union Avenue S.E., Olympia, WA, on May 21, 2002, at 2:00 p.m.

Assistance for Persons with Disabilities: Contact Sandy Davis no later than ten days before the hearing date, TTY 1-800-451-7985 or (360) 570-6175.

April 15, 2002

Alan R. Lynn, Rules Coordinator  
Legislation and Policy Division

phone (360) 413-3232, fax (360) 413-3493, e-mail CAMPJX@DSHS.WA.GOV.

April 16, 2002

Brian H. Lindgren, Manager  
Rules and Policies Assistance Unit

#### WSR 02-09-073

**PREPROPOSAL STATEMENT OF INQUIRY  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES  
(Economic Services Administration)**

[Filed April 16, 2002, 3:43 p.m.]

**Subject of Possible Rule Making:** WAC 388-450-0190 How does the department figure my shelter cost income deduction for food assistance?, 388-450-0195 Utility allowances for food assistance programs, and 388-478-0060 What are my income limits for food assistance? The DSHS Division of Employment and Assistance Programs plans to amend these rules to be consistent with federal standards and limits.

**Statutes Authorizing the Agency to Adopt Rules on this Subject:** RCW 74.04.050, 74.04.500, 74.04.510, 74.08.090, 7 C.F.R. 273.9 (d)(6).

**Reasons Why Rules on this Subject may be Needed and What They Might Accomplish:** These standards are required by federal regulation and are necessary to determine a client's eligibility and benefit level for food assistance benefits.

**Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies:** The United States Department of Agriculture, Food and Nutrition Service (FNS) annually adjusts income and payment standards as well as maximum shelter deductions for the upcoming federal fiscal year. FNS also requires that the department adjust the food stamp utility allowance on an annual basis. The Department of Social and Health Services (DSHS) adopts the new income standards, payment standards, and shelter deduction limits into administrative rule. The department adjusts the food assistance utility allowance based on a utility market basket survey and adopts the new allowance under administrative rule.

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

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting John Camp, Program Manager, Division of Employment and Assistance Programs, Lacey Government Center, P.O. Box 45470, Olympia, WA 98504-4570,

#### WSR 02-09-074

**PREPROPOSAL STATEMENT OF INQUIRY  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES  
(Economic Services Administration)**

[Filed April 16, 2002, 3:45 p.m.]

**Subject of Possible Rule Making:** DSHS Division of Employment and Assistance Programs will amend WAC 388-414-0001 Some food assistance units do not have to meet all eligibility requirements.

**Statutes Authorizing the Agency to Adopt Rules on this Subject:** RCW 74.04.050, 74.04.500, 74.04.510, 74.08.090.

**Reasons Why Rules on this Subject may be Needed and What They Might Accomplish:** The department must adopt rules to be consistent with federal regulations for food stamps. This rule change is necessary to reflect changes in WorkFirst support services that impact which clients are categorically eligible for food assistance and do not have to meet certain requirements to receive food assistance benefits.

**Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies:** The United States Department of Agriculture, Food and Nutrition Service (FNS) publishes federal regulations for the food stamp program in the Federal Register. The Department of Social and Health Services (DSHS) incorporates these regulations and exercises state options by adopting administrative rules for food assistance benefits in Washington state.

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

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

April 16, 2002

Brian H. Lindgren, Manager  
Rules and Policies Assistance Unit

**WSR 02-09-081****PREPROPOSAL STATEMENT OF INQUIRY  
WASHINGTON STATE LOTTERY**

[Filed April 17, 2002, 9:47 a.m.]

Subject of Possible Rule Making: Assignment of prizes.  
Statutes Authorizing the Agency to Adopt Rules on this  
Subject: RCW 67.70.040(1).

Reasons Why Rules on this Subject may be Needed and  
What They Might Accomplish: The lottery is considering  
amending WAC 315-06-123 which deals with the assignment  
of prizes.

Other Federal and State Agencies that Regulate this Sub-  
ject and the Process Coordinating the Rule with These Agen-  
cies: None.

Process for Developing New Rule: Agency study.

Interested parties can participate in the decision to adopt  
the new rule and formulation of the proposed rule before pub-  
lication by contacting Mary Jane Ferguson, Rules Coordina-  
tor, at (360) 664-4833, fax (360) 586-6586, P.O. Box 43025,  
Olympia, WA 98504-3025, with any comments or questions  
regarding this statement of intent.

April 17, 2002  
Mary Jane Ferguson  
Rules Coordinator

**WSR 02-09-088****PREPROPOSAL STATEMENT OF INQUIRY  
DEPARTMENT OF  
LABOR AND INDUSTRIES**

[Filed April 17, 2002, 10:31 a.m.]

Subject of Possible Rule Making: Window washing,  
WAC 296-24-145.

Statutes Authorizing the Agency to Adopt Rules on this  
Subject: RCW 49.17.010, [49.17].040, and [49.17].050.

Reasons Why Rules on this Subject may be Needed and  
What They Might Accomplish: The window washing rules  
are being rewritten for clarity and ease of use. We will also  
be incorporating requirements from the 2001 National Con-  
sensus Standard for window washing, ANSI IWCA 1-14.1,  
Window Cleaning Safety. The rule language will be clarified  
to make understanding and application easier for employers.

Other Federal and State Agencies that Regulate this Sub-  
ject and the Process Coordinating the Rule with These Agen-  
cies: No other state or federal agencies (other than OSHA)  
are known that regulate this subject.

Process for Developing New Rule: The department is  
rewriting the rules relating to window washing for clarity and  
ease of use. The new rules will be at-least-as-effective-as  
OSHA. Parties interested in the formulation of these rules for  
proposal may contact the individuals listed below. The pub-  
lic may also participate by commenting after amendments are  
proposed by providing written comments or giving oral testi-  
mony during the public hearing process.

Interested parties can participate in the decision to adopt  
the new rule and formulation of the proposed rule before pub-  
lication by contacting Steve Vik, Department of Labor and

Industries, WISHA Services Division/Standards Section,  
P.O. Box 44620, Olympia, WA 98504-4620, phone (360)  
902-5516, fax (360) 902-5529, e-mail vikt235@lni.wa.gov.

April 17, 2002

Gary Moore  
Director

**WSR 02-09-089****PREPROPOSAL STATEMENT OF INQUIRY  
DEPARTMENT OF  
LABOR AND INDUSTRIES**

[Filed April 17, 2002, 10:32 a.m.]

Subject of Possible Rule Making: Certificate of compe-  
tency for journeyman plumbers, chapter 296-400A WAC.

Statutes Authorizing the Agency to Adopt Rules on this  
Subject: Chapter 18.106 RCW and chapter 82, Laws of 2002  
(ESHB 2470).

Reasons Why Rules on this Subject may be Needed and  
What They Might Accomplish: The purpose of this project is  
to make changes resulting from legislation enacted in 2002  
and make clarifying and housekeeping changes.

Other Federal and State Agencies that Regulate this Sub-  
ject and the Process Coordinating the Rule with These Agen-  
cies: None.

Process for Developing New Rule: The state Advisory  
Board of Plumbers as established in RCW 18.106.110 will be  
utilized in the development of these rules. Other interested  
parties and the public may also participate by providing writ-  
ten comments or giving oral testimony during the public  
hearing process.

Interested parties can participate in the decision to adopt  
the new rule and formulation of the proposed rule before pub-  
lication by contacting Josh Swanson, Department of Labor  
and Industries, Specialty Compliance Services Division, P.O.  
Box 44400, Olympia, WA 98504-4400, phone (360) 902-  
6411, fax (360) 902-5292, e-mail swaj235@lni.wa.gov.

April 17, 2002

Gary Moore  
Director

**WSR 02-09-090****PREPROPOSAL STATEMENT OF INQUIRY  
DEPARTMENT OF  
LABOR AND INDUSTRIES**

[Filed April 17, 2002, 10:33 a.m.]

Subject of Possible Rule Making: Safety regulations and  
fees for all elevators, dumbwaiters, escalators and other con-  
veyances, chapter 296-96 WAC.

Statutes Authorizing the Agency to Adopt Rules on this  
Subject: Chapter 70.87 RCW and chapter 98, Laws of 2002  
(SHB 2629).

Reasons Why Rules on this Subject may be Needed and  
What They Might Accomplish: The purpose of this project is

to make changes resulting from legislation enacted in 2002 and make clarifying and housekeeping changes.

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

Process for Developing New Rule: The department will solicit input from the Elevator Advisory Committee. Other interested parties and the public may also participate by providing written comments or giving oral testimony during the public hearing process.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Josh Swanson, Department of Labor and Industries, Specialty Compliance Services Division, P.O. Box 44400, Olympia, WA 98504-4400, phone (360) 902-6411, fax (360) 902-5292, e-mail swaj235@lni.wa.gov.

April 17, 2002

Gary Moore  
Director

#### WSR 02-09-091

#### PREPROPOSAL STATEMENT OF INQUIRY DEPARTMENT OF LABOR AND INDUSTRIES

[Filed April 17, 2002, 10:34 a.m.]

Subject of Possible Rule Making: Chapter 296-24 WAC, General safety and health standards and chapter 296-155 WAC, Safety standards for construction work.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 49.17.010, [49.17].040, and [49.17].050.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Currently, cranes, derricks and rigging requirements exist in both chapters 296-24 and 296-155 WAC. The department is proposing to combine these crane requirements, incorporating both existing chapters and related ANSIs. Our intent is to identify unnecessary requirements and outdated terminology, integrate necessary policies and requirements, rewrite and reorganize for clarity, and make one general cranes, derricks and rigging rule.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: No other state or federal agencies (other than OSHA) are known that regulate this subject.

Process for Developing New Rule: The department is rewriting the rules relating to cranes, derricks and rigging for clarity and ease of use. The new rules will be at-least-as-effective-as OSHA. Parties interested in the formulation of these rules for proposal may contact the individual listed below. The public may also participate by commenting after amendments are proposed by providing written comments or giving oral testimony during the public hearing process.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Kimberly Rhoads, Project Manager, Department of Labor and Industries, WISHA Services Divi-

sion, P.O. Box 44620, Olympia, WA 98504-4620, phone (360) 902-5008, fax (360) 902-5529.

April 17, 2002  
Gary Moore  
Director

#### WSR 02-09-100

#### PREPROPOSAL STATEMENT OF INQUIRY GAMBLING COMMISSION

[Filed April 17, 2002, 11:38 a.m.]

Subject of Possible Rule Making: Poker card games.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 9.46.070.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: We have received a petition for rule change from Sherry Gillard. Currently, card room owners and card room employees must turn their cards face up at the end of each game when playing in a game with a player-supported jackpot in which the prize is not based upon a predetermined hand. Ms. Gillard is requesting that owners and card room employees not be required to show their hands until after the "river" and only if there is a possibility of a "bad beat" situation.

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

Process for Developing New Rule: Negotiated rule making.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Rick Day, Deputy Director, P.O. Box 42400, Olympia, WA 98504-2400, (360) 486-3446; Ed Fleisher, Deputy Director, P.O. Box 42400, Olympia, WA 98504-2400, (360) 486-3449; or Susan Arland, Rules Coordinator, P.O. Box 42400, Olympia, WA 98504-2400, (360) 486-3466.

Meeting Dates and Locations: WestCoast Grand Hotel at the Park, 303 West North River Drive, Spokane, WA 99202, (509) 326-8000, on May 9 and 10, 2002; at the LaConner Country Inn, Maple Hall, 108 Commercial Street, LaConner, WA 98257, (360) 466-3101, on June 13 and 14, 2002; and at the Shilo Inn, 707 Ocean Shores Boulevard N.W., Ocean Shores, WA 98569, (360) 289-4600, on August 8 and 9, 2002.

April 17, 2002  
Susan Arland  
Rules Coordinator

**WSR 02-07-116**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Aging and Adult Services Administration)

[Filed March 20, 2002, 10:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 00-24-020.

Title of Rule: Chapter 388-98 WAC, Nursing home licensure program administration and chapter 388-97 WAC, Nursing homes.

Purpose: Repealing chapter 388-98 WAC and merging relevant provisions into chapter 388-97 WAC in order to bring all nursing homes' regulations into one chapter for easier reference. WAC sections are revised per clear rule-writing requirements of Executive Order 97-02.

Statutory Authority for Adoption: RCW 18.51.070, 74.42.620.

Statute Being Implemented: Chapters 18.51, 74.42, 74.39A, 74.34 RCW.

Summary: The amended and updated requirements of chapter 388-98 WAC will be merged with chapter 388-97 WAC as subchapter IV. Additional amendments are made to chapter 388-97 WAC to update to current statute and to clarify requirements. Chapter 388-98 WAC will be repealed. See Reasons Supporting Proposal below.

Reasons Supporting Proposal:

TITLE OF RULE	PURPOSE, SUMMARY AND EFFECT
WAC 388-97-005 Definitions.	Amended. Definitions were added as needed with addition of Subchapter IV, and other definitions were amended to conform to statutory changes or to clarify meaning.
WAC 388-97-043 Transfer and discharge appeals for residents in Medicare or Medicaid certified facilities.	Technical update chapter 388-02 WAC reference.
WAC 388-97-07005 Notice of rights and services.	Technical clarifying change.
WAC 388-97-07040 Examination of survey results.	Amended. Added language to clarify that survey result must be posted when received from the department.
WAC 388-97-07050 Access and visitation rights.	Amended. Clarifies that for Medicare and Medicaid residents, residents have access to any representative of the United States Department of Health and Human Services and Washington Protection and Advocacy System.
WAC 388-97-076 Prevention of abuse.	Amended. Moved information about disqualification criteria from nursing home employment into new section. Added information about mandated reporter such as when to report and consequences for not reporting or making a false report.

TITLE OF RULE	PURPOSE, SUMMARY AND EFFECT
WAC 388-97-160 General administration.	Amended. Allows for an extension of time to find a qualified nursing home administrator when a nursing home is temporarily without an administrator. Clarifies what department will do related to complaints it receives. Conforms to chapter 74.34 RCW.
WAC 388-97-162 Required notification and reporting.	Amended. Conforms to changes in chapter 74.34. RCW and clarifies provider responsibilities when a nursing home voluntarily closes or voluntarily terminates its Medicare or Medicaid contract. For clarification, moves written notification requirement from WAC 388-97-595 to this section.
WAC 388-97-180 Clinical records.	Amended. Clarifies the provider's responsibilities for clinical records when a nursing home ceases operation.
WAC 388-97-202 Criminal history disclosure and background inquiries.	Amended. Conforms to chapter 74.34 RCW. Updates name of Health Care Financing Administration.
WAC 388-97-205 Laundry services.	Amended. Clarifies what chemical laundry disinfectant products are allowed.
WAC 388-97-260 Preadmission screening and resident review (PASRR) determination and appeal rights.	Amended. Updates reference to chapter 388-02 WAC.
WAC 388-97-285 Intermediate care facilities for the mentally retarded.	Editorial amendments.
WAC 388-97-35040 Ambulation route on a dementia care unit in a new building or addition.	Editorial amendment.
WAC 388-97-565 Department review of nursing home license renewals.	Amended. Clarifies "current licensee" instead of "proposed licensee."
WAC 388-97-570 Reasons for denial, suspension, modification, revocation of, or refusal to renew a nursing home license.	Amended. Identifies reasons to deny, suspend, modify, revoke or refuse nursing home licenses.
WAC 388-97-575 Appeal of the department's licensing decision.	Amended. Explains what to do if a licensee wants to appeal the department's licensing decision.
WAC 388-97-580 Management agreements.	Amended. Recognizes existence of management agreements, identifies requirements for submission and required language to maintain licensee's responsibility.
WAC 388-97-585 Change of ownership.	Amended. Identifies what events do and do not constitute a change of ownership.
WAC 388-97-595 Relocation of residents.	Amended. For clarification, moves notification requirement to WAC 388-97-162.
WAC 388-98-001 Definitions.	Repealed. Relevant definitions moved to WAC 388-97-005.
WAC 388-98-003 Remedies.	Repealed. Replaced by WAC 388-97-630.
WAC 388-98-010 List of qualified receivers.	Repealed. Replaced by WAC 388-97-680 and 388-97-685.
WAC 388-98-015 Duties and powers of receiver.	Repealed. Replaced by WAC 388-97-690.

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TITLE OF RULE	PURPOSE, SUMMARY AND EFFECT
WAC 388-98-020 Termination of receivership.	Repealed. Replaced by WAC 388-97-675 and 388-97-695.
WAC 388-98-300 Temporary management.	Repealed. Replaced by WAC 388-97-670.
WAC 388-98-320 Temporary managers—Application.	Repealed. Replaced by WAC 388-97-680 and 388-97-685.
WAC 388-98-330 Duties and powers of temporary manager.	Repealed. Replaced by WAC 388-97-690.
WAC 388-98-340 Termination of temporary management.	Repealed. Replaced by WAC 388-97-695.
WAC 388-98-700 Stop placement—Informal review.	Repealed. Replaced by WAC 388-97-620 Informal department review and 388-97-650 Stop placement.
WAC 388-98-750 Notice and hearing rights.	Repealed. Replaced by WAC 388-97-625.
WAC 388-98-810 Civil penalty fund.	Repealed. Replaced by WAC 388-97-665.
WAC 388-98-830 Notification of response time.	Repealed. Replaced by WAC 388-97-605.
WAC 388-98-870 Separate violations.	Repealed. Replaced by WAC 388-97-645.
WAC 388-98-890 Reporting.	Repealed.
WAC 388-97-203 Disqualification from nursing home employment.	New section. Explains who must not be employed directly or by contract or as a volunteer or student.
WAC 388-97-204 Retaliation or discrimination prohibited.	New section. Provides examples of retaliation or discrimination that is prohibited by licensee or licensee's agent.
WAC 388-97-605 Inspections and deficiency citation report.	New section. Describes types of inspections, when it can be conducted, and responsibilities of licensee or licensee's agent in the inspection process.
WAC 388-97-610 Plan of correction.	New section. Explains when plan of correction must be completed.
WAC 388-97-615 Acceptable and unacceptable plans of correction.	New section. Describes what information must be included in a plan of correction.
WAC 388-97-620 Informal department review.	New section. Explains how licensee or licensee's agent may request an informal department review.
WAC 388-97-625 Notice and appeal rights.	New section. Describes what actions may be appealed and the purpose of a hearing.
WAC 388-97-630 Remedies.	New section. Explains mandatory remedies and optional remedies.
WAC 388-97-635 Criteria for imposing optional remedies.	New section. Provides criteria for when the department can consider optional remedies.
WAC 388-97-640 Severity and scope of deficiencies.	New section. Defines severity of a deficiency, the severity levels and scope of the deficiency.
WAC 388-97-645 Separate deficiencies.	New section. Defines separate deficiency.
WAC 388-97-650 Stop placement.	New section. Explains when a stop placement becomes effective and remains in effect.
WAC 388-97-655 Amount of civil fine.	New section. Provides range of civil fine.

TITLE OF RULE	PURPOSE, SUMMARY AND EFFECT
WAC 388-97-660 Civil fine accrual, due dates and interest.	New section. Describes when civil fine begins, when it is due, and how interest is calculated.
WAC 388-97-665 Civil penalty fund.	New section. Describes the uses of the funds.
WAC 388-97-670 Temporary management.	New section. Explains what happens when the department appoints a temporary manager and when the temporary manager has the authority to relocate residents.
WAC 388-97-675 Receivership.	New section. Explains the situations when the department may recommend that all residents be relocated and nursing home closed after receivership is established.
WAC 388-97-680 Temporary managers and receivers—Application.	New section. Describes who can be temporary manager or receiver and that they must complete application forms.
WAC 388-97-685 Temporary managers and receivers—Considerations before appointment.	New section. Describes factors to consider in appointing a temporary manager or receiver.
WAC 388-97-690 Duties and powers of temporary manager and receiver.	New section. Explains the responsibilities of temporary manager or receiver.
WAC 388-97-695 Termination of temporary management and receivership.	New section. Explains when the department may terminate temporary management or receivership and when the department may appoint an alternate temporary manager or receiver.

Name of Agency Personnel Responsible for Drafting: Lisa Yanagida, Aging and Adult Services Administration, (360) 725-2589; Implementation and Enforcement: Joyce Stockwell, NHQA, Aging and Adult Services Administration, (360) 725-2404.

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

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

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

Proposal Changes the Following Existing Rules: See Reasons Supporting Proposal above for amendments to chapter 388-97 WAC. Chapter 388-98 WAC will be repealed.

No small business economic impact statement has been prepared under chapter 19.85 RCW. It is unlikely that any licensed nursing homes regulated under chapters 18.51 and 74.42 RCW have fewer than fifty employees. In the event that there is such a nursing home, RCS has analyzed its proposed rules and has concluded that they do not impose an increase in existing costs, an imposition of a new cost, or a decrease in benefit. The primary purposes of the proposed amendments are to clarify preexisting requirements and to update existing rules to conform to changes in procedures or in state or federal law. In addition, the department has rewritten its criteria for determining the scope and severity of regulatory violations for clarity. The criteria provide guidance to the department when making decisions about imposition of mandatory and/or optional remedies. After careful review, the department has determined that there should be no additional costs associated with the changes in criteria.

As a result, the preparation of a small business economic impact statement is not required.

RCW 34.05.328 applies to this rule adoption. A copy of the cost-benefit analysis can be obtained from Lisa Yanagida, Aging and Adult Services Administration, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-2589, fax (360) 438-7903, e-mail yanagln2@dshs.wa.gov.

Hearing Location: Office Building 2 Auditorium (DSHS Headquarters) (public parking off 12th and Jefferson), 1115 Washington, Olympia, WA 98504, on May 21, 2002, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Andy Fernando, DSHS Rules Coordinator, by May 17, 2002, phone (360) 664-6094, TTY (360) 664-6178, e-mail fernaax@dshs.wa.gov.

Submit Written Comments to: Identify WAC Numbers, DSHS Rules Coordinator, Rules and Policies Assistance Unit, P.O. Box 45850, Olympia, WA 98504-5850, fax (360) 664-6185, e-mail fernaax@dshs.wa.gov, by 5:00 p.m. May 21, 2002.

Date of Intended Adoption: No sooner than May 22, 2002.

March 7, 2002

Brian H. Lindgren, Manager  
Rules and Policies Assistance Unit

**AMENDATORY SECTION** (Amending WSR 00-06-028, filed 2/24/00, effective 3/26/00)

**WAC 388-97-005 Definitions. "Abandonment"** means action or inaction by an individual or entity with a duty of care for a vulnerable adult that leaves the vulnerable individual without the means or ability to obtain necessary food, clothing, shelter, or health care.

**"Abuse"** means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish. Further clarification of the definition of abuse, and examples of types of behavior that constitute abuse are described in RCW 74.34.020(2).

**"Administrative hearing"** is a formal hearing proceeding before a state administrative law judge that gives a licensee an opportunity to be heard in disputes about licensing actions, including the imposition of remedies, taken by the department.

**"Administrative law judge (ALJ)"** means an impartial decision-maker who presides over an administrative hearing. ALJs are employed by the office of administrative hearings (OAH), which is a separate state agency. ALJs are not DSHS employees or DSHS representatives.

**"Administrator"** means a nursing home administrator, licensed under chapter 18.52 RCW, must be in active administrative charge of the nursing home, as that term is defined in the board of nursing home administrator's regulations.

**"Advanced registered nurse practitioner (ARNP)"** means a registered nurse currently licensed in Washington under RCW ((48-88-175)) 18.79.050 or successor laws.

**"Applicant"** means an individual, partnership, corporation, or other legal entity seeking a license to operate a nursing home.

**"ASHRAE"** means the American Society of Heating, Refrigerating, and Air Conditioning Engineers, Inc.

**"Attending physician"** means the doctor responsible for a particular individual's total medical care.

**"Berm"** means a bank of earth piled against a wall.

**"Chemical restraint"** means a psychopharmacologic drug that is used for discipline or convenience and not required to treat the resident's medical symptoms.

**"Civil fine"** is a civil monetary penalty assessed against a nursing home as authorized by chapters 18.51 and 74.42 RCW. There are two types of civil fines, "per day" and "per instance."

(1) "Per day fine" means a fine imposed for each day that a nursing home is out of compliance with a specific requirement. Per day fines are assessed in accordance with WAC 388-97-660(1); and

(2) "Per instance fine" means a fine imposed for the occurrence of a deficiency.

**"Condition on a license"** means that the department has imposed certain requirements on a license and the licensee cannot operate the nursing home unless the requirements are observed.

**"Deficiency"** is a nursing home's failed practice, action or inaction that violates any or all of the following:

(1) Requirements of chapters 18.51 or 74.42 RCW, or the requirements of this chapter; and

(2) In the case of a Medicare and Medicaid contractor, participation requirements under Title XVIII and XIX of the Social Security Act and federal Medicare and Medicaid regulations.

**"Deficiency citation" or "cited deficiency"** means written documentation by the department that describes a nursing home's deficiency(ies); the requirement that the deficiency(ies) violates; and the reasons for the determination of noncompliance.

**"Deficient facility practice" or "failed facility practice"** means the nursing home action(s), error(s), or lack of action(s) that provide the basis for the deficiency.

**"Dementia care"** means a therapeutic modality or modalities designed specifically for the care of persons with dementia.

**"Denial of payment for new admissions"** is an action imposed on a nursing home (facility) by the department that prohibits payment for new Medicaid admissions to the nursing home after a specified date. Nursing homes certified to provide Medicare and Medicaid services may also be subjected to a denial of payment for new admissions by the federal Centers for Medicare and Medicaid Services.

**"Department"** means the state department of social and health services (DSHS).

**"Department on-site monitoring"** means an optional remedy of on-site visits to a nursing home by department staff according to department guidelines for the purpose of monitoring resident care or services or both.

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**"Dietitian"** means a qualified dietitian. A qualified dietitian is one who is registered by the American Dietetic Association or certified by the state of Washington.

**"Disclosure statement"** means a signed statement by an individual (~~(indicating)~~) in accordance with the requirements under RCW 43.43.834. The statement should include a disclosure of whether or not the individual (~~(was)~~) has been convicted of certain crimes or has been found by any court, state licensing board, disciplinary board, or protection proceeding to have neglected, sexually abused, financially exploited, or physically abused any minor or adult individual.

**"Drug"** means a substance:

(1) Recognized as a drug in the official *United States Pharmacopoeia*, *Official Homeopathic Pharmacopoeia of the United States*, *Official National Formulary*, or any supplement to any of them; or

(2) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease.

**"Drug facility"** means a room or area designed and equipped for drug storage and the preparation of drugs for administration.

**"Emergency closure"** is an order by the department to immediately close a nursing home.

**"Emergency transfer"** is an order by the department to immediately transfer residents from a nursing home to safe settings.

**"Entity"** means any type of firm, partnership, corporation, company, association, or joint stock association (~~(and the legal successor(s))~~).

**"Financial exploitation"** means the illegal or improper use of the property, income, resources, or trust funds of the vulnerable adult by any individual for his or her profit or advantage.

**"Habilitative services"** means the planned interventions and procedures which constitute a continuing and comprehensive effort to teach an individual previously undeveloped skills.

**"Highest practicable physical, mental, and psychosocial well-being"** means that the nursing home must provide each resident with the necessary individualized care and services to assist the resident to achieve or maintain the highest possible health, functional and independence level in accordance with the resident's comprehensive assessment and plan of care. Care and services provided by the nursing home must be consistent with all requirements in this chapter, chapter 74.42 and 18.51 RCW, and the resident's informed choices. For Medicaid and Medicare residents, care and services must also be consistent with Title XVIII and XIX of the Social Security Act and federal Medicare and Medicaid regulations.

**"Informal department review"** is a dispute resolution process that provides an opportunity for the licensee or administrator to informally present information to a department representative about disputed, cited deficiencies. Refer to WAC 388-97-620.

**"Inspection" or "survey"** means the process by which department staff evaluate the nursing home licensee's compliance with applicable statutes and regulations.

**"Intermediate care facility for the mentally retarded (ICF/MR)"** means an institution certified under chapter 42 C.F.R., Part 483, Subpart I, and licensed under chapter 18.51 RCW.

**"License revocation"** is an action taken by the department to cancel a nursing home license in accordance with RCW 18.51.060 and WAC 388-97-570.

**"License suspension"** is an action taken by the department to temporarily revoke a nursing home license in accordance with RCW 18.51.060 and this chapter.

**"Licensee"** means an individual, partnership, corporation, or other legal entity licensed to operate a nursing home.

**"Licensed practical nurse"** means an individual licensed under chapter 18.79 RCW;

**"Mandated reporter"** as used in this chapter means any employee of a nursing home, any health care provider subject to chapter 18.130 RCW, the Uniform Disciplinary Act, and any licensee of a nursing home. Under RCW 74.34.020, mandated reporters also include any employee of the department of social and health services, law enforcement officers, social workers, professional school personnel, individual providers, employees and licensees of boarding home, adult family homes, soldiers' homes, residential habilitation centers, or any other facility licensed by the department, employees of social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agencies, county coroners or medical examiners, or Christian Science practitioners.

**"Misappropriation of resident property"** means the (~~(illegal or improper, patterned or)~~) deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident's belongings or money.

**"NFPA"** means National Fire Protection Association, Inc.

**"Neglect":**

(1) For a nursing home licensed under chapter 18.51 RCW, neglect means that an individual or entity with a duty of care for nursing home residents has:

(a) By a pattern of conduct or inaction, failed to provide goods and services to maintain physical or mental health or to avoid or prevent physical or mental harm or pain to a resident; or

(b) By an act or omission, demonstrated a serious disregard of consequences of such magnitude as to constitute a clear and present danger to the resident's health, welfare, or safety.

(2) For a skilled nursing facility or nursing facility, neglect also means a failure to provide a resident with the goods and services necessary to avoid physical harm, mental anguish, or mental illness.

**"Noncompliance"** means a state of being out of compliance with state and/or federal requirements for nursing homes/facilities.

**"Nursing assistant"** means a nursing assistant as defined under RCW 18.88A.020 or successor laws.

**"Nursing facility (NF)" or "Medicaid-certified nursing facility"** means a nursing (~~(facility as defined in)~~) home that has been certified to provide nursing services to Medic-

aid recipients under Section 1919(a) of the Federal Social Security Act ((and regulations put into effect under that law, or under successor laws)).

**"Nursing home"** means any facility licensed to operate under chapter 18.51 RCW.

**"Officer"** means an individual serving as an officer of a corporation.

**"Owner of five percent or more of the assets of a nursing home"** means:

(1) In the case of a sole proprietorship, the owner, or if owned as community property, the owner and the owner's spouse;

(2) In the case of a corporation, the owner of at least five percent of the capital stock of a corporation; or

(3) In the case of other types of business entities, the owner of a beneficial interest in at least five percent of the capital assets of an entity.

**"Partner"** means an individual in a partnership owning or operating a nursing home.

**"Person"** means any individual, firm, partnership, corporation, company, association or joint stock association.

**"Pharmacist"** means an individual licensed by the Washington state board of pharmacy under chapter 18.64 RCW.

**"Pharmacy"** means a place licensed under chapter 18.64 RCW where the practice of pharmacy is conducted.

**"Physical restraint"** means any manual method or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that the resident cannot remove easily, and which restricts freedom of movement or access to the resident's body.

**"Physician's assistant (PA)"** means a physician's assistant as defined under chapter 18.57A or 18.71A RCW or successor laws.

**"Plan of correction"** is a nursing home's written response to cited deficiencies that explains how it will correct the deficiencies and how it will prevent their reoccurrence.

**"Reasonable accommodation"** and **"reasonably accommodate"** has the meaning given in federal and state anti-discrimination laws and regulations. For the purpose of this chapter:

(1) Reasonable accommodation means that the nursing home must:

(a) Not impose admission criteria that excludes individuals unless the criteria is necessary for the provision of nursing home services;

(b) Make reasonable modification to its policies, practices or procedures if the modifications are necessary to accommodate the needs of the resident;

(c) Provide additional aids and services to the resident.

(2) Reasonable accommodations are not required if:

(a) The resident or individual applying for admission presents a significant risk to the health or safety of others that cannot be eliminated by the reasonable accommodation;

(b) The reasonable accommodations would fundamentally alter the nature of the services provided by the nursing home; or

(c) The reasonable accommodations would cause an undue burden, meaning a significant financial or administrative burden.

**"Receivership"** is established by a court action and results in the removal of a nursing home's current licensee and the appointment of a substitute licensee to temporarily operate the nursing home.

**"Recurring deficiency"** means a deficiency that was cited by the department, corrected by the nursing home, and then cited again within fifteen months of the initial deficiency citation.

**"Registered nurse"** means an individual licensed under chapter 18.79 RCW or successor laws.

**"Rehabilitative services"** means the planned interventions and procedures which constitute a continuing and comprehensive effort to restore an individual to the individual's former functional and environmental status, or alternatively, to maintain or maximize remaining function.

**"Resident"** generally means an individual residing in a nursing home, and if applicable, the surrogate decision maker. The term resident excludes outpatients and individuals receiving adult day or night care, or respite care.

**"Resident care unit"** means a functionally separate unit including resident rooms, toilets, bathing facilities, and basic service facilities.

**"Respiratory isolation"** is a technique or techniques instituted to prevent the transmission of pathogenic organisms by means of droplets and droplet nuclei coughed, sneezed, or breathed into the environment.

**"Siphon jet clinic service sink"** means a plumbing fixture of adequate size and proper design for waste disposal with siphon jet or similar action sufficient to flush solid matter of at least two and one-eighth inches in diameter.

**"Skilled nursing facility (SNF)"** or **"Medicare-certified skilled nursing facility"** means a ~~((skilled))~~ nursing ~~((facility as defined in))~~ home that has been certified to provide nursing services to Medicare recipients under Section 1819(a) of the Federal Social Security Act ~~((and regulations put into effect under that law, or successors to that law))~~.

**"Social/therapeutic leave"** means leave which is for the resident's social, emotional, or psychological well being; it does not include medical leave.

**"Staff work station"** means a location at which nursing and other staff perform charting and related activities throughout the day.

**"Stop placement"** or **"stop placement order"** is an action taken by the department prohibiting nursing home admissions, readmissions, and transfers of patients into the nursing home from the outside.

**"Substantial compliance"** means the nursing home has no deficiencies higher than severity level 1 as described in WAC 388-97-640, or for Medicaid certified facility, no deficiencies higher than a scope and severity "C."

**"Surrogate decision maker"** means a resident representative or representatives as outlined in WAC 388-97-055, and as ~~((established by law under chapter 7.70 RCW))~~ authorized by RCW 7.70.065.

**"Survey"** means the same as **"inspection"** as defined in this section.

**"Temporary manager"** means an individual or entity appointed by the department to oversee the operation of the nursing home to ensure the health and safety of its residents, pending correction of deficiencies or closure of the facility.

**"Termination"** means an action taken by:

- (1) The department, or the nursing home, to cancel a nursing home's Medicaid certification and contract; or
- (2) The Department of Health and Human Services Centers for Medicare and Medicaid Services, or the nursing home, to cancel a nursing home's provider agreement to provide services to Medicaid or Medicare recipients, or both.

**"Toilet room"** means a room containing at least one toilet fixture.

**"Uncorrected deficiency"** is a deficiency that has been cited by the department and that is not corrected by the licensee by the time the department does a revisit.

**"Violation"** means the same as **"deficiency"** as defined in this section.

**"Volunteer"** means an individual who is a regularly scheduled individual not receiving payment for services and having unsupervised access to a nursing home resident.

**"Whistle blower"** means a resident, employee of a nursing home, or any person licensed under Title 18 RCW, who in good faith reports alleged abandonment, abuse, financial exploitation, or neglect to the department, the department of health or to a law enforcement agency.

**AMENDATORY SECTION** (Amending WSR 00-06-028, filed 2/24/00, effective 3/26/00)

**WAC 388-97-043 Transfer and discharge appeals for residents in Medicare or Medicaid certified facilities.** (1) A skilled nursing facility and a nursing facility that initiates transfer or discharge of any resident, regardless of payor status, must:

- (a) Provide the required written notice of transfer or discharge to the resident and, if known or appropriate, to a family member or the resident's representative;
- (b) Attach a department-designated hearing request form to the transfer or discharge notice;
- (c) Inform the resident in writing, in a language and manner the resident can understand, that:
  - (i) An appeal request may be made any time up to ninety days from the date the resident receives the notice of transfer or discharge; and
  - (ii) Transfer or discharge will be suspended when an appeal request is received by the office of administrative hearings on or before the date the resident actually transfers or discharges; and
  - (iii) The nursing home will assist the resident in requesting a hearing to appeal the transfer or discharge decision.

(2) A skilled nursing facility or nursing facility must suspend transfer or discharge pending the outcome of the appeal when the resident's appeal is received by the office of administrative hearings on or before the date of the transfer or discharge set forth in the written transfer or discharge notice, or before the resident is actually transferred or discharged.

(3) The resident is entitled to appeal the skilled nursing facility or nursing facility's transfer or discharge decision. The appeals process is set forth in chapter ((388-08)) 388-02 WAC and this chapter. In such appeals, the following will apply:

(a) In the event of a conflict between a provision in this chapter and a provision in chapter ((388-08)) 388-02 WAC, the provision in this chapter will prevail;

(b) The resident ((shall)) must be the appellant and the skilled nursing facility or the nursing facility will be the respondent;

(c) The department must be notified of the appeal and may choose whether to participate in the proceedings. If the department chooses to participate, its role is to represent the state's interest in assuring that skilled nursing facility and nursing facility transfer and discharge actions comply substantively and procedurally with the law and with federal requirements necessary for federal funds;

(d) If a Medicare certified or Medicaid certified facility's decision to transfer or discharge a resident is not upheld, and the resident has been relocated, the resident has the right to readmission immediately upon the first available bed in a semi-private room if the resident requires and is eligible for the services provided by ((the)) a nursing facility or skilled nursing facility.

**AMENDATORY SECTION** (Amending WSR 00-06-028, filed 2/24/00, effective 3/26/00)

**WAC 388-97-07005 Notice of rights and services.** (1) The nursing home must ((inform)) provide the resident, before admission, or at the time of admission in the case of an emergency, and as changes occur during the resident's stay, both orally and in writing and in language and words that the resident understands, ((of his or her rights as a resident, including)) with the following information:

- (a) All rules and regulations governing resident conduct, resident's rights and responsibilities during the stay in the nursing home;
- (b) Advanced directives, and of any ((facility)) nursing home policy or practice that might conflict with the resident's advance directive if made;
- (c) Advance notice ((of)) of transfer requirements, consistent with RCW ((70-129-150)) 70.129.110;
- (d) Advance notice of deposits and refunds, consistent with RCW 70.129.150; and
- (e) Items, services and activities available in the ((facility)) nursing home and of charges for those services, including any charges for services not covered under Medicare or Medicaid or by the ((facility's)) home's per diem rate.

(2) The resident has the right:

(a) Upon an oral or written request, to access all records pertaining to the resident including clinical records within twenty-four hours ((for Medicare certified and Medicaid certified facilities, and according to chapter 70.02 RCW)); and

(b) After receipt of his or her records for inspection, to purchase at a cost not to exceed twenty-five cents a page, photocopies of the records or any portions of them upon request and two working days advance notice to the nursing

home. For the purposes of this chapter, "working days" means Monday through Friday, except for legal holidays.

(3) The resident has the right to:

(a) Be fully informed in words and language that he or she can understand of his or her total health status, including, but not limited to, his or her medical condition;

(b) Accept or refuse treatment; and

(c) Refuse to participate in experimental research.

(4) The ~~((Medicare certified and Medicaid certified facility))~~ nursing home must inform each resident:

(a) Who is entitled to Medicaid benefits, in writing, prior to the time of admission to the nursing facility or, when the resident becomes eligible for Medicaid of the items, services and activities:

(i) That are included in nursing facility services under the Medicaid state plan and for which the resident may not be charged; and

(ii) That the ~~((facility))~~ nursing home offers and for which the resident may be charged, and the amount of charges for those services;

(b) That deposits, admission fees and prepayment of charges cannot be solicited or accepted from Medicare or Medicaid eligible residents; and

(c) That minimum stay requirements cannot be imposed on Medicare or Medicaid eligible residents.

(5) The nursing home must, except for emergencies, inform each resident in writing, thirty days in advance before changes are made to the availability or charges for items, services or activities specified in section (4)(a)(i) and (ii), or before changes to the ~~((facility))~~ nursing home rules.

(6) The private pay resident has the right to the following, regarding fee disclosure-deposits:

(a) Prior to admission, a nursing home that requires payment of an admission fee, deposit, or a minimum stay fee, by or on behalf of an individual seeking admission to the ~~((facility))~~ nursing home, must provide the individual:

(i) Full disclosure in writing in a language the potential resident or his representative understands:

(A) Of the nursing home's schedule of charges for items, services, and activities provided by the ~~((facility))~~ nursing home; and

(B) Of what portion of the deposits, admissions fees, pre-paid charges or minimum stay fee will be refunded to the resident if the resident leaves the ~~((facility))~~ nursing home.

(ii) The amount of any admission fees, deposits, or minimum stay fees.

(iii) If the nursing home does not provide these disclosures, the nursing home must not keep deposits, admission fees, prepaid charges or minimum stay fees.

(b) If a resident dies or is hospitalized or is transferred and does not return to the ~~((facility))~~ nursing home, the nursing home:

(i) Must refund any deposit or charges already paid, less the ~~((facility's))~~ home's per diem rate, for the days the resident actually resided or reserved or retained a bed in the ~~((facility))~~ nursing home, regardless of any minimum stay or discharge notice requirements; except that

(ii) The ~~((facility))~~ nursing home may retain an additional amount to cover its reasonable, actual expenses

incurred as a result of a private pay resident's move, not to exceed five days per diem charges, unless the resident has given advance notice in compliance with the admission agreement.

(c) The nursing home must refund any and all refunds due the resident within thirty days from the resident's date of discharge from the ~~((facility))~~ nursing home; and

(d) Where the nursing home requires the execution of an admission contract by or on behalf of an individual seeking admission to the ~~((facility))~~ nursing home, the terms of the contract must be consistent with the requirements of this section.

(7) The nursing home must furnish a written description of legal rights which includes:

(a) A description of the manner of protecting personal funds, under WAC 388-97-07015.

(b) In the case of a nursing facility only, a description of the requirements and procedures for establishing eligibility for Medicaid, including the right to request an assessment which determines the extent of a couple's nonexempt resources at the time of institutionalization and attributes to the community spouse an equitable share of resources which cannot be considered available for payment toward the cost of the institutionalized spouse's medical care in his or her process of spending down to Medicaid eligibility levels;

(c) A posting of names, addresses, and telephone numbers of all relevant state client advocacy groups such as the state survey and certification agency, the state licensure office, the state ombudsman program, the protection and advocacy network, and the Medicaid fraud control unit; and

(d) A statement that the resident may file a complaint with the state survey and certification agency concerning resident abandonment, abuse, neglect, financial exploitation, and misappropriation of resident property in the nursing home.

(8) The nursing home must:

(a) Inform each resident of the name, and specialty of the physician responsible for his or her care; and

(b) Provide a way for each resident to contact his or her physician.

(9) The skilled nursing facility and nursing facility must prominently display in the facility written information, and provide to residents and ~~((applicants))~~ individuals applying for admission oral and written information, about how to apply for and use Medicare and Medicaid benefits, and how to receive refunds for previous payments covered by such benefits.

(10) The written information provided by the nursing home pursuant to this section, and the terms of any admission contract executed between the nursing home and an individual seeking admission to the nursing home, must be consistent with the requirements of chapters 74.42 and 18.51 RCW and, in addition, for facilities certified under Medicare or Medicaid, with the applicable federal requirements.

AMENDATORY SECTION (Amending WSR 00-06-028, filed 2/24/00, effective 3/26/00)

**WAC 388-97-07040 Examination of survey results.**

(1) ~~((A))~~ The resident has the right to examine the results of:

~~(a) The most recent survey ((and complaint investigation)) of the nursing home conducted by federal and state surveyors ((or inspectors and the plans of correction in effect with respect to the facility));~~

~~(b) Surveys related to any current or subsequent complaint investigation; and~~

~~(c) Any required accompanying plan of correction, completed or not.~~

~~(2) Upon receipt of any deficiency citation report, the nursing home must publicly post a notice:~~

~~(a) ((A copy of the report and plan of correction of the most recent full survey and complaint investigations; and~~

~~(b) A notice that the results of the survey and investigation are available and the location of the reports.~~

~~(3) The nursing home must post a copy or copies of survey and complaint investigations, with plans of correction, and notices, available for examination in a place or places:~~

~~(a) Readily accessible to residents, which does not require staff intervention to access; and~~

~~(b) In plain view of the nursing home residents, individuals visiting those residents, and individuals who inquire about placement in the facility)) That the results of the survey or complaint investigation, or both, are available regardless of whether the plan of correction is completed or not;~~

~~(b) Of the location of the deficiency citation reports.~~

~~(3) For a report posted prior to the plan of correction being completed, the nursing home may attach an accompanying notice that explains the purpose and status of the plan of correction, informal dispute review, administrative hearing and other relevant information.~~

~~(4) Upon receipt of any citation report, the nursing home must publicly post a copy of the most recent full survey and all subsequent complaint investigation deficiency citation reports, including the completed plans of correction, when one is required.~~

~~(5) The notices and any survey reports must be available for viewing or examination in a place or places:~~

~~(a) Readily accessible to residents, which does not require staff interventions to access; and~~

~~(b) In plain view of the nursing home residents, including individuals visiting those residents, and individuals who inquire about placement in the nursing home.~~

**AMENDATORY SECTION** (Amending WSR 00-06-028, filed 2/24/00, effective 3/26/00)

**WAC 388-97-07050 Access and visitation rights.** (1) The resident has the right and the nursing home must provide immediate access to any resident by the following:

(a) For Medicare and Medicaid residents any representative of the ((secretary)) U.S. Department of Health and Human Services (DHHS);

(b) Any representative of the state;

(c) The resident's personal physician;

(d) Any representative of the state long term care ombudsman program (established under section 307 (a)(12) of the Older American's Act of 1965);

(e) ((The agency responsible for the protection and advocacy system for developmentally disabled individuals)) Any representative of the Washington protection and advocacy

system, or any other agency (established under part c of the Developmental Disabilities Assistance and Bill of Rights Act);

(f) ((The agency responsible for the protection and advocacy system for mentally ill individuals)) Any representative of the Washington protection and advocacy system, or any agency (established under the Protection and Advocacy for Mentally Ill Individuals Act);

(g) Subject to the resident's right to deny or withdraw consent at any time, immediate family or other relatives of the resident; and

(h) Subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, others who are visiting with the consent of the resident.

(2) The nursing home must provide reasonable access to any resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time.

(3) The nursing home must allow representatives of the state ombudsman, described in subsection (1)(d) of this section, to examine a resident's clinical records with the permission of the resident or the resident's surrogate decision maker, and consistent with state law. The ombudsman may also, under federal and state law, access resident's records when the resident is incapacitated and has no surrogate decision maker, and may access records over the objection of a surrogate decision maker if access is authorized by the state ombudsman pursuant to 42 ((C.F.R.)) U.S.C. §3058g(b) and RCW 43.190.065.

**AMENDATORY SECTION** (Amending WSR 00-06-028, filed 2/24/00, effective 3/26/00)

**WAC 388-97-076 Prevention of abuse.** (1) Each resident has the right to be free from verbal, sexual, physical and mental abuse, corporal punishment, and involuntary seclusion.

(2) The nursing home must develop and implement written policies and procedures that:

(a) Prohibit abandonment, abuse, and neglect of residents, financial exploitation, and misappropriation of resident property; and

(b) Require staff to report possible abuse, and other related incidents, as required by chapter 74.34 RCW, and for skilled nursing facilities and nursing facilities as required by 42 C.F.R. §483.13.

(3) The nursing home must not allow staff to:

(a) Engage in verbal, mental, sexual, or physical abuse;

(b) Use corporal punishment;

(c) Involuntarily seclude, abandon, neglect, or financially exploit residents; or

(d) Misappropriate resident property.

(4) The nursing home must ((not employ individuals in positions that will provide them with the opportunity for unsupervised access with vulnerable residents, if the individuals have:

(a) Been found to have abused, neglected, exploited or abandoned a minor or vulnerable adult, by a court of law or by a licensing authority;

~~(b) A finding of abuse, neglect, exploitation or abandonment on any state registry, including the nursing assistant registry; or~~

~~(c) Been found to have abused, neglected, or misappropriated resident property by the department's resident protection program.~~

~~(5) The nursing home must~~) report any information it has about an action taken by a court of law against an employee to the department's complaint resolution unit and the appropriate department of health licensing authority, if that action would disqualify the individual from employment as described in RCW 43.43.842.

~~((6)) (5) The nursing home ((and mandatory reporters))~~ must ensure that all allegations involving abandonment, abuse, neglect, financial exploitation, or misappropriation of resident property, including injuries of unknown origin, are reported immediately to the department, other applicable officials, and the administrator of the facility. The nursing home must:

(a) Ensure that the reports are made through established procedures in accordance with state law including chapter 74.34 RCW, and guidelines developed by the department; and

(b) Not have any policy or procedure that interferes with the requirement of chapter 74.34 RCW that employees and other mandatory reporters file reports directly with the department, and also with law enforcement, if they suspect sexual or physical assault has occurred.

~~((7)) (6) The nursing home must:~~

(a) Have evidence that all alleged violations are thoroughly investigated;

(b) Prevent further potential abandonment, abuse, neglect, financial exploitation, or misappropriation of resident property while the investigation is in progress; and

(c) Report the results of all investigations to the administrator or his designated representative and to other officials in accordance with state law and established procedures (including the state survey and certification agency) within five working days of the incident, and if the alleged violation is verified appropriate action must be taken.

~~(7) When a mandated reporter has:~~

(a) Reasonable cause to believe that a vulnerable adult has been abandoned, abused, neglected, financially exploited, or a resident's property has been misappropriated, the individual mandatory reporter must immediately report the incident to the department's aging and adult services administration (AASA);

(b) Reason to suspect that a vulnerable adult has been sexually or physically assaulted, the individual mandatory reporter must immediately report the incident to law enforcement and the department's aging and adult services administration (AASA).

~~(8) Under RCW 74.34.053, it is:~~

(a) A gross misdemeanor for a mandated reporter knowingly to fail to report as required under this section; and

(b) A misdemeanor for a person to intentionally, maliciously, or in bad faith make a false report of alleged abandonment, abuse, financial exploitation, or neglect of a vulnerable adult.

(9) The nursing home must not employ individuals who are disqualified under the requirements of WAC 388-97-203.

AMENDATORY SECTION (Amending WSR 00-06-028, filed 2/24/00, effective 3/26/00)

**WAC 388-97-160 General administration.** (1) The nursing home must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well being of each resident.

(2) The nursing home must:

(a) Be licensed under chapter 18.51 RCW;

(b) Operate and provide services in compliance with:

(i) All applicable federal, state and local laws, regulations, and codes;

(ii) Accepted professional standards and principles that apply to professionals providing services in nursing homes; and

(c) Have a governing body or designated individuals functioning as a governing body, that is legally responsible for establishing and implementing policies regarding the management and operation of the nursing home.

(3) The governing body of the nursing home must appoint the administrator who:

(a) Is licensed by the state;

(b) Is responsible for management of the ~~((facility))~~ nursing home;

(c) Keeps the licensee informed of all surveys and notices of noncompliance;

(d) Complies with all requirements of chapter 18.52 RCW, and all regulations ~~((put into effect under the))~~ adopted under that chapter;

(e) Is an onsite, full-time individual in active administrative charge at the premises of only one nursing home, a minimum of four days and an average of forty hours per week. Exception: Onsite, full-time administrator with small resident populations or in rural areas will be defined as an individual in active administrative charge at the premises of only one nursing home:

(i) A minimum of four days and an average of twenty hours per week at facilities with one to thirty beds; or

(ii) A minimum of four days and an average of thirty hours per week at facilities with thirty-one to forty-nine beds~~((+and))~~.

(4) The nursing home must identify deficient practice and develop, implement and evaluate plans of action to correct identified deficient practice.

(5) Nursing homes temporarily without an administrator may operate up to four continuous weeks under a responsible individual authorized to act as nursing home administrator designee.

(a) The designee must be qualified by experience to assume designated duties; and

(b) The nursing home must have a written agreement with a ~~((Washington State licensed))~~ nursing home administrator, licensed in the state of Washington, who must be readily available to consult with the designee.

(c) The nursing home may request from the department's designated local aging and adult services administration

(AASA) field office in writing, an extension of the four weeks by stating why an extension is needed, how a resident's safety or well-being is maintained during an extension and giving the estimated date by which a full time, qualified nursing home administrator will be on-site.

~~((5))~~ (6) The nursing home must employ on a full time, part time or consultant basis those professionals necessary to carry out the requirements of this chapter.

~~((6))~~ (7) If the nursing home does not employ a qualified professional individual to furnish a specific service to be provided by the nursing home, the nursing home must:

(a) Have that service furnished to residents by an individual or agency outside the nursing home under a written arrangement or agreement; and

(b) Ensure the arrangement or agreement referred to in (a) of this subsection specifies in writing that the nursing home assumes responsibility for:

(i) Obtaining services that meet professional standards and principles that apply to professionals providing services in nursing homes; and

(ii) The timeliness of services.

~~((7))~~ (8) The nursing home must:

(a) Report to the local law enforcement agency and the department any individual threatening bodily harm or causing a disturbance which threatens any individual's welfare and safety;

(b) Identify, investigate, and report incidents involving residents, according to department established nursing home guidelines; and

(c) Comply with "whistle blower" rules as defined in chapter 74.34 RCW. (~~"Whistle blower" means a resident or employee of a nursing home, or any individual licensed under Title 18 RCW, who in good faith reports alleged abandonment, abuse, neglect, financial exploitation, or misappropriation of resident property to the department.~~)

~~((8))~~

(9) The department will:

(a) (~~Discourage "whistle blower"~~) Investigate complaints, made ((in bad faith)) to the department according to established protocols;

(b) Take action against a nursing home that is found to have used retaliatory treatment toward a resident or employee who has voiced grievances to nursing home staff or administration, or lodged a good faith complaint with the department; ~~((and))~~

(c) (~~Investigate complaints, made to the department's toll free number, according to established protocols~~) Report to local law enforcement:

(i) Any mandated reporter that knowingly fails to report in accordance with WAC 388-97-076; and

(ii) Any person that intentionally, maliciously or in bad faith makes a false report of alleged abandonment, abuse, financial exploitation, or neglect of a vulnerable adult.

(10) Refer also to WAC 388-97-204, Retaliation.

AMENDATORY SECTION (Amending WSR 00-06-028, filed 2/24/00, effective 3/26/00)

**WAC 388-97-162 Required notification and reporting.** (1) ~~((The nursing home and mandatory reporters under chapter 74.34 RCW are responsible for the reporting and notification requirements found in this section and elsewhere in this chapter.~~

~~((2))~~ The nursing home ~~((and mandatory reporters, where applicable,))~~ must immediately notify the department's aging and adult services administration (AASA) of:

(a) Any allegations of resident abandonment, abuse, or neglect, including substantial injuries of an unknown source, financial exploitation and misappropriation of a resident's property;

(b) Any unusual event, having an actual or potential negative impact on residents, requiring the actual or potential implementation of the nursing home's disaster plan. These unusual events include but are not limited to those listed under WAC 388-97-185 (1)(a) through (k), and could include the evacuation of all or part of the residents to another area of the nursing home or to another address; and

(c) Circumstances which threaten the nursing home's ability to ensure continuation of services to residents.

(2) Mandated reporters must notify the department and law enforcement as directed in WAC 388-97-076, and according to department established nursing home guidelines.

(3) The nursing home must notify the department's AASA of:

(a) Physical plant changes, including but not limited to:

(i) New construction;

(ii) Proposed resident area or room use change;

(iii) Resident room number changes; and

(iv) Proposed bed banking;

(b) Mechanical failure of equipment important to the everyday functioning of the ~~((facility))~~ nursing home, which cannot be repaired within a reasonable time frame, such as an elevator; and

(c) An actual or proposed change of ownership (CHOW).

(4) The nursing home must notify, in writing, the department's AASA and each resident, of a loss of, or change in, the nursing home's administrator or director of nursing services at the time the loss or change occurs.

(5) The nursing home licensee must notify the ~~((department))~~ department's AASA in writing of any change in the name of the licensee, or of the nursing home, at the time the change occurs.

(6) If a licensee operates in a building it does not own, the licensee must immediately notify the department of the occurrence of any event of default under the terms of the lease, or if it receives verbal or written notice that the lease agreement will be terminated, or that the lease agreement will not be renewed.

(7) The nursing home must report any case or suspected case of a reportable disease to the appropriate department of health officer and must also notify the appropriate department(s) of other health and safety issues, according to state and local laws.

(8) The nursing home licensee must notify the department in writing of a nursing home's voluntary closure.

(a) The licensee must send this written notification sixty days before closure to the department's designated local aging and adult administration office and to all residents and resident representatives.

(b) Relocation of residents must be in accordance with WAC 388-97-595(2).

(9) The nursing home licensee must notify the department in writing of voluntary termination of its Medicare or Medicaid contract.

(a) The license must send this written notification sixty days before contract termination, to the department's designated local aging and adult services administration office and to all residents and resident representatives.

(b) If the contractor continues to provide nursing facility services, the contract termination will be subject to federal law prohibiting the discharge of residents who are residing in the facility on the day before the effective date of the contract termination.

**AMENDATORY SECTION** (Amending WSR 00-06-028, filed 2/24/00, effective 3/26/00)

**WAC 388-97-180 Clinical records.** (1) The nursing home must:

(a) Maintain clinical records on each resident in accordance with accepted professional standards and practices that are:

- (i) Complete;
- (ii) Accurately documented;
- (iii) Readily accessible; and
- (iv) Systematically organized.

(b) Safeguard clinical record information against alteration, loss, destruction, and unauthorized use; and

(c) Keep confidential all information contained in the resident's records, regardless of the form or storage method of the records, except when release is required by:

- (i) Transfer to another health care institution;
- (ii) Law;
- (iii) Third party payment contract; or
- (iv) The resident.

(2) The nursing home must ensure the clinical record of each resident includes at least the following:

(a) Resident identification and sociological data, including the name and address of the individual or individuals the resident designates as significant;

(b) Medical information required under WAC 388-97-125;

- (c) Physician's orders;
- (d) Assessments;
- (e) Plans of care;
- (f) Services provided;

(g) In the case of the Medicaid-certified nursing facility, records related to preadmission screening and resident review;

- (h) Progress notes;
- (i) Medications administered;
- (j) Consents, authorizations, releases;
- (k) Allergic responses;

(l) Laboratory, X-ray, and other findings; and

(m) Other records as appropriate.

(3) The nursing home must:

(a) Designate an individual responsible for the record system who:

(i) Has appropriate training and experience in clinical record management; or

(ii) Receives consultation from a qualified clinical record practitioner, such as ~~((an))~~ a registered ~~((record))~~ health information administrator or ~~((accredited-record))~~ registered health information technician.

(b) Make all records available to authorized representatives of the department for review and duplication as necessary; and

(c) Maintain the following:

(i) A master resident index having a reference for each resident including the health record number, if applicable; full name; date of birth; admission dates; and discharge dates; and

(ii) A chronological census register, including all admissions, discharge, deaths and transfers, and noting the receiving facility. The nursing home must ensure the register includes discharges for social leave and transfers to other treatment facilities in excess of twenty-four hours.

(4) The nursing home must ensure the clinical record of each resident:

(a) Is documented and authenticated accurately, promptly and legibly by individuals giving the order, making the observation, performing the examination, assessment, treatment or providing the care and services. "**Authenticated**" means the authorization of a written entry in a record by signature, including the first initial and last name and title, or a unique identifier allowing identification of the responsible individual; and

(i) Documents from other health care facilities that are clearly identified as being authenticated at that facility will be considered authenticated at the receiving facility; and

(ii) The original or a durable, legible, direct copy of each document will be accepted.

(b) Contains appropriate information for a deceased resident including:

(i) The time and date of death;

(ii) Apparent cause of death;

(iii) Notification of the physician and appropriate resident representative; and

(iv) The disposition of the body and personal effects.

(5) In cases where the nursing home maintains records by computer rather than hard copy, the nursing home must:

(a) Have in place safeguards to prevent unauthorized access; and

(b) Provide for reconstruction of information.

(6) The nursing home licensee must:

(a) Retain health records for the time period required in RCW 18.51.300:

(i) For a period of no less than eight years following the most recent discharge of the resident; except

(ii) That the records of minors must be retained for no less than three years following the attainment of age eighteen

years, or ten years following their most recent discharge, whichever is longer.

(b) In the event of a change of ownership, provide for the orderly transfer of clinical records to the new licensee; and

(c) In the event a nursing home ceases operation, make arrangements prior to cessation, as approved by the department, for preservation of the clinical records. The nursing home licensee must provide a plan for preservation of clinical records to the department's designated local aging and adult administration (AASA) office no later than seven days after the date of notice of nursing home closure as required by WAC 388-97-162 (8) and (9) unless an alternate date has been approved by the department.

(d) Provide a resident access to all records pertaining to the resident as required under WAC 388-97-07005(2).

**AMENDATORY SECTION** (Amending WSR 00-06-028, filed 2/24/00, effective 3/26/00)

**WAC 388-97-202 Criminal history disclosure and background inquiries.** (1) ~~((Except as provided in this section, a nursing home must not employ any individual, directly or by contract, or accept as a volunteer or student, any individual who may have regularly scheduled unsupervised access to residents if the individual:~~

~~(a) Has been convicted of a "crime against children and other persons" as defined in RCW 43.43.830, unless the individual has been convicted of one of the five crimes listed below and the required number of years has passed between the most recent conviction and the date of the application for employment:~~

~~(i) Simple assault, assault in the fourth degree, or the same offense as it may hereafter be renamed, and three or more years have passed;~~

~~(ii) Prostitution, or the same offense as it may hereafter be renamed, and three or more years have passed;~~

~~(iii) Theft in the second degree, or the same offense as it may hereafter be renamed, and five or more years have passed;~~

~~(iv) Theft in the third degree, or the same offense as it may hereafter be renamed, and three or more years have passed; or~~

~~(v) Forgery, or the same offense as forgery may hereafter be renamed, and five or more years have passed.~~

~~(b) Has been convicted of crimes relating to financial exploitation as defined under RCW 43.43.830;~~

~~(c) Has been found, by a court of law, to have abused, neglected, exploited, or abandoned a minor or vulnerable adult in criminal, dependency or domestic relations proceeding. A "vulnerable adult" is defined in chapter 74.34 RCW;~~

~~(d) Was subject to an order of protection under chapter 74.34 RCW for abandonment, abuse, neglect, or financial exploitation of a vulnerable adult, or misappropriation of resident property; or~~

~~(e) Has been found to have neglected, exploited, or abandoned a minor or vulnerable adult by a disciplining authority, including the state department of health, or by the department's resident protection program.~~

~~(2) A nursing home may conditionally employ an individual pending a background inquiry provided the nursing~~

~~home requests the inquiry within seventy-two hours of the conditional employment.~~

~~(3)) A nursing home licensed under chapter 18.51 RCW must make a background inquiry request to one of the following:~~

~~(a) The Washington state patrol;~~

~~(b) The department;~~

~~(c) The most recent employer licensed under chapters 18.51, 18.20, and 70.128 RCW provided termination of that employment was within twelve months of the current employment application and provided the inquiry was completed by the department or the Washington state patrol within the two years of the current date of application; or~~

~~(d) A nurse pool agency licensed under chapter 18.52C RCW, or hereafter renamed, provided the background inquiry was completed by the Washington state patrol within two years before the current date of employment in the nursing home; and~~

~~(e) A nursing home may not rely on a criminal background inquiry from a former employer, including a nursing pool, if the nursing home knows or has reason to know that the ((applicant)) individual applying for the job has, or may have, a disqualifying conviction or finding.~~

~~((4)) (2) Nursing homes must:~~

~~(a) Request a background inquiry of any individual employed, directly or by agreement or contract, or accepted as a volunteer or student; and~~

~~(b) Notify appropriate licensing or certification agency of any individual resigning or terminated as a result of having a conviction record.~~

~~((5)) (3) Before a nursing home employs any individual, directly or by contract, or accepts any individual as a volunteer or student, a nursing home must:~~

~~(a) Inform the individual that the ((facility)) nursing home must make a background inquiry and require the individual to sign a disclosure statement, ((authorizing the inquiry; or)) under penalty or perjury and in accordance with RCW 43.43.834;~~

~~(b) Inform the individual that he or she may make a request for a copy of a completed background inquiry of this section; and~~

~~(c) Require the individual to sign a statement authorizing the nursing home, the department, and the Washington state patrol to make a background inquiry; and~~

~~(d) Verbally inform the individual of the background inquiry results within seventy-two hours of receipt.~~

~~((6)) (4) The nursing home must establish procedures ensuring that:~~

~~(a) The individual is verbally informed of the background inquiry results within seventy-two hours of receipt;~~

~~(b) All disclosure statements and background inquiry responses and all copies are maintained in a confidential and secure manner;~~

~~(c) Disclosure statements and background inquiry responses are used for employment purposes only;~~

~~(d) Disclosure statements and background inquiry responses are not disclosed to any individual except:~~

~~(i) The individual about whom the nursing home made the disclosure or background inquiry;~~

(ii) Authorized state employees including the department's licensure and certification staff, resident protection program staff and background inquiry unit staff;

(iii) Authorized federal employees including those from the Department of Health and Human Services, (~~Health Care Financing Administration~~) Centers for Medicare and Medicaid Services;

(iv) The Washington state patrol auditor; and

(v) Potential employers licensed under chapters 18.51, 18.20, and 70.128 RCW who are making a request as provided for under subsection (~~(3)~~) (1) of this section; and

(e) A record of findings be retained by the (~~facility~~) nursing home for twelve months beyond the date of employment termination.

(5) The nursing home must not employ individuals who are disqualified under the requirements of WAC 388-97-203.

#### NEW SECTION

**WAC 388-97-203 Disqualification from nursing home employment.** (1) The nursing home must not employ directly or by contract, or accept as a volunteer or student, any individual:

(a) Who has been found to have abused, neglected, exploited or abandoned a minor or vulnerable adult by a court of law, by a disciplining authority, including the state department of health, or by the department's resident protection program;

(b) Against whom a finding of abuse, neglect, exploitation, misappropriation of property or abandonment has been entered on any state registry, including the nursing assistant registry; or

(c) Who has been subject to an order of protection under chapter 74.34 RCW for abandonment, abuse, neglect, or financial exploitation of a vulnerable adult, or misappropriation of resident property.

(2) Except as provided in this section, the nursing home must not employ directly or by contract, or accept as a volunteer or student, any individual who may have unsupervised access to residents if the individual:

(a) Has been convicted of a "crime against children and other persons" as defined in RCW 43.43.830, unless the individual has been convicted of one of the five crimes listed below and the required number of years has passed between the most recent conviction and the date of the application for employment:

(i) Simple assault, assault in the fourth degree, or the same offense as it may hereafter be renamed, and three or more years have passed;

(ii) Prostitution, or the same offense as it may hereafter be renamed, and three or more years have passed;

(iii) Theft in the second degree, or the same offense as it may hereafter be renamed, and five or more years have passed;

(iv) Theft in the third degree, or the same offense as it may hereafter be renamed, and three or more years have passed; or

(v) Forgery, or the same offense as forgery may hereafter be renamed, and five or more years have passed.

(b) Has been convicted of crimes relating to financial exploitation as defined under RCW 43.43.830.

(3) The term "vulnerable adult" is defined in RCW 74.34.020; the term "unsupervised access" is defined in RCW 43.43.830.

#### NEW SECTION

**WAC 388-97-204 Retaliation or discrimination prohibited.** (1) The licensee or the nursing home must not discriminate or retaliate in any manner against a resident or employee in its nursing home who has initiated or participated in any action or proceeding authorized under nursing home licensing law. Examples of such participation include, but are not limited to the following:

(a) The resident, or someone acting on behalf of the resident, or the employee;

(i) Made a complaint, including a whistle blower complaint, to the department, the department of health, the long-term care ombudsman, attorney general's office, the courts or law enforcement;

(ii) Provided information to the department, the department of health, the long-term care ombudsman, attorney general's office, the courts or law enforcement; or

(iii) Testified in a proceeding related to the nursing home or its staff.

(2) For purposes of this chapter, "**retaliation**" or "**discrimination**" against a resident means an act including, but not limited to:

(a) Verbal or physical harassment or abuse;

(b) Any attempt to expel the resident from the facility;

(c) Nonmedically indicated social, dietary, or mobility restriction(s);

(d) Lessening of the level of care when not medically appropriate; or

(e) Nonvoluntary relocation within a nursing home without appropriate medical, psychosocial, or nursing justification;

(f) Neglect or negligent treatment;

(g) Withholding privileges;

(h) Monitoring resident's phone, mail or visits without resident's permission;

(i) Withholding or threatening to withhold food or treatment unless authorized by terminally ill resident or the resident's representative;

(j) Persistently delaying responses to resident's request for services of assistance; or

(k) Infringement on a resident's rights described in chapter 74.42 RCW, RCW 74.39A.060(7), WAC 388-97-051, and also, for Medicaid and Medicare certified nursing facilities, in federal laws and regulations.

(3) For purposes of this chapter, "**retaliation**" or "**discrimination**" against an employee means an act including, but not limited to:

(a) Harassment;

(b) Unwarranted firing;

(c) Unwarranted demotion;

(d) Unjustified disciplinary action;

(e) Nonvoluntary reassignment or rescheduling;

- (f) Denial of adequate staff to perform duties;
- (g) Frequent staff changes;
- (h) Frequent and undesirable office changes;
- (i) Refusal to assign meaningful work;
- (j) Unwarranted and unsubstantiated report of misconduct under Title 18 RCW;
- (k) Unsubstantiated letters of reprimand;
- (l) Unsubstantiated unsatisfactory performance evaluations;
- (l) Denial of employment;
- (m) A supervisor or superior encouraging coworkers to behave in a hostile manner toward the whistle blower; or
- (n) Workplace reprisal or retaliatory action as defined in RCW 74.34.180 (3)(b).

(4) For purposes of this chapter, a "whistle blower" is defined in WAC 388-97-005.

(5) If, within one year of the complaint by or on behalf of a resident, the resident is involuntarily discharged from the nursing home, or is subjected to any type of discriminatory treatment, there will be a presumption that the action was in retaliation for the filing of the complaint. Under these circumstances, the nursing home will have the burden of establishing that the action was not retaliatory, in accordance with RCW 18.51.220 and 74.34.180(2).

**AMENDATORY SECTION** (Amending WSR 00-06-028, filed 2/24/00, effective 3/26/00)

**WAC 388-97-205 Laundry services.** (1) The nursing home must meet the requirements of WAC 388-97-347, and:

- (a) Launder ~~((facility))~~ nursing home linens on the premises; or
- (b) Contract with a laundry capable of meeting quality standards, infection control, and turn-around time requirements; and

(c) Make provision for laundering of residents' personal clothing.

(2) For residents' personal clothing, the nursing home:

(a) Must have a system in place to ensure that personal clothing is not damaged or lost during handling and laundering; and

(b) May use ~~((department approved chemical disinfection))~~ a chemical disinfectant in lieu of ~~((the))~~ hot water disinfection provided that the nursing home:

(i) Uses the product according to the manufacturer's instructions; and

(ii) Has readily available, current documentation from the manufacturer that supports the claim that the product is effective as a laundry disinfectant and such documentation is based on scientific studies or other rational data. "Disinfectant" means a germicide that inactivates virtually all recognized pathogenic microorganisms (but not necessarily all microbial forms, such as bacterial spores) on inanimate objects.

**AMENDATORY SECTION** (Amending WSR 00-06-028, filed 2/24/00, effective 3/26/00)

**WAC 388-97-260 Pre-admission screening and resident review (PASRR) determination and appeal rights.**

(1) The resident has the right to choose to remain in the nursing facility and receive specialized services if:

(a) He or she has continuously resided in a nursing facility since October 1, 1987; and

(b) The department determined, in 1990, that the resident required specialized services for a serious mental illness or developmental disability but did not require nursing facility services.

(2) In the event that residents chose to remain in the nursing facility as outlined in subsection (1) above, the department, or designee, will clarify the effect on eligibility for Medicaid services under the state plan if the resident chooses to leave the facility, including its effect on readmission to the facility.

(3) ~~((A nursing facility applicant or))~~ An individual applying for admission to a nursing facility or a nursing facility resident who has been adversely impacted by a PASRR determination may appeal the department's determination ~~((of))~~ that the individual is:

(a) Not in need of nursing facility care as defined under WAC ~~((388-97-022))~~ 388-71-0700;

(b) Not in need of specialized services as defined under WAC 388-97-251; or

(c) Need for specialized services as defined under WAC 388-97-251.

(4) The nursing facility must assist the ~~((applicant))~~ individual applying for admission or resident, as needed, in requesting a hearing to appeal the department's PASRR determination.

(5) If the department's PASRR determination requires that a resident be transferred or discharged, the department will:

(a) Provide the required notice of transfer or discharge to the resident, the resident's surrogate decision maker, and if appropriate, a family member or the resident's representative thirty days or more before the date of transfer or discharge;

(b) Attach a hearing request form to the transfer or discharge notice;

(c) Inform the resident, in writing in a language and manner the resident can understand, that:

(i) An appeal request may be made any time up to ninety days from the date the resident receives the notice of transfer or discharge;

(ii) Transfer or discharge will be suspended when an appeal request is received by the office of administrative hearings on or before the date of transfer or discharge set forth in the written transfer or discharge notice; and

(iii) The resident will be ineligible for Medicaid nursing facility payment:

(A) Thirty days after the receipt of written notice of transfer or discharge; or

(B) If the resident appeals under subsection (1)(a) of this section, thirty days after the final order is entered upholding the department's decision to transfer or discharge a resident.

(6) The department's home and community services may pay for the resident's nursing facility services after the time specified in subsection ~~((3))~~(5)(c)(iii) of this section, if the department determines that a location appropriate to the resident's medical and other needs is not available.

(7) The department will:

(a) Send a copy of the transfer/discharge notice to the resident's attending physician, the nursing facility and, where appropriate, a family member or the resident's representative;

(b) Suspend transfer or discharge:

(i) If the office of administrative hearings receives an appeal on or before the date set for transfer or discharge or before the resident is actually transferred or discharged; and

(ii) Until the office of appeals makes a determination; and

(c) Provide assistance to the resident for relocation necessitated by the department's PASRR determination.

(8) Resident appeals of PASRR determinations will be in accordance with 42 C.F.R. §431 Subpart E, chapter ~~((388-08))~~ 388-02 WAC, and the procedures defined in this section. In the event of a conflict between a provision in this chapter and a provision in chapter ~~((388-08))~~ 388-02 WAC, the provision in this chapter will prevail.

AMENDATORY SECTION (Amending WSR 00-06-028, filed 2/24/00, effective 3/26/00)

**WAC 388-97-285 Intermediate care facilities for the mentally retarded (ICF/MR).** (1) ~~((An))~~ ICF/MR nursing facilities must meet the requirements of 42 C.F.R. §483(-) Subpart I and the requirements of this subchapter except that in an ICF/MR nursing facility:

(a) There must be at least one registered nurse or licensed practical nurse on duty eight hours per day, and additional licensed staff on any shift if indicated. WAC 388-97-115 (2)(a) and (3)(a) and (b) do not apply to ICF/MR nursing facilities; and

(b) A medical director is not required.

(2) Staff from the division of developmental disabilities will approve of social/therapeutic leave for individuals who reside in ICF/MR nursing facilities.

AMENDATORY SECTION (Amending WSR 00-06-028, filed 2/24/00, effective 3/26/00)

**WAC 388-97-35040 Ambulation route on a dementia care unit in a new building or addition.** The nursing home must ensure that the dementia care ~~((unit))~~ unit has a continuous ambulation route which may include outdoor ambulation areas and allows the resident to return to the resident's starting point without reversing direction.

AMENDATORY SECTION (Amending WSR 00-06-028, filed 2/24/00, effective 3/26/00)

**WAC 388-97-565 Department review of nursing home license renewals.** (1) All renewal license applications must be reviewed by the department under this chapter.

(2) The department will not begin review of an incomplete license renewal application.

(3) The ~~((proposed))~~ current licensee must respond to any department request for additional information within five working days.

(4) When the application is determined to be complete, the department will review:

(a) The information contained in the application;

(b) Actions against the license (i.e., revocation, suspension, refusal to renew, etc.);

(c) All criminal convictions, and relevant civil or administrative actions or findings including, but not limited to, findings under 42 C.F.R. §488.335, disciplinary findings, and findings of abuse, neglect, exploitation, or abandonment; and

(d) Other relevant information.

(5) The department will notify the current licensee of the results of the review.

AMENDATORY SECTION (Amending WSR 00-06-028, filed 2/24/00, effective 3/26/00)

**WAC 388-97-570 Reasons for denial, suspension, modification, revocation of, or refusal to renew a nursing home license.** (1) The department may deny, suspend, modify, revoke, or refuse to renew a nursing home license ~~((if))~~ when the department finds the proposed or current licensee, or any partner, officer, director, managing employee, ~~((or))~~ owner of five percent or more of the proposed or current licensee of the nursing home, owner of five percent or more of the assets of the nursing home, proposed or current administrator, or employee or individual providing nursing home care or services has:

(a) ~~((Not complied with all the requirements established by chapters 18.51, 74.42, or 74.46 RCW and rules adopted thereunder;))~~ Failed or refused to comply with the:

(i) Requirements established by chapters 18.51, 74.42, or 74.46 RCW and regulations adopted under these chapters; or

(ii) Medicaid requirements of Title XIX of the Social Security Act and Medicaid regulations.

(b) A history of significant noncompliance with federal or state regulations in providing nursing home care;

(c) No credit history or a poor credit history;

(d) Engaged in the illegal use of drugs or the excessive use of alcohol or been convicted of "crimes relating to drugs" as defined in RCW 43.43.830;

(e) Unlawfully operated a nursing home, or long term care facility as defined in RCW 70.129.010, without a license or under a revoked or suspended license;

(f) Previously held a license to operate a hospital or any facility for the care of children or vulnerable adults, and that license has been revoked, or suspended, or the licensee did not seek renewal of the license following written notification of the licensing agency's initiation of revocation or suspension of the license;

(g) Obtained or attempted to obtain a license by fraudulent means or misrepresentation;

(h) Permitted, aided, or abetted the commission of any illegal act on the nursing home premises;

(i) ~~((Failed to meet financial obligations as the obligations fall due in the normal course of business;))~~

(j)) Been convicted of a felony, other than a felony that is a "crime against children or other persons," or a "crime relating to financial exploitation" as defined in RCW 43.43.830, if the crime reasonably relates to the competency of the individual to own or operate a nursing home;

~~((k) Failed to provide any authorization, documentation, or information the department requires in order to verify information contained in the application; or~~

~~(l) Failed to)~~

(j) Failed to:

(i) Provide any authorization, documentation, or information the department requires in order to verify information contained in the application;

(ii) Meet financial obligations as the obligations fall due in the normal course of business;

(iii) Verify additional information the department determines relevant to the application;

(iv) Report abandonment, abuse, neglect or financial exploitation in violation of chapter 74.34 RCW; or in the case of a skilled nursing facility or nursing facilities, failure to report as required by 42 C.F.R. 483.13; or

(v) Pay a civil fine the department assesses under this chapter within ten days after assessment becomes final;

(k) Been certified pursuant to RCW 74.20A.320 as a person who is not in compliance with a child support order (license suspension only);

(l) Knowingly or with reason to know makes a false statement of a material fact in the application for a license or license renewal, in attached data, or in matters under department investigation;

(m) Refused to allow department representatives or agents to inspect required books, records, and files or portions of the nursing home premises;

(n) Willfully prevented, interfered with, or attempted to impede the work of authorized department representatives in the:

(i) Lawful enforcement of provisions under this chapter or chapters 18.51 or 74.42 RCW; or

(ii) Preservation of evidence of violations of provisions under this chapter or chapters 18.51 or 74.42 RCW.

(o) Retaliated against a resident or employee initiating or participating in proceedings specified under RCW 18.51.220; or

(p) Discriminated against Medicaid recipients as prohibited under RCW 74.42.055.

(2) In determining whether there is a history of significant noncompliance with federal or state regulations under subsection (1)(b), the department may, at a minimum, consider:

(a) Whether the violation resulted in a significant harm or a serious and immediate threat to the health, safety, or welfare of any resident;

(b) Whether the proposed or current licensee promptly investigated the circumstances surrounding any violation and took steps to correct and prevent a recurrence of a violation;

(c) The history of surveys and complaint investigation findings and any resulting enforcement actions;

(d) Repeated failure to comply with regulations;

(e) Inability to attain compliance with cited deficiencies within a reasonable period of time; and

(f) The number of violations relative to the number of facilities the proposed or current licensee, or any partner, officer, director, managing employee, employee or individual providing nursing home care or services has been affiliated within the past ten years, or owner of five percent or more of the proposed or current licensee or of the assets of the nursing home ~~(, has been affiliated with in the past ten years)~~.

(3) The department must deny, suspend, revoke, or refuse to renew a proposed or current licensee's nursing home license if the proposed or current licensee or any partner, officer, director, managing employee, owner of five percent or more of the proposed or current licensee of the nursing home or owner of five percent or more of the assets of the nursing home, proposed or current administrator, or employee or individual providing nursing home care or services has been:

(a) Convicted of a "crime against children or other persons" as defined under RCW 43.43.830;

(b) Convicted of a "crime relating to financial exploitation" as defined under RCW 43.43.830;

(c) Found by a court in a protection proceeding under chapter 74.34 RCW, or any comparable state or federal law, to have abandoned, abused, neglected or financially exploited a vulnerable adult;

(d) Found in any final decision issued by a disciplinary board to have sexually or physically abused or exploited any minor or an individual with a developmental disability or to have abused, neglected, abandoned, or financially exploited any vulnerable adult;

(e) Found in any dependency action to have sexually assaulted or exploited any minor or to have physically abused any minor;

(f) Found by a court in a domestic relations proceeding under Title 26 RCW, or any comparable state or federal law, to have sexually abused or exploited any minor or to have physically abused any minor; or

(g) Found to have abused, neglected, abandoned or financially exploited or mistreated residents or misappropriated their property, and that finding has been entered on a nursing assistant registry.

AMENDATORY SECTION (Amending WSR 00-06-028, filed 2/24/00, effective 3/26/00)

**WAC 388-97-575 Appeal of the department's licensing decision.** ~~((1))~~ A proposed or current licensee contesting a department licensing decision must file a written request for an ~~((adjudicative proceeding))~~ administrative hearing within twenty days of receipt of the decision.

~~((2))~~ Adjudicative proceedings will be governed by the Administrative Procedure Act (chapter 34.05 RCW), RCW 18.51.065, 43.20A.205, WAC 388-98-750, and chapters 388-08 and 388-97 WAC. If any provision in this chapter conflicts with chapter 388-08 WAC, the provision of this chapter will govern.) The appeals process and requirements are set forth in WAC 388-97-625.

**AMENDATORY SECTION** (Amending WSR 00-06-028, filed 2/24/00, effective 3/26/00)

**WAC 388-97-580 Management agreements.** (1) ~~((If the responsibilities given to the manager by the management agreement are so extensive that the licensee is relieved of responsibility for the daily operations of the facility, then the department must determine that a change of ownership has occurred))~~ The licensee is responsible for the daily operations of the nursing home.

(2) As used in this section:

(a) "Management agreement," means a written, executed, agreement between the licensee and another individual or entity regarding the provision of certain services in a nursing home; and

(b) "Manager" refers to the individual or entity providing services under a management agreement.

(3) The licensee may not give the manager responsibilities that are so extensive that the licensee is relieved of responsibility for the daily operations and provisions of services of the facility. If the licensee does so, then the department must determine that a change of ownership has occurred.

(4) The proposed licensee or the current licensee must notify the residents and their representatives sixty days before entering into a management agreement.

~~((3))~~ (5) The department must receive a written management agreement, including an organizational chart showing the relationship between the proposed or current licensee, management company, and all related organizations:

(a) Sixty days before;

(i) The proposed change of ownership date ((as part of));

(ii) The initial ((license application or any change of ownership;)) licensure date; or

(iii) The effective date of the management agreement; or

(b) ~~((Sixty days before the effective date when submitted by the current licensee; or~~

~~(e)))~~ Thirty days before the effective date of any amendment to an existing management agreement.

~~((4))~~ (6) Management agreements, at minimum must:

(a) Create a principal/agent relationship between the licensee and the manager;

(b) Describe the responsibilities of the licensee and manager, including items, services, and activities to be provided;

(c) Require the licensee's governing body, board of directors, or similar authority to appoint the facility administrator;

(d) Provide for maintenance and retention of all records as applicable according to rules and regulations;

(e) Allow unlimited access by the department to documentation and records according to applicable laws or regulations;

(f) Require the licensee to participate in monthly oversight meetings and quarterly on-site visits to the facility;

(g) Require the manager to immediately send copies of surveys and notices of noncompliance to the licensee;

(h) State that the licensee is responsible for ensuring all licenses, certifications, and accreditations are obtained and maintained;

(i) State that the manager and licensee will review the management agreement annually and notify the department of changes according to applicable ~~((rules and))~~ regulations; ~~((and))~~

(j) Acknowledge that the licensee is the party responsible for meeting state and federal licensing and certification requirements~~((-~~

~~(5))~~;

(k) Require the licensee to maintain ultimate responsibility over personnel issues relating to the operation of the nursing home and care of the residents, including but not limited to, staffing plans, orientation, and training;

(l) Require that, even if day-to-day management of the trust funds are delegated, the licensee:

(i) Retains all fiduciary and custodial responsibility for funds that have been deposited with the nursing home by the resident; and

(ii) Is directly accountable to the residents for such funds.

(m) Provide that if any responsibilities for the day-to-day management of the resident trust fund are delegated to the manager, then the manager must:

(i) Provide the licensee with a monthly accounting of the resident funds; and

(ii) Meet all legal requirements related to holding, and accounting for, resident trust funds; and

(n) State that the manager will not represent itself or give the appearance it is the licensee.

(7) Upon receipt of a proposed management agreement, the department may require:

(a) The licensee or manager to provide additional information or clarification;

(b) Any changes necessary to:

(i) Bring the management agreement into compliance with this section; and

(ii) Ensure that the licensee has not been relieved of the responsibility for the daily operations of the facility; and

(c) More frequent contact between the licensee and manager under subsection ~~((4))~~(6)(f).

~~((6) The department may monitor the licensee's and manager's compliance with the terms of the management agreement and))~~

(8) The licensee and manager must act in accordance with the terms of the management agreements. If the department determines that they are not, then the department may take ((any)) action deemed appropriate.

**AMENDATORY SECTION** (Amending WSR 00-06-028, filed 2/24/00, effective 3/26/00)

**WAC 388-97-585 Change of ownership.** (1) A change of ownership occurs when there is a substitution, elimination, or withdrawal of the ~~((operator or operating entity responsible for the daily operational decisions of the nursing home;))~~ licensee or a substitution of control of ~~((such operating entity))~~ the licensee. "Control," as used in this section, means the possession, directly or indirectly, of the power to direct the management, operation, and policies of the licensee, whether through ownership, voting control, by agreement, by contract or otherwise. Events which constitute a

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change of ownership include, but are not limited to, the following:

(a) The form of legal organization of the licensee is changed (e.g., a sole proprietor forms a partnership or corporation);

(b) The licensee transfers ownership of the nursing home business enterprise to another party regardless of whether ownership of some or all of the real property and/or personal property assets of the facility is also transferred;

(c) Dissolution or consolidation of the entity ~~((or merger if the licensee does not survive the merger));~~

(d) Merger unless the licensee survives the merger and there is not a change in control of the licensee;

(e) If, during any continuous twenty-four month period, fifty percent or more of the entity is transferred, whether by a single transaction or multiple transactions, to:

(i) A different party (e.g., new or former shareholders); or

(ii) An individual or entity that had less than a five percent ownership interest in the nursing home at the time of the first transaction; or

~~((e))~~ (f) Any other event or combination of events that the department determines results in a:

(i) Substitution, elimination, or withdrawal of the licensee; or

(ii) Substitution of control of the ~~((operator or the operating entity))~~ licensee responsible for the daily operational decisions of the nursing home.

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

(a) A party contracts with the licensee to manage the nursing home enterprise ~~((as the licensee's agent (i.e., as provided in))~~ in accordance with the requirements of WAC 388-97-580((3)); or

(b) The real property or personal property assets of the nursing home are sold or leased, or a lease of the real property or personal property assets is terminated, as long as there is not a substitution or substitution of control of the ~~((operator or operating entity))~~ licensee.

(3) When a change of ownership is contemplated, the current licensee must notify the department and all residents and their representatives at least sixty days prior to the proposed date of transfer. The notice must be in writing and contain the following information as specified in RCW 18.51.530:

(a) Name of the ~~((current licensee and))~~ proposed licensee;

(b) Name ~~((and address of the nursing home being transferred; and~~

(c) Date of proposed transfer)) of the managing entity;

(c) Names, addresses, and telephone numbers of department personnel to whom comments regarding the change may be directed;

(d) Names of all officers and the registered agent in the state of Washington if proposed licensee is a corporation; and

(e) Names of all general partners if proposed licensee is a partnership.

(4) The proposed licensee must comply with license application requirements. The operation or ownership of a

nursing home must not be transferred until the proposed licensee has been issued a license to operate the nursing home.

AMENDATORY SECTION (Amending WSR 00-06-028, filed 2/24/00, effective 3/26/00)

**WAC 388-97-595 Relocation of residents.** (1) In the event of license revocation or suspension, decertification, or other emergency closures the department must:

(a) Notify residents and, when appropriate, resident representatives of the action; and

(b) Assist with residents' relocation and specify possible alternative living choices and locations.

(2) When a resident's relocation occurs due to a nursing home's voluntary closure, or voluntary termination of its Medicare ~~((and))~~ or Medicaid contract or both, the nursing home must:

(a) ~~((The nursing home must:~~

~~(i) Send written notification, sixty days before closure or contract termination, to the department's designated local office and to all residents and resident representatives; and~~

~~((ii))~~ Notify the department and all residents and resident representatives in accordance with WAC 388-97-162; and

(b) Provide appropriate discharge planning and coordination for all residents including a plan to the department for safe and orderly transfer or discharge of residents from the nursing home.

~~((b))~~ (3) The department may provide residents assistance with relocation.

#### SUBCHAPTER IV

### NURSING HOME LICENSURE PROGRAM ADMINISTRATION

#### NEW SECTION

**WAC 388-97-605 Inspections and deficiency citation report.** (1) The department may inspect nursing homes at any time in order to determine compliance with the requirements of chapters 18.51 or 74.42 RCW and this chapter. Types of state inspections in nursing homes include pre-occupancy, licensing, revisit, and complaint investigation. In the case of a Medicaid or Medicare contractor, or both, the department may also inspect Medicare and Medicaid certified nursing homes to determine compliance with the requirements of Title XVIII and/or XIX of the Social Security Act and federal Medicare and Medicaid regulations.

(2) The department will provide to the nursing home written documentation (notice) of the nursing home's deficiency(ies), the requirement that the deficiency(ies) violates, and the reasons for the determination of noncompliance with the requirements (RCW 18.51.091).

(3) The department may revisit the nursing home to confirm that corrections of deficiencies has been made. Revisits will be made:

(a) In accordance with RCW 74.39A.060 (5)(e);

(b) In the case of ~~((an))~~ a Medicare or Medicaid contractor, or both, in accordance with the requirements of Title

XVIII or XIX, or both of the Social Security Act and federal Medicare and Medicaid regulations; and

(c) At the department's discretion.

(4) The licensee or nursing home must:

(a) Ensure that department staff have access to the nursing home residents, staff and all resident records; and

(b) Not willfully interfere or fail to cooperate with department staff in the performance of official duties. Examples of willful interference or failure to cooperate include, but are not limited to, not allowing department staff to talk to residents or staff in private or not allowing department staff access to resident records.

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

### NEW SECTION

**WAC 388-97-610 Plan of correction.** (1) The licensee or nursing home must, within ten calendar days of notification of the cited deficiencies prepare, sign, date and provide to the department a detailed written plan of correction. Such plan of correction will provide notification to the department of the date by which the nursing home will complete the correction of cited deficiencies. The plan of correction must be completed regardless of whether the licensee requests an informal department review in accordance in WAC 388-97-620.

(2) A plan of correction is not required for deficiencies at a severity level 1/isolated scope as described in WAC 388-97-640, unless specifically requested by the department.

(3) In the case of actual or imminent threat to resident health or safety/immediate jeopardy (severity level 4 as described in WAC 388-97-640), the department may require the licensee or nursing home to submit a document alleging that the imminent threat has been removed within a time frame specified by the department. The document must specify the steps the nursing home has taken or will take to correct the imminent harm. An allegation that the imminent harm has been removed does not substitute for the plan of correction as required by subsection (1) of this section but it will become a part of the completed plan of correction.

### NEW SECTION

**WAC 388-97-615 Acceptable and unacceptable plans of correction.** (1) A plan of correction must:

(a) Address how corrective action will be accomplished for those residents found to have been affected by the deficient practice;

(b) Address how the nursing home will identify other residents having the potential to be affected by the same deficient practice;

(c) Address what measures will be put into place or systemic changes made to ensure that the deficient practice will not recur;

(d) Indicate how the nursing home plans to monitor its performance to make sure that solutions are sustained, including how the plan of correction will be integrated into the nursing home's quality assurance system;

(e) Give the title of the person who is responsible for assuring lasting correction; and

(f) Give the date by which the correction will be made.

(2) The department will review the nursing home's plan of correction to determine whether it is acceptable.

(3) When deficiencies involve nursing home alterations, physical plant plan development, construction review, or other circumstances where extended time to complete correction may be required, the department's designated local aging and adult services administration (AASA) field office or other department designee may accept a plan of correction as evidence of substantial compliance under the following circumstances:

(a) The plan of correction must include the steps that the nursing home needs to take, the time schedule for completion of the steps, and concrete evidence that the plan will be carried out as scheduled; and

(b) The nursing home must submit progress reports and/or updated plans to the department in accordance with a schedule specified by department.

(c) The department's acceptance of a plan of correction is solely at the department's discretion and does not rule out the imposition of optional remedies.

### NEW SECTION

**WAC 388-97-620 Informal department review.** (1) For Medicare or Medicaid certified nursing homes, the informal department review process described in this section is the only opportunity for the nursing home to dispute the federal deficiency citation report, unless a federal sanction is imposed.

(2) The nursing home licensee has the right to an informal department review of disputed state or federal citations, or both.

(3) A licensee must make a written request for an informal department review within ten calendar days of receipt of the department's written deficiency citation(s) report. The request must be directed to the department's designated local aging and adult services administration (AASA) office and must identify the deficiencies that are being disputed.

(4) At the informal department review, the licensee or nursing home may provide documentation and verbal explanations related to the disputed federal or state deficiencies, or both.

(5) When modifications or deletions are made to the disputed federal or state deficiency citations, or both, the licensee or nursing home must modify or delete the relevant portions of the plan of correction within five days of receipt of the modified or deleted deficiency(ies). The licensee or nursing home may request from the department a clean copy of the revised deficiency citation report.

(6) If the licensee or nursing home is unwilling to provide the modified plan of correction, the department may impose a per day civil fine for failure to return the modified deficiency citation report to the department in accordance with this subsection.

NEW SECTION

**WAC 388-97-625 Notice and appeal rights.** (1) The notification and hearing rights in this section apply to any appealable action taken by the department under chapters 18.51, 74.42 and 74.39A RCW. Notification and appeals requirements for resident protection program findings are described in WAC 388-97-077.

(2) The following actions may be appealed:

(a) Imposition of a penalty under RCW 18.51.060 or 74.42.580;

(b) An action against the nursing home, or a denial of a license under RCW 18.51.054, 18.51.067 or 74.39A.050; or

(c) Deficiencies cited on the state survey report.

(3) Deficiencies cited on the federal survey report may not be appealed.

(4) The appeal process will be governed by the administrative procedure act (chapter 34.05 RCW), RCW 18.51.065 and 74.42.580, chapter 388-02 WAC and this chapter. If any provision in this chapter conflicts with chapter 388-02 WAC, the provision of this chapter will govern.

(5) The purpose of an administrative hearing will be to review actions taken by the department under chapters 18.51, 74.42 or 74.39A RCW, and under this chapter.

(6) The applicant, licensee or nursing home must file a request for an administrative hearing with the office of administrative hearings within twenty days of receipt of written notification of the department's action. Further information about administrative hearings is available in chapter 388-02 WAC and at the office of administrative hearing (OAH) website: [www.oah.wa.gov](http://www.oah.wa.gov).

(7) Orders of the department imposing a stop placement, license suspension, emergency closure emergency transfer of residents, temporary management or conditions on a license are effective immediately upon verbal or written notice and must remain in effect until they are rescinded by the department or through the state administrative appeals process.

NEW SECTION**WAC 388-97-630 Remedies. Mandatory Remedies**

(1) In accordance with RCW 18.51.060 (5)(a), the department must impose a stop placement order when the department determines that the nursing home is not in substantial compliance with applicable laws or regulations and the cited deficiency(ies):

(a) Jeopardize the health and safety of the residents; or

(b) Seriously limit the nursing home's capacity to provide adequate care.

(2) When required by RCW 18.51.060(3), the department must deny payment to a nursing home that is certified to provide Medicaid services for any Medicaid-eligible individual admitted to the nursing home. Nursing homes that are certified to provide Medicare services or both Medicare and Medicaid services may be subject to a federal denial of payment for new admissions, in accordance with federal law.

(3) The department must deny, suspend, revoke or refuse to renew a proposed or current licensee's nursing home license in accordance with WAC 388-97-570(3).

**Optional Remedies**

(4) When the department determines that a licensee has failed or refused to comply with the requirements under chapter 18.51, 74.39A or 74.42 RCW, or this chapter; or a Medicaid contractor has failed or refused to comply with Medicaid requirements of Title XIX of the Social Security Act or Medicaid regulations, the department may impose any or all of the following optional remedies:

(a) Stop placement;

(b) Immediate closure of a nursing home, emergency transfer of residents or both;

(c) Civil fines;

(d) Appoint temporary management;

(e) Petition the court for appointment of a receiver in accordance with RCW 18.51.410;

(f) License denial, revocation, suspension or non-renewal;

(g) Denial of payment for new Medicaid admissions;

(h) Termination of the Medicaid provider agreement (contract);

(i) Department on-site monitoring as defined under WAC 388-97-005; and

(j) Reasonable conditions on a license as authorized by chapter 74.39A RCW. Examples of conditions on a license include but are not limited to training related to the deficiency(ies); consultation in order to write an acceptable plan of correction; demonstration of ability to meet financial obligations necessary to continue operation.

NEW SECTION**WAC 388-97-635 Criteria for imposing optional**

**remedies.** (1) The criteria set forth in this section implement the requirements under RCW 18.51.060(8). The criteria do not replace the standards for imposition of mandatory remedies under RCW 18.51.060 (3) and (5), or for the imposition of mandatory remedies in accordance with WAC 388-97-630 (1), (2) and (3).

(2) The department must consider the imposition of one or more optional remedy(ies) when the nursing home has:

(a) A history of being unable to sustain compliance;

(b) One or more deficiencies on one inspection at severity level 2 or higher as described in WAC 388-97-640;

(c) Been unable to provide an acceptable plan of correction after receiving assistance from the department about necessary revisions;

(d) One or more deficiencies cited under general administration and/or nursing services;

(e) One or more deficiencies related to retaliation against a resident or an employee for whistle blower activity under RCW 18.51.220, 74.34.180 or 74.39A.060 and WAC 388-97-203;

(f) One or more deficiencies related to discrimination against a Medicare or Medicaid client under RCW 74.42.055, and Titles XVIII and XIX of the Social Security Act and Medicare and Medicaid regulations; or

(g) Willfully interfered with the performance of official duties by a long-term care ombudsman.

(3) The department, in its sole discretion, may consider other relevant factors when determining what optional remedy or remedies to impose in particular circumstances.

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(4) When the department imposes an optional remedy or remedies, the department will select more severe penalties for nursing homes that have deficiency(ies) that are:

- (a) Uncorrected upon revisit;
- (b) Recurring (repeated);
- (c) Pervasive; or
- (d) Present a threat to the health, safety, or welfare of the residents.

(5) The department will consider the severity and scope of cited deficiencies in accordance with WAC 388-97-640 when selecting optional remedy(ies). Such consideration will not limit the department's discretion to impose a remedy for a deficiency at a low level severity and scope.

**NEW SECTION**

**WAC 388-97-640 Severity and scope of deficiencies.**

(1) "**Severity of a deficiency**" means the seriousness of the deficiency. Factors the department will consider when determining the severity of a deficiency may include, but are not limited to:

- (a) Whether harm to the resident, not limited to but including resident's rights, has occurred, or could occur;
- (b) The impact of the actual or potential harm on the resident; and
- (c) The degree to which the nursing home failed to meet the resident's highest practicable physical, mental, and psychosocial well being as defined in WAC 388-97-005.

**(2) Severity levels**

**(a) Severity level 4—Imminent harm or immediate jeopardy**

Level 4 means that a resident(s)' health or safety is imminently threatened or immediately jeopardized as a result of deficient nursing home practice. This level includes actual harm or potential harm, or both, to resident(s)' health or safety that has had or could have a severe negative outcome or critical impact on resident's well being, including death or severe injury. Severity Level 4 requires immediate corrective action to protect the health and safety of resident(s).

**(b) Severity level 3—Actual harm**

Level 3 means that actual harm has occurred to resident(s) as the result of deficient nursing home practice.

(i) "**Serious harm**" is harm that results in a negative outcome that significantly compromises the resident(s)' ability to maintain and/or reach the highest practicable physical, mental and psychosocial well being. Serious harm does not constitute imminent danger/immediate jeopardy (Severity Level 4).

(ii) "**Moderate harm**" is harm that results in a negative outcome that more than slightly but less than significantly compromises the resident(s)' ability to maintain and/or reach the highest practicable physical, mental and psychosocial well being.

(iii) "**Minimal harm**" is harm that results in a negative outcome that to a small degree compromises the resident(s)' ability to maintain and/or reach the highest practicable physical, mental well being.

**(c) Severity level 2—Potential for harm**

Level 2, "**potential for harm**" means that if the deficient nursing home practice is not corrected, resident(s) may suffer actual harm.

**(d) Severity level 1—No harm or minimal impact**

Level 1 means a deficient nursing home practice that does not compromise the resident(s)" ability to maintain or reach, or both, the highest practicable physical, mental and psychosocial well being. Deficiencies at level 1 are those that have no direct or potential for no more than minimal impact on the resident. Examples include certain structure deficiencies, certain physical environment deficiencies and process deficiencies.

(3) "**Scope of a deficiency**" means the frequency, incidence, or extent of the occurrence of the deficiency.

**(4) Scope categories**

- (a) "**Isolated or limited scope**" means a relatively few number of residents have been affected or have the potential to be affected, by the deficient nursing home practice.
- (b) "**Moderate or pattern scope**" scope means more than an isolated and less than a widespread number of residents have been affected, or have the potential to be affected by the deficient nursing home practice.
- (c) "**Widespread**" or "**systemic scope**" means most or all of the residents are affected or have the potential to be affected, by the deficient nursing home practice.

(5) Determination of scope will be made by the department in its sole discretion. Factors the department will consider may include:

- (a) Size of the nursing home;
- (b) Size of the sample;
- (c) Number and location of affected residents;
- (d) Whether the deficiency applies to all or a subset of the residents;
- (e) Other factors relevant to the particular circumstances.

**NEW SECTION**

**WAC 388-97-645 Separate deficiencies—Separate remedies.** (1) Each deficiency cited by the department for noncompliance with a statute or regulation is a separate deficiency subject to the assessment of a separate remedy.

(2) Each day upon which the same deficiency occurs is a separate deficiency subject to the assessment of a separate remedy.

**NEW SECTION**

**WAC 388-97-650 Stop placement.** (1) The department must impose a stop placement order when required by RCW 18.51.060(5) and WAC 388-97-650 and may impose a stop

placement order as an optional remedy in accordance with WAC 388-97-635. The department's stop placement order becomes effective upon verbal or written notice.

(2) The nursing home has the right to an informal department review to refute the federal or state deficiencies, or both, cited as the basis for the stop placement and must request such review in accordance with WAC 388-97-620(3).

(3) The department will not delay or suspend a stop placement order because the nursing home requests an administrative hearing or informal department review.

(4) The stop placement order must remain in effect until:

(a) The department terminates the stop placement order;

or

(b) The stop placement order is terminated by a final agency order following appeal conducted in accordance with chapter 34.05 RCW.

(5) The department must terminate the stop placement when:

(a) The nursing home states in writing that the deficiencies necessitating the stop placement action have been corrected; and

(b) Within fifteen working days of the nursing home's notification, department staff confirm by on-site revisit of the nursing home that:

(i) The deficiencies that necessitated the stop placement action have been corrected; and

(ii) The nursing home exhibits the capacity to maintain adequate care and services and correction of deficiencies.

(6) After lifting the stop placement, the department may continue to perform on site monitoring to verify that the nursing home has maintained correction of deficiencies.

(7) While a stop placement order is in effect, the department may approve a readmission to the nursing home from the hospital in accordance with RCW 18.51.060 (5)(b) and department guidelines for readmission decisions.

#### NEW SECTION

**WAC 388-97-655 Amount of civil fine.** (1) Except as otherwise provided in statute, the range for a:

(a) Per day civil fine is fifty dollars to three thousand dollars; and

(b) Per instance civil fine is one thousand to three thousand dollars.

(2) In the event of continued noncompliance, nothing in this section must prevent the department from increasing a civil fine up to the maximum amount allowed by law.

#### NEW SECTION

**WAC 388-97-660 Civil fine accrual and due dates and interest.** (1) Accrual of a per day civil fine begins on the first date the department verifies that the nursing home has or had a specific deficiency. Accrual of the per day civil fine will end on the date the department determines the nursing home corrected the deficiency.

(2) A per instance fine may be assessed for a deficiency, regardless of whether or not the deficiency had been corrected by the time the department first identified it.

(3) Civil fine(s) are due twenty days after the nursing home is notified of the civil fine(s) if the nursing home does not request a hearing.

(4) If the nursing home requests a hearing, the civil fine(s) including interest, if any, is due twenty days after:

(a) A hearing decision ordering payment of the fine(s) becomes final in accordance with chapter 388-02 WAC;

(b) The appeal is withdrawn;

(c) A settlement agreement and order of dismissal is entered, unless otherwise specified in the agreement; or

(d) An order of dismissal is entered.

(5) Interest on the civil fine(s) begins to accrue at a rate of one percent per month, thirty days after the nursing home is notified of the fine, unless a settlement agreement includes other provisions for payment of interest. If the amount of the civil fine is reduced following an appeal, interest on the reduced civil fine(s) accrues from thirty days after the nursing home was notified of the original civil fine(s).

(6) When a nursing home fails to pay a civil fine when due under this chapter, the department may:

(a) Withhold an amount equal to the fine plus interest, if any, from the nursing home's Medicaid payment;

(b) Impose an additional fine; or

(c) Suspend the nursing home license under WAC 388-97-570(1). Such license suspension must continue until the fine is paid.

#### NEW SECTION

**WAC 388-97-665 Civil penalty fund.** (1) The department must deposit civil penalties collected under chapter 18.51 or 74.42 RCW into a special fund administered by the department to be applied to the protection of the health or property of residents of nursing homes found to be deficient.

(2) The funds must be administered by the department according to department procedures. Uses of the fund include, but are not limited to:

(a) Payment for the costs of relocation of residents to other facilities;

(b) Payment to maintain operation of a nursing home pending correction of deficiencies or closure; and

(c) Reimbursement of residents for personal funds or property lost when the resident's personal funds or property cannot be recovered from the nursing home or third party insurer.

#### NEW SECTION

**WAC 388-97-670 Temporary management.** (1) When the department appoints a temporary manager, the department must order the licensee to:

(a) Cease operating the nursing home; and

(b) Immediately turn over to the temporary manager possession and control of the nursing home including, but not limited to, all patient care records, financial records, and other records necessary for continued operation of the nursing home while temporary management is in effect.

(2) The temporary manager will have authority to temporarily relocate some or all residents if the:

- (a) Temporary manager determines the resident's health, security, or welfare is jeopardized; and
- (b) Department concurs with the temporary manager's determination that relocation is necessary.
- (3) The department's authority to order temporary management is discretionary in all cases.

#### NEW SECTION

**WAC 388-97-675 Receivership.** (1) Receivership is authorized under RCW 18.51.400 through 520 and the following regulations.

(2) After receivership is established, the department may recommend to the court that all residents be relocated and the nursing home closed when:

- (a) Problems exist in the physical condition of the premises which cannot be corrected in an economically prudent manner; or
- (b) The department determines the former licensee or owner:
  - (i) Is unwilling or unable to manage the nursing home in a manner ensuring residents' health, safety, and welfare; and
  - (ii) Has not entered into an enforceable agreement to sell the nursing home within three months of the court's decision to grant receivership.

#### NEW SECTION

**WAC 388-97-680 Temporary managers and receivers—Application.** (1) The department may recruit individuals, partnerships, corporations and other entities interested in serving as a temporary manager or receiver of a nursing home.

(2) Individuals, partnerships, corporations, or other entities interested in being appointed as a temporary manager or receiver must complete and submit to the department the required application on department forms.

(3) Individuals, partnerships, corporations, or other entities with experience in providing long-term health care and a history of satisfactory nursing home operation may submit an application to the department at any time. Applicants will be subject to the criteria established for licensees found in WAC 388-97-570, except the department may waive the requirement that it have at least sixty days to review the application.

(4) The department must not appoint or recommend the appointment of a person (including partnership, corporation or other entity) to be a temporary manager or receiver if that person:

- (a) Is the licensee, administrator, or partner, officer, director, managing employee, or owner of five percent or more of the licensee of the nursing home subject to temporary management or receivership;
- (b) Is affiliated with the nursing home subject to temporary management or receivership; or
- (c) Has owned or operated a nursing home ordered into temporary management or receivership in any state.

#### NEW SECTION

**WAC 388-97-685 Temporary managers and receivers—Considerations before appointment.** (1) The department's authority to appoint a temporary manager or to recommend appointment of a specific individual or entity to act as receiver is discretionary in all cases.

(2) The department, in appointing a temporary manager or recommending appointment of a receiver, may consider one or more of the following factors:

- (a) Potential temporary manager's or receiver's willingness to serve as a temporary manager or receiver for the nursing home in question;
- (b) Amount and quality of the potential temporary manager's or receiver's experience in long-term care;
- (c) Quality of care, as determined by prior survey reports, provided under the potential temporary manager's or the potential receiver's supervision, management or operation;
- (d) Potential temporary manager's or receiver's prior performance as a temporary manager or receiver;
- (e) How soon the potential temporary manager or receiver is available to act as a temporary manager or receiver;
- (f) Potential temporary manager's or receiver's familiarity and past compliance with Washington state and federal regulations applicable to nursing homes.

#### NEW SECTION

**WAC 388-97-690 Duties and powers of temporary manager and receiver.** (1) The temporary manager or receiver must protect the health, security and welfare of the residents for the duration of the temporary management or receivership. The temporary manager or receiver must perform all acts reasonably necessary to ensure residents' needs are met. Such acts may include, but are not limited to:

- (a) For receivers, the powers in RCW 18.51.490;
- (b) Correcting cited deficiencies;
- (c) Hiring, directing, and managing all consultants and employees and discharging them for just cause, discharging the administrator of the nursing home, recognizing collective bargaining agreement, and settling labor disputes;
- (d) Receiving and expending in a prudent and business-like manner all current revenues of the home provided priority will be given to debts and expenditures directly related to providing care and meeting residents' needs;
- (e) Making necessary purchases, repairs, and replacements, provided such expenditures in excess of five thousand dollars are approved by the department, or in the case of a receiver, approved by court;
- (f) Entering into contracts necessary for the operation of the nursing home, provided that, the court must approve contracts extending beyond the period of receivership;
- (g) Preparing all department-required reports;
- (h) Overseeing facility closure, when appropriate;
- (i) Planning required relocation with residents and residents' legal representative, family, or significant others in conjunction with home and community services division field staff;

(j) Meeting regularly with and informing staff, residents, and residents' families or significant others of:

- (i) Plans for correcting the cited deficiencies;
- (ii) Progress achieved in correction of deficiencies;
- (iii) Plans for facility closure and relocation; and
- (iv) Plans for continued operation of the nursing home, including training of staff.

(2) The temporary manager or receiver must make a detailed monthly accounting of all expenditures and liabilities to the department and to the owner of the nursing home, and to the court when required.

(3) The receiver must consult the court in cases of extraordinary or questionable debts incurred prior to the receiver's appointment and will not have the power to close the home or sell any of the nursing home's assets without prior court approval.

(4) The temporary manager or receiver must comply with all applicable state and federal laws and regulations. If the nursing home is certified and is providing care to Medicaid clients, the temporary manager or receiver must become the Medicaid contractor for the duration of the temporary management or receivership period.

#### NEW SECTION

**WAC 388-97-695 Termination of temporary management and receivership.** (1) The department will terminate temporary management:

(a) After three months unless good cause is shown to continue the temporary management. Good cause for continuing the temporary management exists when returning the nursing home to its former licensee would subject residents to a threat to health, safety, or welfare;

(b) When all residents are transferred and the nursing home is closed;

(c) When deficiencies threatening residents' health, safety, or welfare are eliminated and the former licensee agrees to department-specified conditions regarding the continued facility operation; or

(d) When a new licensee assumes control of the nursing home.

(2) The department may appoint an alternate temporary manager:

(a) When the temporary manager is no longer willing to serve as a temporary manager;

(b) If a temporary manager is not making acceptable progress in correcting the nursing home deficiencies or in closing the nursing home; or

(c) If the department determines the temporary manager is not operating the nursing home in a financially responsible manner.

(3) The receivership will terminate in accordance with RCW 18.51.450 and 18.51.460.

(4) The department may recommend to the court an alternate receiver be appointed:

(a) When the receiver is no longer willing to serve as a receiver; or

(b) If a receiver is not making acceptable progress in correcting the deficiencies in the nursing home.

**WSR 02-08-060**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)  
[Filed April 1, 2002, 3:48 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 02-04-097.

Title of Rule: Chapter 388-290 WAC, Working connections child care.

Purpose: WAC 388-290-0125, 388-290-0190, 388-290-0200, 388-290-0225, and 388-290-0245 are being revised to allow the department to pay child care subsidies to seasonal day camps that are accredited by the American Camping Association (ACA), when an eligible family chooses to have their children attend.

WAC 388-290-0015, 388-290-0020, 388-290-0035, 388-290-0040, 388-290-0045, 388-290-0050, 388-290-0055, 388-290-0095, 388-290-0105, 388-290-0120, 388-290-0130, 388-290-0135, 388-290-0205, 388-290-0230, 388-290-0240, and 388-290-0270 are being revised to clarify language and correct typographical errors.

Statutory Authority for Adoption: RCW 74.04.050, 74.13.085.

Statute Being Implemented: Chapters 74.04 and 74.13 RCW.

Summary: We are rewriting the rules to add seasonal day camps accredited by the ACA as an alternative type of child care provider for eligible families. We are also writing the rules more clearly and correcting typographical errors.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Carla Gira, Program Manager, Lacey Government Center, 1009 College Street S.E., Lacey, WA 98503, (360) 413-3268.

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

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

Explanation of Rule, its Purpose, and Anticipated Effects: The rule adds seasonal day camps accredited by the ACA as a type of provider that the working connections child care program may pay child care subsidies to. It is not expected that this will cause an increase in expenditures, as we envision the day camps as being just another option that eligible families will be able to choose from.

Proposal Changes the Following Existing Rules: Current rules do not allow subsidy payments to seasonal day camps.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule does not impose any cost to small business. The proposed rules allow accredited seasonal day camps, which had been excluded from being eligible child care providers, to be eligible providers under the working connections child care program.

RCW 34.05.328 applies to this rule adoption. The rule meets the definition of a "significant legislative rule" but DSHS is exempt from preparing a cost benefit analysis under RCW 34.05.328 (5)(b)(vii).

PROPOSED

Hearing Location: Office Building 2, Auditorium (DSHS Headquarters) (parking off 12th and Jefferson), 1115 Washington, Olympia, WA 98504, on May 21, 2002, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Andy Fernando, DSHS Rules Coordinator, by May 17, 2002, phone (360) 664-6094, TTY (360) 664-6178, e-mail fernaAX@dshs.wa.gov.

Submit Written Comments to: Identify WAC Numbers, DSHS Rules Coordinator, Rules and Policies Assistance Unit, P.O. Box 45850, Olympia, WA 98504-5850, fax (360) 664-6185, e-mail fernaax@dshs.wa.gov, by 5:00 p.m., May 21, 2002.

Date of Intended Adoption: No sooner than May 22, 2002.

March 28, 2002  
Margaret J. Partlow  
for Brian H. Lindgren, Manager  
Rules and Policies Assistance Unit

**AMENDATORY SECTION** (Amending WSR 02-01-135, filed 12/19/01, effective 1/19/02)

**WAC 388-290-0015 How does the WCCC program determine my family size for eligibility?** ~~((The WCCC program determines))~~ We determine your family size by reviewing those individuals who live together in the same household as follows:

<b>(1) If you are:</b>	<b>We count the following individuals as part of the family for WCCC eligibility:</b>
(a) A single parent, including a minor parent living independently;	You and your <del>((child(ren)))</del> <u>children</u> .
(b) Unmarried parents <del>((that))</del> <u>who</u> have at least one mutual child;	Both parents and all their children living in the household.
(c) Unmarried parents with no mutual children;	Unmarried parents and their respective children are counted as separate WCCC families.
(d) Married parents;	Both parents and all their children living in the household.
(e) Undocumented parents <del>((all other family rules in this section apply))</del> ;	<del>((Both))</del> <u>Parents and ((all)) children, documented and undocumented, as long as the child needing care is a U.S. citizen or legally residing in the United States. All other family rules in this section apply.</u>

(f) A consumer as defined in WAC 388-290-0005(2)(c) <u>through (i)</u> and you are not financially responsible for the <del>((child(ren)))</del> <u>children</u> ;	Only the <del>((child(ren)))</del> <u>children</u> are counted as the WCCC family. The <del>((child(ren)))</del> <u>children</u> and <del>((his/her))</del> <u>their</u> income <del>((is counted for WCCC eligibility))</del> <u>are counted</u> .
(g) A minor parent with children and live with a parent/guardian;	Only the minor parent and <del>((the))</del> <u>their</u> children.
(h) <u>A</u> family member(s) who <del>((are))</del> <u>is</u> temporarily out of the household because of employment requirements, such as the military <del>((all other family rules in this section apply))</del> .	<del>((This))</del> <u>The absent individual ((as part of the household))</u> , <u>the children, and the other parent if it is a two-parent family. All other family rules in this section apply.</u>
<b>(2) If your household includes:</b>	<b>We count the following individuals as part of the family for WCCC eligibility:</b>
(a) Eighteen year old siblings of the children requiring care who are enrolled in <del>((approved))</del> secondary education or general equivalency diploma (GED) program.	The eighteen year olds (unless they are a parent themselves), until they turn nineteen <del>((s))</del> or complete <del>((HS/GED))</del> <u>high school/GED</u> , whichever comes first. <u>All other family rules in this section apply.</u>
(b) Siblings of the children requiring care who are up to twenty-one years of age and who are participating in <del>((an approved))</del> program through the school district's special education department under RCW 28A.155.0202.	The individual participating in an approved program through RCW 28A.155.0202 up to twenty-one years of age <del>((s))</del> (unless they are a parent themselves). <u>All other family rules in this section apply.</u>

**AMENDATORY SECTION** (Amending WSR 02-01-135, filed 12/19/01, effective 1/19/02)

**WAC 388-290-0020** ~~((When can I get))~~ Are there special circumstances that might affect my WCCC ~~((benefits))~~ eligibility? (1) ~~((Depending on your circumstances, or those of your child(ren);))~~ You might be eligible for WCCC if you are:

- (a) An employee of the same child care facility where your ~~((child(ren)-is))~~ children are receiving care and you do not provide direct care to your own ~~((child(ren)))~~ children during the time WCCC is requested;
- (b) In sanction status for temporary assistance for needy families (TANF), while you are in an activity needed to remove the sanction or employment;
- (c) A parent in a two-parent family and one parent is not able or available to provide care for your ~~((child(ren)))~~ child.

PROPOSED

dren while ~~((one))~~ the other is working, looking for work, or preparing for work;

(i) "Able" means physically~~((;))~~ and mentally~~((; and emotionally))~~ capable of caring for a child in a responsible manner.

(ii) "Available" means able to provide care when ~~((they are))~~ not participating in an approved work activity under WAC 388-290-0040, 388-290-0045, ~~((and))~~ or 388-290-0050 during the time ~~((you need))~~ child care is needed.

(d) A married consumer described under WAC 388-290-0005 (1)(d) through (i). Only you or ~~((your spouse))~~ the other parent must be participating in activities under WAC 388-290-0040, 388-290-0045, or 388-290-0050.

(2) You might be eligible for WCCC if your ~~((child(ren) is))~~ children are legally residing in the country and ~~((is))~~ are:

(a) Less than thirteen years of age; or

(b) ~~((Thirteen years of age and))~~ Less than age nineteen, and:

(i) ~~((Has))~~ Have a verified special need, according to WAC 388-290-0220; or

(ii) ~~((Is))~~ Are under court supervision.

**AMENDATORY SECTION** (Amending WSR 02-01-135, filed 12/19/01, effective 1/19/02)

**WAC 388-290-0035 What responsibilities does the WCCC program staff have?** The WCCC program staff are responsible to:

(1) Allow you to choose your provider as long as they meet the requirements in WAC 388-290-0125;

(2) Review your chosen in-home/relative provider's background information ~~((because the department:~~

~~(a) Wants you to have this information to help you:~~

~~(i) Make informed, safe, and responsible decisions about your child(ren)'s care provider; and~~

~~(ii) Reduce the risk of harm to children by caregivers that have been convicted of certain crimes.~~

~~(b) Does not pay for any of the cost of child care provided by individuals convicted of crimes listed in WAC 388-290-0160 or 388-290-0165).~~

(3) Authorize payments only to child care providers who allow you to see your children whenever they are in care;

(4) Only authorize payment when no adult in your WCCC family is "able or available" to care for your children (under WAC 388-290-0020).

(5) Inform you of:

(a) Your rights and responsibilities under the WCCC program at the time of application and eligibility review;

(b) The types of child care providers we can pay;

(c) The community resources that can help you select child care~~((;))~~ when needed; and

(d) Any change in your copayment during the authorization period except under WAC 388-290-0120(4).

(6) Respond to you within ten days if you report a change of circumstance ~~((which))~~ that affects your WCCC eligibility~~((/))~~ or copayment; and

(7) Provide prompt child care payments to your ~~((licensed or certified))~~ child care provider.

**AMENDATORY SECTION** (Amending WSR 02-01-135, filed 12/19/01, effective 1/19/02)

**WAC 388-290-0040 If I receive a temporary assistance for needy families (TANF) grant, ~~((when might I))~~ what activities must I be involved in to be eligible for WCCC benefits?** If you receive a temporary assistance for needy families (TANF) grant, you may be eligible for WCCC benefits for up to sixteen hours maximum per day for your hours of participation in the following:

(1) ~~((A))~~ An approved WorkFirst activity under ~~((chapter))~~ ~~((WAC 388-310))~~ WAC 388-310-0200;

(2) Employment or self-employment. We consider "employment" or "work" to mean engaging in any legal, income generating activity that is taxable under the United States Tax Code or that would be taxable with or without a treaty between an Indian Nation and the United States;

(3) Transportation time between the location of child care and your place of employment or approved activity;

(4) Up to ten hours per week of study time before or after regularly scheduled classes or up to three hours of study time per day when needed to cover time between approved classes ~~((for your approved activity));~~ and

(5) Up to eight hours per day of sleep time when it is needed, such as if you work nights and sleep days.

**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 02-01-135, filed 12/19/01, effective 1/19/02)

**WAC 388-290-0045 If I don't get a temporary assistance for needy families (TANF) grant, ~~((when might I))~~ what activities must I be involved in to be eligible for WCCC benefits?** If you do not receive TANF, you may be eligible for WCCC benefits for up to sixteen hours maximum per day for the hours of your participation or enrollment in the following:

(1) Employment or self-employment under WAC 388-290-0050. We consider "employment" or "work" to mean engaging in any legal, income generating activity that is taxable under the United States Tax Code or that would be taxable with or without a treaty between an Indian Nation and the United States;

(2) Secondary education or general equivalency diploma (GED) program if you are age twenty-one or younger.

(3) Same-day job search if you are a TANF applicant;

(4) The food stamp employment and training program under chapter 388-444 WAC;

(5) Adult basic education (ABE), English as a second language (ESL), high school/GED, vocational education, or job skills training or other program under WAC 388-310-1000, ~~((388-31-1050))~~ 388-310-1050, 388-310-1200, or 388-310-1800, and you are:

(a) Working:

(i) Twenty or more hours per week; or

(ii) Sixteen or more hours per week in a work study job.

(b) Participating in the educational program for no longer than thirty-six months.

(6) WCCC may be approved for activities listed in WAC 388-290-0040 (3) through (5), when needed.

AMENDATORY SECTION (Amending WSR 02-01-135, filed 12/19/01, effective 1/19/02)

**WAC 388-290-0050 If I am self-employed, can I get WCCC benefits ((if I'm self-employed))?** You may be eligible for WCCC benefits for up to sixteen hours maximum per day when you're self-employed.

(1) If you get TANF:

(a) You must have an approved self-employment plan under ~~((chapter 388-310))~~ WAC 388-310-1700; and

(b) The amount of WCCC you get for self-employment is equal to the number of hours in your approved plan.

(2) If you don't get TANF:

(a) During the first six months of your WCCC eligibility, the number of hours of WCCC you can get will be calculated based on your self-employment earnings. The number of hours of WCCC you get is based on whichever is more:

(i) Your work hours reported in your business records; or

(ii) The average number of monthly hours equal to dividing your monthly self-employment income by the federal or state minimum wage (whichever minimum wage is lower).

(b) After the first six months, the number of hours of WCCC you can get each month is based on the lesser of subsections (2)(a)(i) or (ii) of this section.

AMENDATORY SECTION (Amending WSR 02-01-135, filed 12/19/01, effective 1/19/02)

**WAC 388-290-0055 ~~((Can the WCCC program authorize benefits))~~ If ((I'm)) I am not working or in an approved activity right now, can I get WCCC benefits?**

(1) ~~((The WCCC program))~~ We can authorize WCCC payments for up to two weeks when you're waiting to enter an approved activity under WAC 388-290-0040 or 388-290-0045.

(2) We can authorize WCCC payments for up to four weeks if you experience a gap for reasons out of your control such as a layoff in employment, or approved activity, and:

(a) Your employment, or the approved activity, will resume within that period; or

(b) You're looking for another job and you received WCCC immediately before the gap in employment, or approved activity.

AMENDATORY SECTION (Amending WSR 02-01-135, filed 12/19/01, effective 1/19/02)

**WAC 388-290-0095 If I receive temporary assistance for needy families (TANF) and I am determined eligible for WCCC, when do my benefits begin?** When you receive TANF, and are eligible for WCCC, your benefits begin when your eligible provider (under WAC 388-290-0125) is caring for your child and you ~~((have begun your))~~ are participating in an approved activity under WAC 388-290-0040.

AMENDATORY SECTION (Amending WSR 02-01-135, filed 12/19/01, effective 1/19/02)

**WAC 388-290-0105 What is the process for my WCCC review for reauthorization of my WCCC benefits?** (1) You are required to complete a review of your WCCC benefits ~~((before the end date of your current WCCC eligibility period. The WCCC program determines)).~~ We determine if you are still eligible by:

(a) Requesting on-going eligibility review information prior to the end date of your current WCCC eligibility period; and

(b) Reviewing the requested information.

(2) Your WCCC benefits may continue if:

(a) Your review eligibility information is received no later than ten days after your previous eligibility period ends;

(b) Your provider is eligible for payment under WAC 388-290-0125; and

(c) You are eligible for WCCC.

(3) If you are determined eligible for WCCC benefits based on your review information, the program will notify you of continued benefits.

(4) If you provide the requested review information to us more than ten days beyond your last eligibility period, you are determined eligible for WCCC and you:

(a) Receive TANF, your benefit ~~((begin us))~~ begins when:

(i) You ~~((begin))~~ are participating in your approved activity, and

(ii) Your eligible provider (under WAC 388-290-0125) is caring for your child.

(b) Do not receive TANF, your benefit begin date is the date you:

(i) Application is date stamped as received or entered into our automated system as received;

(ii) ~~((Application is entered into our automated system as received; or~~

~~((iii)))~~ Eligible provider (under WAC 388-290-0125) is caring for your child; ((whichever is later)); and

(iii) Participation in an approved activity has started.

AMENDATORY SECTION (Amending WSR 02-01-135, filed 12/19/01, effective 1/19/02)

**WAC 388-290-0120 When doesn't advance and adequate notice of payment changes apply to me?** ~~((The WCCC program does))~~ We do not give you advance and adequate notice in the following circumstances:

(1) You tell ~~((the department))~~ us you no longer want WCCC;

(2) Your whereabouts are unknown to ~~((the department))~~ us;

(3) You are receiving duplicate child care benefits;

(4) Your new authorization period results in a change in child care benefits;

(5) The location where child care occurs does not meet requirements under WAC 388-290-0130 (2) or (3); or

(6) ~~((The department determines))~~ We determine your in-home/relative provider:

(a) Is not of suitable character and competence;

(b) May cause a risk of harm to your ~~((child(ren)))~~ children based on the provider's physical(~~(, emotional)~~) or mental health; or

(c) Has been convicted of, or has charges pending for crimes listed in WAC 388-290-0160 or 388-290-0165.

**AMENDATORY SECTION** (Amending WSR 02-01-135, filed 12/19/01, effective 1/19/02)

**WAC 388-290-0125 What child care providers can I choose under the WCCC program?** To receive payment under the WCCC program, your child care provider must be:

(1) Licensed as required by chapter 74.15 RCW;

(2) Meeting their states licensing regulations, for providers who care for children in states bordering Washington. ~~((DSHS pays))~~ We pay the lesser of the following to ~~((licensed or certified))~~ qualified child care facilities in bordering states:

(a) The provider's usual daily rate for that child; or

(b) The DSHS maximum child care subsidy daily rate for the DSHS region where the child resides.

(3) Exempt from licensing but certified by ~~((the department))~~ us, such as:

(a) Tribal child care ~~((facility))~~ facilities that meet the requirements of tribal law;

(b) Child care facilities on a military installation; ~~((or))~~ and

(c) Child care facilities operated on public school property by a school district.

(4) Seasonal day camps that have a contract with us to provide subsidized child care and are:

(a) Of a duration of three months or less;

(b) Engaged primarily in recreational or educational activities; and

(c) Accredited by the American Camping Association (ACA).

(5) An in-home/relative provider meeting the requirements in WAC 388-290-0130.

**AMENDATORY SECTION** (Amending WSR 02-01-135, filed 12/19/01, effective 1/19/02)

**WAC 388-290-0130 What in-home/relative providers can I choose under the WCCC program?** (1) To be authorized as an in-home/relative provider under the WCCC program, your in-home/relative provider must:

(a) Be a U.S. citizen or legally residing in the country((s));

(b) Meet the requirements in WAC 388-290-0135 ~~((and must:~~

~~((a)))~~;

(c) Complete and submit a criminal background inquiry form prescribed by ~~((the department))~~ us; and

~~((b) Not be disqualified based on information in WAC 388-290-0140 (3) or (4).~~

~~((2) A relative provider must))~~

(d) Be one of the following adult relatives providing care in the home of either the child or the relative((:

~~((a)))~~;

(i) An adult sibling living outside the child's home;

~~((b)))~~ (ii) An extended tribal family member under chapter 74.15 RCW; or

~~((e)))~~ (iii) A grandparent, aunt, uncle, or great-grandparent, great-aunt or great-uncle.

~~((3)))~~ (2) A nonrelative provider may be an adult friend or neighbor and must provide care in the child's own home.

~~((4)))~~ (3) The in-home/relative provider may not be:

(a) The child's biological, adoptive((,)) or step-parent;

(b) The child's legal guardian or the guardian's spouse; or

(c) Another adult acting in loco parentis or that adult's spouse.

**AMENDATORY SECTION** (Amending WSR 02-01-135, filed 12/19/01, effective 1/19/02)

**WAC 388-290-0135 When I choose an in-home/relative provider, what information must I submit to receive WCCC benefits?** When you choose in-home/relative child care, you must submit the following and complete certain forms:

(1) The in-home/relative child care provider's name and address; ~~((and))~~

(2) A copy of the provider's valid Social Security ~~((Number))~~ card and photo identification to ~~((the department))~~ us;

(3) A completed background inquiry application; and

(4) A completed form ~~((which))~~ that makes the following assurances:

(a) The provider is:

(i) Of suitable character and competence;

(ii) Of sufficient physical~~((, emotional,))~~ and mental health to meet the needs of the ~~((child))~~ children in care. If requested by ~~((the department, the parent(s)))~~ us, you must provide written evidence that the in-home child care provider of ~~((the parent's))~~ your choice is of sufficient physical~~((, emotional,))~~ and mental health to be a safe child care provider;

(iii) Able to work with the ~~((child))~~ children without using corporal punishment or psychological abuse;

(iv) Able to accept and follow instructions;

(v) Able to maintain personal cleanliness; and

(vi) Prompt and regular in job attendance.

(b) The ~~((child is))~~ children are current on the immunization schedule as described in the National Immunization Guidelines, developed by the American Academy of Pediatrics and the Advisory Committee on Immunization Practices;

(c) The home where care is provided is safe for the care of the ~~((child, and))~~ children;

(d) The in-home/relative child care provider is informed about basic health practices, prevention and control of infectious disease, immunizations, and home and physical premises safety relevant to the care of the ~~((child,))~~ children; and

(e) ~~((As the WCCC consumer, you will instruct))~~ You have instructed the in-home/relative child care provider that ~~((he/she))~~ they will have the following responsibilities:

(i) Provide constant care and supervision of the ~~((child))~~ children throughout the arranged time of care in accordance with the needs of the ~~((child))~~ children; and

(ii) Provide developmentally appropriate activities for the ~~((child))~~ children.

**AMENDATORY SECTION** (Amending WSR 02-01-135, filed 12/19/01, effective 1/19/02)

**WAC 388-290-0190** What does the WCCC program pay for and when can the program pay more? (1) ~~(The WCCC program pays)~~ We pay for:

(a) Basic child care hours, either full day, half day or hourly:

(i) A full day of child care is authorized to licensed/certified facilities and seasonal day camps that have contracted with us to provide subsidized child care when care is needed for five or more hours per day;

(ii) A half day of child care is authorized to licensed/certified facilities and seasonal day camps that have contracted with us to provide subsidized child care when care is needed for less than five hours per day; and

(iii) Hourly child care is authorized when the provider is an in-home/relative.

(b) A registration fee (under WAC 388-290-0245);

(c) An activity fee (under WAC 388-290-0245);

(d) Care for nonstandard hours (under WAC 388-290-0210 and 388-290-0215);

(e) An infant bonus (under WAC 388-290-0250); and

(f) Special needs care when the child has a documented need for higher level of care (under WAC 388-290-0220, 388-290-0225, 388-290-0230, and 388-290-0235).

(2) We pay more than the basic child care subsidy daily rate if:

(a) Care is not available at ~~(the DSHS)~~ our daily rate within a reasonable distance, then the provider's usual daily rate is authorized; or

(b) Care is over ten hours per day, then an additional amount of care is authorized.

**AMENDATORY SECTION** (Amending WSR 02-01-135, filed 12/19/01, effective 1/19/02)

**WAC 388-290-0200** What daily rates does DSHS pay for child care in a licensed or certified child care center or DSHS contracted seasonal day camps? ~~(DSHS pays)~~ We pay the lesser of the following to a licensed or certified child care center or a seasonal day camp that has a contract with us to provide subsidized child care:

(1) The provider's usual daily rate for that child; or

(2) The DSHS maximum child care subsidy daily rate for that child as listed in the following table.

		Infants (Birth - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 5 yrs)	School-age (5 - 12 yrs)
Region 1	Full-Day	\$24.32	\$20.45	\$19.32	\$18.18
	Half-Day	\$12.16	\$10.23	\$9.66	\$9.09
Region 2	Full-Day	\$24.55	\$20.50	\$19.00	\$16.82
	Half-Day	\$12.27	\$10.25	\$9.50	\$8.41
Region 3	Full-Day	\$32.50	\$27.09	\$23.41	\$22.73
	Half-Day	\$16.25	\$13.55	\$11.70	\$11.36
Region 4	Full-Day	\$37.82	\$31.59	\$26.50	\$23.86
	Half-Day	\$18.91	\$15.80	\$13.25	\$11.93
Region 5	Full-Day	\$27.73	\$23.86	\$21.00	\$18.64
	Half-Day	\$13.86	\$11.93	\$10.50	\$9.32

		Infants (Birth - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 5 yrs)	School-age (5 - 12 yrs)
Region 6	Full-Day	\$27.27	\$23.41	\$20.45	\$20.00
	Half-Day	\$13.64	\$11.70	\$10.23	\$10.00

**AMENDATORY SECTION** (Amending WSR 02-01-135, filed 12/19/01, effective 1/19/02)

**WAC 388-290-0205** What daily rates does DSHS pay for child care in a licensed or certified family child care home? ~~(DSHS pays)~~ (1) We pay the lesser of the following to a licensed or certified family child care ~~(center)~~ home:

~~((1))~~ (a) The provider's usual daily rate for that child; or

~~((2))~~ (b) The DSHS maximum child care subsidy daily rate for that child as listed in the following table.

		Infants (Birth - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 5 yrs)	School-age (5 - 12 yrs)
Region 1	Full-Day	\$20.00	\$18.00	\$18.00	\$16.00
	Half-Day	\$10.00	\$9.00	\$9.00	\$8.00
Region 2	Full-Day	\$20.00	\$19.00	\$17.00	\$17.00
	Half-Day	\$10.00	\$9.50	\$8.50	\$8.50
Region 3	Full-Day	\$29.00	\$25.00	\$22.00	\$20.00
	Half-Day	\$14.50	\$12.50	\$11.00	\$10.00
Region 4	Full-Day	\$30.00	\$29.67	\$25.00	\$24.00
	Half-Day	\$15.00	\$14.83	\$12.50	\$12.00
Region 5	Full-Day	\$22.00	\$20.00	\$19.00	\$17.00
	Half-Day	\$11.00	\$10.00	\$9.50	\$8.50
Region 6	Full-Day	\$22.00	\$20.00	\$20.00	\$19.00
	Half-Day	\$11.00	\$10.00	\$10.00	\$9.50

(2) The family child care home WAC 388-155-010 allows providers to provide care to children within a birth through eleven years of age range exclusively. In order for a family home provider to provide care for a twelve-year-old or older child, the provider must obtain a child specific and time-limited waiver from their child care licensor.

**AMENDATORY SECTION** (Amending WSR 02-01-135, filed 12/19/01, effective 1/19/02)

**WAC 388-290-0225** What is the DSHS child care subsidy daily rate for children with special needs in a licensed or certified child care center or DSHS contracted seasonal day camp? ~~(DSHS authorizes)~~ We authorize special needs daily rates to licensed or certified child care centers or seasonal day camps that have contracts with us to provide subsidized child care under WAC 388-290-0200 and whichever of the following is greater:

(1) The provider's reasonable documented additional cost associated with the care of the child; or

(2) The daily rate listed in the table below.

		Infants (Birth - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 5 yrs)	School-age (5 - 12 yrs)
Region 1	Full-Day	\$7.30	\$6.14	\$5.80	\$5.45
	Half-Day	\$3.65	\$3.07	\$2.90	\$2.73
Region 2	Full-Day	\$7.36	\$6.15	\$5.70	\$5.05
	Half-Day	\$3.68	\$3.08	\$2.85	\$2.52

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		Infants (Birth - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 5 yrs)	School-age (5 - 12 yrs)
Region 3	Full-Day	\$9.75	\$8.13	\$7.02	\$6.82
	Half-Day	\$4.88	\$4.06	\$3.51	\$3.41
Region 4	Full-Day	\$11.35	\$9.48	\$7.95	\$7.16
	Half-Day	\$5.67	\$4.74	\$3.98	\$3.58
Region 5	Full-Day	\$8.32	\$7.16	\$6.30	\$5.59
	Half-Day	\$4.16	\$3.58	\$3.15	\$2.80
Region 6	Full-Day	\$8.18	\$7.02	\$6.14	\$6.00
	Half-Day	\$4.09	\$3.51	\$3.07	\$3.00

**AMENDATORY SECTION** (Amending WSR 02-01-135, filed 12/19/01, effective 1/19/02)

**WAC 388-290-0230** What is the DSHS child care subsidy daily rate for children with special needs in a licensed or certified family child care home? (~~DSHS authorizes~~) (1) We authorize special needs daily rates to licensed or certified family child care (~~centers~~) homes under WAC 388-290-0205 and whichever of the following is greater:

- ((1)) (a) The provider's reasonable documented additional cost associated with the care of the child; or
- ((2)) (b) The daily rate listed in the table below.

		Infants (Birth - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 5 yrs)	School-age (5 - 12 yrs)
Region 1	Full-Day	\$6.00	\$5.40	\$5.40	\$4.80
	Half-Day	\$3.00	\$2.70	\$2.70	\$2.40
Region 2	Full-Day	\$6.00	\$5.70	\$5.10	\$5.10
	Half-Day	\$3.00	\$2.85	\$2.55	\$2.55
Region 3	Full-Day	\$8.70	\$7.50	\$6.60	\$6.00
	Half-Day	\$4.35	\$3.75	\$3.30	\$3.00
Region 4	Full-Day	\$9.00	\$8.90	\$7.50	\$7.20
	Half-Day	\$4.50	\$4.45	\$3.75	\$3.60
Region 5	Full-Day	\$6.60	\$6.00	\$5.70	\$5.10
	Half-Day	\$3.30	\$3.00	\$2.85	\$2.55
Region 6	Full-Day	\$6.60	\$6.00	\$6.00	\$5.70
	Half-Day	\$3.30	\$3.00	\$3.00	\$2.85

(2) The family child care home WAC 388-155-010 allows providers to provide care to children within a birth through eleven years of age range exclusively. In order for a family home provider to provide care for a twelve-year-old or older child, the provider must obtain a child specific and time-limited waiver from their child care licensur.

**AMENDATORY SECTION** (Amending WSR 02-01-135, filed 12/19/01, effective 1/19/02)

**WAC 388-290-0240** What is the DSHS child care subsidy rate for in-home/relative child care and how is it paid? (1) When you employ an in-home/relative provider, the maximum ((the WCCC program pays)) we pay for child care ((provided by an in-home/relative provider)) is the lesser of the following:

- (a) Two dollars and six cents per hour for the child who needs the greatest number of hours of care and one dollar and

three cents per hour for the care of each additional child in the family; or

- (b) The provider's usual ((daily)) hourly rate for that care.

(2) ~~((The WCCC program))~~ We may pay above the maximum ((daily)) hourly rate for children who have special needs under WAC 388-290-0235.

(3) When care is provided by an in-home/relative provider, ~~((the WCCC programs pays))~~ we pay benefits directly to you, defined as the consumer~~((, who is defined))~~ in WAC 388-290-0005~~((, We consider the consumer the employer of the child care provider))~~.

(4) On all payments ~~((DSHS makes))~~ we make toward the cost of in-home/relative child care, ~~((DSHS pays))~~ when appropriate we pay the employer's share, on behalf of the client, of:

- (a) Social Security and Medicare taxes (FICA);
- (b) ~~((Medicare taxes;~~
- ~~((e)))~~ Federal Unemployment Taxes (FUTA); and
- ~~((d)))~~ (c) State unemployment taxes (SUTA) when applicable.

(5) On all payments ~~((DSHS makes))~~ we make toward the cost of in-home/relative child care ~~((DSHS withholds the following taxes:~~

- ~~((a)))~~ we withhold Medicare taxes and Social Security taxes (FICA) up to the wage base limit~~((, and~~
- ~~((b) Medicare taxes))~~.

(6) If an in-home/relative child care provider receives less than ~~((one thousand one hundred dollars))~~ the wage base limit per family in a calendar year, ~~((DSHS refunds))~~ we refund all withheld taxes to the provider.

**AMENDATORY SECTION** (Amending WSR 02-01-135, filed 12/19/01, effective 1/19/02)

**WAC 388-290-0245** When can the WCCC program authorize payment of fees for registration ~~((and/or special activities))~~? (1) ~~((The WCCC program pays))~~ We pay licensed or certified child care providers and seasonal day camps that have contracts with us to provide subsidized child care a registration fee once per calendar year of fifty dollars per child or the provider's usual fee, whichever is less only if the fees are:

- (a) Required of all parents whose ~~((child(ren)))~~ children are in care with that provider; and
- (b) Needed to maintain the child care arrangement.
- ~~((e)))~~ (2) The registration fee may be authorized more than once per calendar year when:

~~((f)))~~ (a) There is a break in your child care services ~~((with the same provider of))~~ for more than sixty days and the provider's usual policy is to charge an additional registration fee when there is a break in care; or

~~((g)))~~ (b) The ~~((child(ren)))~~ children change child care providers and the new provider meets subsection (1)(a) and (b) of this section.

~~((h)))~~ (3) The WCCC program pays licensed or certified child care providers a monthly activity fee of twenty dollars per child or the provider's actual cost for the activity, which-

ever is less only if the fees meet the conditions in ~~((subsections))~~ subsection (1)(a) and (b) of this section.

AMENDATORY SECTION (Amending WSR 02-01-135, filed 12/19/01, effective 1/19/02)

**WAC 388-290-0270 What is a WCCC overpayment and when might I have one?** (1) A WCCC overpayment:

(a) Occurs when ~~((a consumer))~~ you or a provider has received benefits or payment ~~((which))~~ that you or they are not eligible to receive;

(b) Is written by ~~((WCCC staff))~~ us and expected to be paid back by ~~((either the consumer))~~ you or the provider.

(2) ~~((The WCCC program establishes))~~ We establish WCCC overpayments, regardless of whether you are a current or past WCCC consumer, when we made payment for WCCC benefits and:

(a) You are no longer eligible or you are eligible for a smaller amount of care~~((The overpayment will start from the day your circumstances change and you become ineligible))~~;

(b) You knowingly fail to report information to ~~((the department))~~ us that affects the amount of WCCC you are eligible for; or

(c) You do not have attendance records and~~((of))~~ payment receipts to support the amount you billed ~~((the department))~~ us for in-home/relative care.

(3) When setting up an overpayment, we reduce the WCCC overpayment by the amount of the WCCC underpayment when applicable.

(4) In areas not covered by this section, ~~((WCCC consumers))~~ you are subject to chapter 388-410 WAC (Benefit errors).

(5) We set up overpayments starting the date that we paid for WCCC when you were not eligible or eligible for a lesser amount of care.

(6) ~~((The WCCC program recovers))~~ We establish WCCC overpayments ~~((from))~~ for licensed/certified child care providers and contracted seasonal day camps, when:

(a) The provider receives payment for WCCC services not provided;

(b) The provider does not have attendance records that support the billing;

(c) We pay the provider more than they are eligible to bill; or

(d) The provider receives payment from ~~((DSHS))~~ us and the provider is not eligible based on WAC 388-290-0125.

Title of Rule: Customer information rules, WAC 480-120-201 through 480-120-209 and WAC 480-120-211 through 480-120-216. The proposed rules would consider the use of information made available to telecommunications companies by customers solely by virtue of the customer-company relationship.

Purpose: The proposed rules would clarify the extent to which customer information may be used by telecommunications companies; establish notice requirements; establish operational requirements for customer approval mechanisms; establish requirements for confirmation of customer approval for the use of customer information; and limit the use, under some circumstances, of subscriber list information. The proposed rules would replace the current rules on this topic: WAC 480-120-144 and 480-120-151 through 480-120-154.

Other Identifying Information: Docket UT-990146, Customer privacy notification rules. This is the second CR-102 proposal in this docket. The first covered general rules and was adopted at WSR 01-15-022. Another proposal will be filed that will address remaining rules.

Statutory Authority for Adoption: RCW 80.01.040 and 80.04.160.

Summary: See Explanation of Rule below.

Name of Agency Personnel Responsible for Drafting: Robert Shirley, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504-7250, (360) 664-1292; Implementation and Enforcement: Carole J. Washburn, Secretary, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504-7250, (360) 664-1174.

Name of Proponent: Washington Utilities and Transportation Commission, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The rule concerns the use of customer information made available to telecommunications companies by customers solely by virtue of the customer-carrier relationship. Its purpose is to clarify the uses of the information and the approval, or lack of approval, that must be given by the customer to the company before the information is used.

The anticipated effect is to permit the use of call detail information (e.g., whom you call and when and where you call) only with affirmative approval of a customer (so-called "opt-in" approval). Other, less personal information (e.g., whether customer subscribes to one line or two) may be used by companies or entities under common control of or with a telecommunications company after annual notice and opportunity to "opt-out" (i.e., disapprove) the use of that less personal information. Customers will be in a position to control the use of certain very private information and some less private information, while companies will be in a position to conduct the day-to-day operations of their business and use, with the approval of the customer, certain information that may be useful in marketing telecommunications-related services and other products and services.

The proposed rules would clarify permitted and not permitted uses of customer information that has been rendered uncertain by a decision of the 10th Circuit Court of Appeals and a revision of the FCC's rules on this topic. For example, a recent action by one company to use opt-out approval

**WSR 02-08-081**

**PROPOSED RULES**

**UTILITIES AND TRANSPORTATION  
COMMISSION**

[Filed April 3, 2002, 10:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 99-09-027.

where current rules require opt-in approval resulted in substantial confusion among customers.

Proposal Changes the Following Existing Rules: The proposal would permit customers to opt-out of the use of certain private account information by their telecommunications company. Federal law, 47 U.S.C. § 222, requires customer approval before certain customer information may be used by a company for other than day-to-day operations. The proposed rules replace WAC 480-120-151 through 480-120-154, which did not permit customers to opt-out of certain uses under certain circumstances. Call detail information that once was permitted to be used without affirmative approval and without an opportunity to opt-out under some circumstances, will now require affirmative, opt-in approval before it can be used.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

### Small Business Economic Impact Statement

1. Introduction: In 1999, the Washington Utilities and Transportation Commission (commission) initiated a review of the rules in chapter 480-120 WAC regarding telecommunications companies. The commission initiated this review in Docket No. UT-990146 pursuant to Executive Order 97-02, which requires agencies to review existing rules for readability and content with attention being paid to clarity, intent, statutory authority, need, effectiveness, efficiency, coordination, cost, and fairness. The commission also undertook this review to ensure that its rules reflect and support an open, competitive industry structure, because both state and federal legal barriers to telecommunications competition were removed in the mid-1990s. The commission also conducted a general revision of the rules to analyze whether they provided the results that they were originally intended to achieve and whether the rules are consistent with laws and with appropriate and lawful policies. New rules were added to ensure clear communication of policies, processes, and procedures or to provide complete information important to regulated companies and the customers they serve.

Over the last three years, the commission has circulated multiple rounds of draft rules and held many workshops with stakeholders to discuss draft rule language, receive comments, and explore options. The commission's regulation of the telecommunications industry is economic regulation, and at every stage of the process, the economic impact of potential rule changes was an integral part of the commission's analysis. In addition, the commission on two occasions asked stakeholders to provide information on the economic impact of potential rule provisions for use in preparing a small business economic impact statement (SBEIS). An SBEIS is intended to evaluate any disproportionate impacts of the rule making on small businesses.

2. Regulatory Fairness Act Requirements: Administrative rules implemented by state agencies can have a disproportionate impact on small businesses, compared to large business, simply because of the size of those businesses. This disproportionate impact may affect competition, innovation, employment, economic growth, and threaten the very existence of some small businesses. Thus, the Regulatory Fair-

ness Act, chapter 19.85 RCW, was enacted with the intent of reducing any disproportionate impact of state administrative rules on small businesses.

The Regulatory Fairness Act requires agencies to prepare an SBEIS if the proposed rule will impose "more than minor costs on businesses in an industry." An agency must then compare the costs of compliance with the proposed rule for large and small businesses within an industry, and then consider how to mitigate any disproportionate impact on small businesses. A business is categorized as "small" under the Regulatory Fairness Act if the business employs fifty or fewer employees.

3. Background: Pursuant to chapter 19.85 RCW, staff determined that it was necessary to prepare an SBEIS for revisions to the rules in Docket No. UT-990146, as the proposed rules may impose more than minor costs on telecommunications companies operating in Washington state. However, almost all telecommunications companies operating in Washington state are not "small" businesses as defined by the Regulatory Fairness Act. Under the telecommunications laws, specifically RCW 80.04.350, a telecommunications company is considered to be "small" if it serves fewer than 2% of the state's access lines, i.e., fewer than about 80,000 access lines. Even a small telecommunications company typically has more than the fifty employees that define a "small business" under the Regulatory Fairness Act.

Because the commission engages in economic regulation of the telecommunications industry, the economic impact of its regulation is integrated directly into its decision process. The statutory objective of the agency is to ensure that telecommunications companies offer service at prices and terms that are fair, just, reasonable, and sufficient. These terms, taken together, have come to mean that the commission must provide regulated companies with a reasonable opportunity to earn a fair profit on their business. Rates for regulated services are based on costs and reasonable profit, so requirements that increase costs for the regulated company can ultimately lead to increased rates by that company. The ultimate impact of changes in regulations therefore falls on the customers of the regulated company more than on the regulated company itself.

Few telecommunications companies are small businesses, and the commission's regulations primarily take the form of economic regulation. As a result of these two factors, the principal impact of commission regulations on small business is indirect, through the rates that small businesses pay to large telecommunications companies. Small businesses are generally not affected directly by the commission's regulations. Rather, as customers of the telecommunications companies, small businesses are affected if the commission's rules cause a telecommunications company to change its rates, offer different services, or change the quality of its services.

Because of this large indirect effect on small businesses as customers of regulated telecommunications companies, traditional mitigation approaches to minimize disproportionate impact on small businesses are frequently not meaningful.

4. Study Procedure: The commission considered the economic impact of potential changes to the telecommunications industry rules as an integral part of its review of the

rules themselves. In each round of written and oral comments by stakeholders, economic factors were central to the public interest considerations being argued.

In addition, the commission specifically solicited input on economic impacts at two points during the rule review process. The commission circulated an SBEIS questionnaire in March 2001 on draft rules to require customer credits for service quality performance problems. The commission received responses from Qwest, Verizon, and WCI Cable, none of whom are small businesses. WCI Cable said the rules would have no economic impact. Verizon said that the draft rules would cause it to incur expenses of \$3.7 million to hire, train, and equip additional staff to improve service performance and cause it to incur lower revenues of \$4.5 million per year in the form of service quality credits. Qwest said the draft rule would result in lower revenues of \$1.5 million due to service quality credits. Qwest was unable to quantify the cost of some components of the draft rules and identified minor tariff revision and customer notification costs.

The commission modified the service performance rules in response to concerns raised by Verizon, Qwest, and other stakeholders. The proposed rules still require customer credits when customers receive inadequate service, but the standards better match the operating practices of the regulated companies. Even at the cost levels identified by Qwest and Verizon, however, the increased expenses and reduced revenues are well under 1% of the companies' revenues.

The commission issued a second SBEIS questionnaire in August 2001 soliciting input on the economic impact of all the rules being revised in chapter 480-120 WAC. The commission used an interactive survey form on its web site to make it easier for companies to submit cost data. Paper copies were accepted as well. The interactive SBEIS web site accepted submissions from August 24, 2001, through November 7, 2001, and again from February 14, 2002, through March 7, 2001 [2002]. The commission received a single response from a company that provides specialized E-911 services. The respondent said that the rules, as revised, would have no economic impact on its business.

It may be that companies did not respond either because they were not small businesses or because, under the cost-based methods used by the commission to set prices, any impact of the rules would not ultimately be borne by the company itself.

This SBEIS is based primarily on the commission's knowledge of the telecommunications industry and the policy-oriented comments of stakeholders in various workshops and written filings.

5. Conclusion: As the section-by-section analysis below shows, the economic impact of the proposed rule revisions is generally not significant for telecommunications companies in general or for small business telecommunications companies in particular. The proposed revisions make the telecommunications rules clearer and more consistent, which makes it easier for companies to comply with the rules. Outdated and monopoly-oriented provisions are eliminated or modernized. Some rules will result in additional costs for companies, but these are not significant.

Section-by-Section Analysis of Economic Impact of Proposed Revisions  
Chapter 480-120 WAC - Telecommunications Operations

PART I. GENERAL RULES	
480-120-011 Application of rules.	No substantive change. No economic impact.
480-120-015 Exemptions from rules in chapter 480-120 WAC.	No substantive change. No economic impact.
480-120-016 Additional requirements.	No substantive change. No economic impact.
480-120-017 Severability.	No substantive change. No economic impact.
480-120-019 Telecommunications performance requirements—Enforcement.	The proposed change eliminates vague standards that could create uncertainty about compliance for regulated companies. This may reduce legal costs for regulated companies, and the benefit would be relatively more for small businesses.
480-120-021 Definitions.	Any substantive effect of a change in definition is analyzed with the substantive rule itself.
480-120-026 Tariffs and price lists.	No change.
480-120-028 Registration.	No change.
480-120-061 Refusing service.	The rule clarifies the circumstances in which a telecommunications company is required to provide service. The clarification reduces compliance costs. Since compliance costs are a disproportionate burden on small businesses, the changes to this rule will benefit small businesses more than other businesses.
PART II. ESTABLISHING SERVICE AND CREDIT	
480-120-102 Service offered.	No substantive change. No economic impact.
480-120-103 Local calling areas.	No substantive change. No economic impact.
480-120-104 Application for service.	The changes provide more specific requirements for filing applications for new service. The specific requirements are consistent with existing installation practices of most telecommunications companies, so there will be no economic impact. However, some telecommunications companies may be providing slower service than the proposed rule would allow. These companies may incur additional costs to improve their service delivery ability.  Small telephone companies are as quick, or quicker, at installing new service. Therefore the cost impact of this rule change, if any, will disproportionately fall on any large businesses that have relatively slow installation performance.

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<p>480-120-105 Availability of information to consumers.</p>	<p>The proposed change requires companies to mail new customers information about the services they have ordered. Most companies already do this, and for those companies there will be no impact from the requirement.</p> <p>For a company that is not mailing information to new customers, the proposed rule will cause them to incur the cost of printing and mailing the information. These costs may be offset if the information causes customers to make fewer customer service calls, fail to understand and comply with a company's service terms, or request a free copy of the company's tariff or price list.</p> <p>Any such costs will probably be disproportionately large if the company is a small business, because printing and postage can be purchased more economically in large quantities.</p> <p>The commission was unable to identify any mitigation measures that would preserve customer protections. However, the commission eliminated some information elements that were included in earlier drafts, because companies said these would be more costly to include.</p>
<p>480-120-107 Company performance standards for installation or activation of access lines.</p>	<p>Subsection (1)(a) eliminates an uncertainty about whether companies could use above-standard performance in one exchange to offset below-standard in another exchange. The uncertainty is eliminated to the advantage of the regulated companies. This would reduce compliance costs, particularly for large companies that have a mix of rural and urban exchanges.</p> <p>Subsection (1)(b) is not a substantive change.</p> <p>Subsection (1)(c) is a new requirement to complete all access line orders within one hundred eighty days. Companies rarely take longer than one hundred eighty days to complete an order, but this requirement could increase costs for a company that would otherwise take longer.</p> <p>Subsection (2) clarifies the method of counting violations. It is not a substantive change.</p> <p>Subsection (3) provides for exceptions. It is not a substantive change.</p> <p>Subsection (4) exempts competitive local exchange companies, who are currently subject to the rule. This mitigation reduces compliance costs for both small and large competitive companies.</p>

<p>480-120-108 Installation and activation credits.</p>	<p>This rule requires companies to offer credits to customers when service is not installed by the promised date. It exempts any service that is subject to effective competition. It provides two methods that a company can use to calculate the credit.</p> <p>The rule will impose economic costs on any company that does not install service on time. This will be in the form of either reduced revenues, due to application of the credits, or increased expenses to meet commitments.</p> <p>The indirect impact on small businesses, as telephone customers, is to lower costs. Fewer order commitments will be missed, and in those cases where a commitment is missed the customer will receive a credit on its telephone bill.</p> <p>Small telecommunications companies generally have better service performance than large telecommunications companies. Thus the economic cost, if any, of compliance will be less for small business.</p>
<p>480-120-109 Missed appointment credits.</p>	<p>This rule requires companies to offer credits to customers when the company does not keep an installation or repair appointment.</p> <p>The rule will impose economic costs on any company that does not keep appointments. This will be in the form of either reduced revenues, due to application of the credits, or increased expenses to employ enough technicians to keep appointments.</p> <p>The indirect impact on small businesses, as telephone customers, is to lower costs. Fewer appointments will be missed, and in those cases where an appointment is missed the customer will receive a credit on its telephone bill.</p> <p>Small telecommunications companies generally have better service performance than large telecommunications companies. Thus the economic cost, if any, of compliance will be less for small business.</p>
<p>480-120-112 Company performance for orders for nonbasic services.</p>	<p>This rule requires companies to complete orders for nonbasic services within one hundred eighty days.</p> <p>Companies rarely take longer than one hundred eighty days to complete an order, but this requirement could increase costs for a company that would otherwise take longer.</p>

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	<p>The indirect impact on small businesses, as telephone customers, is to lower costs. Nonbasic services include business access lines beyond two lines and data services typically used by small business. More timely installation of these services would allow businesses to have telecommunications services necessary for their operation.</p> <p>Small telecommunications companies generally have better service performance than large telecommunications companies. Thus the economic cost, if any, of compliance will be less for small business telecommunications companies.</p>
<p>480-120-122a Establishment of establishing credit—Residential services.</p>	<p>The proposed changes clarify requirements for companies to require deposits and manage their risk of uncollectible accounts. Doing so reduces compliance costs, particularly for small business telecommunications companies.</p> <p>The proposed rule says companies cannot use credit reports as the basis to require deposits for basic local service. The existing rule also has this prohibition, so there is no economic impact.</p> <p>The proposed rule clarifies that companies cannot use a customer's long-distance payment history as a basis for requiring a deposit for basic local service. This clarification could result in increased costs or lower revenues for some companies, if they are requiring deposits based on long-distance charges.</p> <p>The overall economic effect of the proposed changes is negligible.</p>
<p>480-120-122b Establishment of establishing credit—Residential services.</p>	<p>The proposed changes clarify requirements for companies to require deposits and manage their risk of uncollectible accounts. Doing so reduces compliance costs, particularly for small business telecommunications companies.</p> <p>The proposed rule says companies cannot use credit reports as the basis to require deposits for basic local service. The existing rule also has this prohibition, so there is no economic impact.</p> <p>The proposed rule clarifies that companies cannot use a customer's long-distance payment history as a basis for requiring a deposit for basic local service. This clarification could result in increased costs or lower revenues for some companies, if they are requiring deposits based on long-distance charges.</p> <p>The overall economic impact of the proposed changes is negligible.</p>

<p>480-120-123 Establishment of establishing credit—Business services.</p>	<p>No substantive change. No economic impact.</p>
<p>480-120-124 Guarantee in lieu of deposit.</p>	<p>No substantive change. No economic impact.</p>
<p>480-120-125 Deposit or security—Telecommunications resellers.</p>	<p>No substantive change. No economic impact.</p>
<p>480-120-127 Protection of customer prepayments.</p>	<p>No substantive change. No economic impact.</p>
<p>480-120-128 Deposit administration.</p>	<p>The proposed changes clarify requirements without making substantive changes.</p> <p>The type of treasury bill used in calculating the interest rate on deposits is changed, due to a change by the federal government in the types of bills issued. The method of calculation is unchanged, and companies' deposit interest expenses are expected to have virtually no change.</p>
<p>480-120-132 Business offices.</p>	<p>No substantive change. No economic impact.</p>
<p>480-120-133 Response time for calls to business office or repair center.</p>	<p>The proposed rule would establish standards for how long a company could keep a customer on hold during a customer service or repair call. The new standards are more specific than the existing standard, which applies to repair calls but not customer service calls.</p> <p>The proposed standards are consistent with answer time standards used by the industry itself. As a result, there is no economic impact from the proposed rule.</p> <p>Small business telecommunications companies often do not use automated call handling systems. The commission included an alternative performance standard in subsection (3) to accommodate these companies.</p>
<p>480-120-145 Extending service.</p>	<p>No substantive change. No economic impact.</p>
<p>480-120-146 Changing service providers from one local exchange company to another.</p>	<p>The proposed rule clarifies responsibilities when a customer changes from one local telephone company to another local telephone company.</p> <p>To comply with this rule, a company must communicate with another company during the transition of a customer's service. This could result in minor costs to disconnect service. Since any cost would be based on the number of disconnection orders, there is no disproportionate impact on small business.</p>

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480-120-147 Changes in local exchange and intrastate toll services.	<p>There is no substantive change to the existing requirements for verification of customer orders before changing local or long-distance providers. Subsection (7) provides an exception when a company is changing customers' service as a result of a corporate merger, acquisition, or transfer of customer base. Companies currently must seek a waiver of the rule in these circumstances. Incorporating the exception into rule means that companies will no longer incur costs to file a waiver petition and will not have to wait for the commission to review and approve the petition.</p> <p>By eliminating a filing requirement, the cost savings resulting from subsection (7) will disproportionately benefit small business telecommunications companies. This is because costs of regulatory filings are higher, on a per-revenue or per-customer basis, for small business.</p>
<b>PART III. PAYMENTS AND DISPUTES</b>	
480-120-161 Form of bills.	No substantive change. No economic impact.
480-120-162 Cash and urgent payments.	No substantive change. No economic impact.
480-120-163 Refunding for overcharge.	No substantive change. No economic impact.
480-120-164 Prorata credits.	<p>The proposed rule requires companies to provide credits if a service is unavailable for more than twenty-four hours.</p> <p>Most companies already provide credits in this circumstance. Those that do not will incur costs to modify their billing or accounting systems to track the credits and will incur reduced revenues by the amount of the credits.</p> <p>Small business telephone companies generally have better service performance than large business telephone companies, so they would pay fewer credits on a per-customer or per-revenue basis. However, if a small business has to modify its systems to track the credits, the costs of these modifications would be higher on a per-customer or per-revenue basis.</p> <p>The commission did not identify any mitigation provisions that would still protect customers, including small business customers, from having to pay for service not received.</p>
480-120-165 Complaints and disputes.	No substantive change. No economic impact.
480-120-166 Customer complaints.	The proposed rule incorporates existing practices and policies into rule. There is no substantive change in the requirements and no economic impact.

480-120-167 Company responsibility.	The proposed rule clarifies responsibility when an informal complaint involves more than one company. The economic impact is to reduce costs, but by a negligible amount. Since costs would be incurred on a per-customer basis, the effect on small business is proportionate to the effect on large business.
<b>PART IV. DISCONTINUING AND RESTORING SERVICE</b>	
480-120-171 Discontinuing service—Customer requested.	No substantive change. No economic impact.
480-120-172 Discontinuing service—Company initiated.	No substantive change. No economic impact.
480-120-173 Restoring service after discontinuation.	No substantive change. No economic impact.
480-120-174 Restoring service based on Washington telephone assistance program (WTAP) or federal enhanced tribal lifeline program eligibility.	The proposed rule requires a company to restore local service if the customer enrolls in a low-income assistance program. There is no economic impact on the regulated companies, because the program benefits cover the costs of providing service.
<b>PART V. POSTING AND PUBLICATION NOTICE</b>	
480-120-193 Posting of tariffs for public inspection and review.	No substantive change. No economic impact.
480-120-194 Publication of proposed tariff changes to increase charges or restrict access to services.	No substantive change. No economic impact.
480-120-195 Notice of tariff changes other than increases in recurring charges and restrictions in access to services.	No substantive change. No economic impact.
480-120-196 Customer notice requirements—Competitively classified telecommunications companies or services.	No substantive change. No economic impact.
480-120-197 Adjudicative proceedings where public testimony will be taken.	No substantive change. No economic impact.
480-120-198 Notice verification and assistance.	No substantive change. No economic impact.
480-120-199 Other customer notice.	No substantive change. No economic impact.
<b>PART VI. CUSTOMER INFORMATION</b>	
480-120-201 Telephone solicitation.	No substantive change. No economic impact.
480-120-202 Using a customer's call detail information.	No substantive change from the existing rule, which also requires opt-in approval for use of call detail information. No economic impact.
480-120-203 Using private account information in the provision of services.	No substantive change. No economic impact.
480-120-204 Using private account information during an inbound call.	No substantive change. No economic impact.

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<p>480-120-205 Using private account information for marketing related services.</p>	<p>The current rule allows companies to use private account information to market related services without informing the customer or securing the customer's approval. The proposed rule allows a customer to opt out of this use. The economic impact of this rule, in the form of either additional expenses or reduced revenues, is discussed below at WAC 480-120-207 and 480-120-208.</p>
<p>480-120-206 Using private account information for marketing unrelated services.</p>	<p>This proposed rule allows companies to use an "opt-out" approach before using customers' private account information to market unrelated services. The existing rule requires affirmative, "opt-in" approval. The change reduces expenses and increases revenues for regulated companies. Companies will incur lower expenses to secure approval for use of customer information. Companies will increase revenues due to the increased marketing capabilities through use of private information. The economic impacts of this change are similar for large and small businesses.</p>
<p>480-120-207 Notice when use of private account information is permitted unless a customer directs otherwise ("opt-out").</p>	<p>This rule establishes the notice provisions when opt-out approval is used. To use customers' private information, the company must print and mail a notice to customers explaining the use and giving the customer a chance to say no. Printing and postage costs are higher, on a per-customer basis, for a small business. There is no overall increase in costs as a result of this rule, because the company is not required to use customers' private account information to market other services. A company would incur these costs only if it expects that the use would reduce other marketing expenses and/or increase revenues by enough to offset the notice costs.</p>
<p>480-120-208 Mechanisms for opting out of use, disclosure, and access to private customer account information.</p>	<p>The proposed rule [rule] requires a company, if it chooses to use customers' private account information for marketing, to establish mechanisms by which customers can say no. A company would incur costs to process incoming telephone calls, written notices, and web site transactions. There is no overall increase in costs as a result of this rule, because the company is not required to use customers' private account information to market other services. A company would incur these costs only if it expects that the use would reduce other marketing expenses and/or increase revenues by enough to offset the notice costs.</p>

<p>480-120-209 Notice when explicit ("opt-in") approval is required.</p>	<p>The proposed rule clarifies and increases the disclosures that a company must make when seeking explicit approval to use a customer's private account information. There is no increase in costs as a result of this rule, because the existing rule requires a notice when a company seeks opt-in approval. Moreover, a company is not required to incur any costs, since it is not required to use customer private account information for marketing.</p>
<p>480-120-211 Confirming change in approval status.</p>	<p>The proposed rule requires a company to give written confirmation of a customer's change in privacy status. A company would incur costs to print and mail the confirmation notice. There is no overall increase in costs as a result of this rule, because the company is not required to use customers' private account information for marketing.</p>
<p>480-120-212 Duration of customer approval or disapproval.</p>	<p>No substantive change. No economic impact.</p>
<p>480-120-213 Safeguards required for using private account information.</p>	<p>The proposed revision requires companies to file a copy of a document that they are already required to produce. The additional cost of filing the document, as part of an existing annual report filing, is negligible. There is no economic impact on small business telecommunications companies, if they are exempt from this filing requirement by RCW 80.04.530.</p>
<p>480-120-214 Disclosing customer proprietary network information.</p>	<p>No substantive change. No economic impact.</p>
<p>480-120-215 Using privacy listings for telephone solicitation.</p>	<p>No substantive change. No economic impact.</p>
<p>480-120-216 Using subscriber list information for purposes other than directory publishing.</p>	<p>The proposed rule requires companies to remove customers, upon request, from subscriber lists sold to telemarketers. There is no requirement to notify customers of this provision. The rule reflects existing practice within the telecommunications industry. There is no economic impact.</p>
<p>PART VII. TELECOMMUNICATIONS SERVICES</p>	
<p>480-120-251 Directory service.</p>	<p>No substantive change. No economic impact.</p>
<p>480-120-252 Intercept services.</p>	<p>No substantive change. No economic impact.</p>
<p>480-120-253 Automatic dialing-announcing device (ADAD).</p>	<p>No substantive change. No economic impact.</p>
<p>480-120-254 Information delivery services.</p>	<p>No substantive change. No economic impact.</p>
<p>480-120-255 Caller identification service.</p>	<p>No substantive change. No economic impact.</p>

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480-120-256 Emergency services.	No substantive change. No economic impact.
480-120-261 Operator services.	No substantive change. No economic impact.
480-120-262 Operator service providers (OSPs).	<p>The proposed rule increases the amount of information that customers receive when they make operator-assisted calls. The rule establishes benchmark rates for operator-assisted calls.</p> <p>The current rule applies only to calls from pay phones and hotels using the prescribed operator service. The proposed rule expands the scope to include calls made using any operator service provider. Operator service providers that do not already provide prescribed services will incur additional expenses if they do not currently give customers the ability to obtain a rate quote. If they already have rate quote ability, there will be no additional costs as a result of the expanded scope.</p> <p>For operator service providers whose charges are below the benchmark, the proposed rule does not change existing disclosure requirements. There is no economic impact for these companies.</p> <p>For operator service providers whose charges are above the benchmark, the proposed rule requires a rate quote on each call. These companies may incur one-time costs to reprogram operator assistance platforms to deliver the rate quote on all above-benchmark calls. Additional expense may be incurred due to the time spent delivering the rate quote. The companies also may experience reduced revenues, because customers may hang up when they hear what the rates are.</p> <p>The proposed rule likely does not directly affect small businesses, because operator service providers typically require more than fifty employees. However, the proposed rule indirectly affects small businesses that own, manage, or operate pay telephones, convenience stores, and motels. These businesses sometimes receive commissions from operator service providers that are based on operator service revenues generated at their location. If customers choose not to complete calls after they hear the rates, revenues to the site owners will be reduced.</p>

	The commission did not identify any mitigation provisions for small businesses. Requiring disclosure was the less burdensome method of protecting consumers, compared to direct regulation of operator service provider rates. The rule implements a statute, RCW 80.36.520, that applies to all operator service providers regardless of size.
480-120-263 Pay phone service providers (PSPs).	No substantive change. No economic impact.
480-120-264 Prepaid calling services.	No substantive change. No economic impact.
PART VIII. FINANCIAL RECORDS AND REPORTING RULES	
480-120-301 Accounting requirements for competitively classified companies.	No substantive change. No economic impact.
480-120-302 Accounting requirements for companies not competitively classified as competitive.	<p>The proposed rule updates and streamlines accounting requirements. The economic impact of the changes, while a benefit to companies, is negligible.</p> <p>The rule provides for reduced accounting requirements for small businesses.</p>
480-120-303 Reporting requirements for competitively classified companies.	No substantive change. No economic impact.
480-120-304 Reporting requirements for companies not competitively classified as competitive.	<p>No substantive change. No economic impact.</p> <p>The rule provides streamlined filing requirements for small businesses.</p>
480-120-305 Streamlined filing requirements for Class B telecommunications company rate increases.	<p>The proposed rule simplifies and reduces the filing requirements for a small telecommunications company (including small businesses) that seek to increase rates.</p> <p>The revisions reduce expenses for companies seeking to justify an increase in regulated rates.</p> <p>The benefits are disproportionately felt by small businesses, since accounting and legal services are higher for them on a per-revenue or per-customer basis.</p>
480-120-311 Access charge and universal service reporting.	<p>The proposed rule simplifies and reduces filing requirements for companies that collect access charges.</p> <p>The benefits are disproportionately felt by small businesses, since accounting and legal services are higher for them on a per-revenue or per-customer basis.</p>
480-120-312 Universal service cost recovery authorization.	No substantive change. No economic impact.
480-120-313 Terminating access charges.	No substantive change. No economic impact.
480-120-321 Expenditures for political or legislative activities.	No substantive change. No economic impact.

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480-120-322 Retaining and preservation of preserving records and reports.	No substantive change. No economic impact.
480-120-323 Washington Exchange Carrier Association (WECA).	No substantive change. No economic impact.
<b>PART IX. SAFETY AND STANDARDS RULES</b>	
480-120-401 Network performance standards.	The proposed changes clarify existing performance standards and make them more specific. This reduces uncertainty and compliance costs. Expenses could increase for a company whose performance was not in violation of the existing, vague rule, if the same performance level does not comply with the more specific standards. The commission is not aware of any companies in this situation.
480-120-402 Safety.	No substantive change. No economic impact.
480-120-411 Network maintenance.	No substantive change. No economic impact.
480-120-412 Major outages.	No substantive change. No economic impact.
480-120-413 Collocation.	No substantive change. No economic impact.
480-120-414 Emergency operation.	No substantive change. No economic impact.
480-120-436 Responsibility for drop facilities and support structure.	The proposed rule reflects current practice. No substantive change. No economic impact.
480-120-437 Responsibility for maintenance and repair of facilities and support structures.	The proposed rule reflects current practice. No substantive change. No economic impact.
480-120-438 Trouble report standard.	No substantive change. No economic impact.
480-120-439 Service quality performance reports.	The proposed changes eliminate outdated reporting requirements and add reporting requirements consistent with the commission's performance standards. Local exchange companies are expected to incur some initial costs to establish systems to track and report the statistics in the report. The cost of the periodic report filing itself is negligible. Reporting costs are generally a disproportionate expense for small businesses, but the rule exempts small telecommunications companies from the reporting requirements. With this mitigation, there is no disproportionate impact on small business.

480-120-440 Service interruptions and impairments, excluding major outages.	The proposed rule would change the standard for restoration of interruptions of basic service from two working days, which is an average of sixty hours, to forty-eight hours. Most companies restore basic service interruptions in less than forty-eight hours, but some companies may incur additional expenses to hire employees or contracts to meet the shorter restoration interval. The proposed rule would change the standard for restoration of nonbasic services from two working days to seventy-two hours. Some companies may have slightly lower expenses because they will be able to comply with the rule with fewer repair technicians. The proposed rule provides additional exceptions to the service restoration intervals. These exceptions represent situations when a company would have difficult[y] meeting the forty-eight hour or seventy-two hour standard. Including the additional exceptions lowers costs for regulated companies. The increased expenses and reduced expenses resulting from the proposed rule changes do not have a disproportionate impact on small business, because the costs are generally incurred in proportion to the number of customers served.
480-120-450 Enhanced 9-1-1 (E911) obligations of local exchange companies.	The proposed rule changes clarify responsibilities for maintaining E-911 information. Some companies may incur additional costs to comply with the requirement to offer a method for customers and other telecommunications companies to submit data base changes electronically. Any additional costs would be minor and could be recovered through the rates charged for E-911 service.
480-120-451 Local exchange carrier contact number for use by public safety answering points (PSAPs).	This proposed rule requires companies to maintain a contact number for use by county E-911 systems. The cost of a contact number is negligible, so there is no economic impact from the proposed rule.
480-120-452 Reverse search by enhanced 9-1-1 (E911) public safety answering point (PSAP) of ALI/DMS data base—When permitted.	No substantive change. No economic impact.
<b>PART X. ADOPTION BY REFERENCE</b>	
480-120-999 Adoption by reference.	No substantive change. No economic impact.
<b>REPEALED</b>	
480-120-121 Responsibility for delinquent accounts.	

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480-120-131 Reports of accidents.	
480-120-151 Telecommunications carriers' use of customer proprietary network information (CPNI).	
480-120-152 Notice and approval required for use of customer proprietary network information (CPNI).	
480-120-153 Safeguards required for use of customer proprietary network information. (CPNI).	
480-120-154 Definitions.	

A copy of the statement may be obtained by writing to Washington Utilities and Transportation Commission, P.O. Box 47250, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504-7250, phone (360) 664-1234, fax (360) 586-1150. The small business economic impact statement addresses this proposal and the remaining rules that will be filed under a subsequent proposal.

RCW 34.05.328 does not apply to this rule adoption. The commission is not an agency to which RCW 34.05.328 applies. The proposed rules are not significant legislative rules as referenced in RCW 34.05.328(5).

Hearing Location: Washington Utilities and Transportation Commission, Headquarters, Room 206, 1300 South Evergreen Park Drive S.W., Olympia, WA 98502-7250 [98504-7250], on July 26, 2002, at 1:30 p.m.

Assistance for Persons with Disabilities: Contact Mary De Young by Friday, July 19, 2002, TDD (360) 586-8203, or (360) 664-1133.

Submit Written Comments to: Secretary, Docket No. UT-990146, Washington Utilities and Transportation Commission, 1300 South Evergreen Park Drive S.W., P.O. Box 47250, Olympia, WA 98504-7250, fax (360) 586-1150, by May 22, 2002.

Date of Intended Adoption: July 26, 2002.

April 3, 2002  
 Carole J. Washburn  
 Secretary

**NEW SECTION**

**WAC 480-120-201 Definitions.** The definitions in this section apply to WAC 480-120-202 through 216.

**"Call detail"** means:

(a) Any information that identifies or reveals for any specific call, the name of the caller, the name of any person called, the location from which a call was made, the area code, prefix, any part of the telephone number of any participant, the time of day of the call, the duration of a call, or the cost of a call;

(b) The aggregation of information in (a) of this subsection up to the level where a specific individual is associated with information on calls made to a given area code, prefix, or complete telephone number, whether that information is expressed through amount spent, number of calls, or number

of minutes used and whether that information is expressed in monthly, less-than-monthly or greater-than-monthly units;

(c) The aggregation of the information in (a) of this subsection up to the level where a specific individual is associated with general calling patterns (e.g. peak, off-peak, weekends) or amounts spent expressed on a less-than-per-month basis;

(d) The number of calls that are answered or unanswered and information related to them that provide information by time of the day, day of the week, or by week or weeks up to but not including by month.

Call detail does not include information other than (a), (b) and (c) of this subsection compiled on a monthly basis. For example, it does not include the monthly amount spent on long distance calls or the monthly amount spent on ancillary services. It does include, for example, the monthly amount spent calling area code XXX, and the number of unanswered calls between the hours of 8:00 A.M. and 5:00 P.M. and the number of unanswered calls on Tuesdays.

**"Customer proprietary network information (CPNI)"** means (a) Information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service, including call detail, and that is made available to the company by the customer solely by virtue of the customer-company relationship, which includes information obtained by the company for the provision of the telecommunication service; and (b) Information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a company; except that CPNI does not include subscriber list information.

**"Company"** means any telecommunications company as defined in RCW 80.04.010.

**"Private account information"** means customer proprietary network information that is associated with an identifiable individual.

**"Subscriber list information (SLI)"** means any information:

(a) Identifying the listed names of subscribers of a company and those subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned when service is established), or any combination of listed names, numbers, addresses, or classifications; and

(b) That the company or an affiliate has published, caused to be published, or accepted for publication in any directory format.

**"Telecommunications-related products and services"** means:

(a) The offering of telecommunications for a fee directly to the public, or to such classes of users to be effectively available directly to the public, regardless of the facilities used; or

(b) Services offered over common carrier transmission facilities which employ computer processing applications that act on the format, content, code, protocol, or similar aspects of the subscriber's transmitted information, provide the subscriber additional, different, or restructured information, or involve subscriber interaction with stored information; or

(b) Equipment employed on the premises of a person to originate, route, or terminate telecommunications.

"**Telecommunications service**" means the offering of telecommunications for a fee directly to the public, or to such classes of users to be effectively available directly to the public, regardless of the facilities used.

"**Telemarketing**" means contacting a person by telephone in an attempt to sell one or more products or services.

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

#### NEW SECTION

**WAC 480-120-202 Use of customer proprietary network information permitted.** Customer proprietary network information may be used as permitted by 47 U.S.C. Section 222 except where sections 480-120-202 through 216 require otherwise.

#### NEW SECTION

**WAC 480-120-203 Using a customer's call detail information.** (1) Except as provided in this section and WAC 480-120-205, a company may not use, disclose, or permit access to a customer's call detail information, unless the customer has given explicit written ("opt-in") approval.

(2) Without seeking or obtaining customer approval, a company may use, disclose, or permit access to a customer's call detail information to the extent necessary to:

(a) Initiate, render, coordinate, facilitate, bill, and collect for telecommunications services the customer has purchased or requested;

(b) Protect the rights or property of the company, or to protect users of those services and other companies from fraudulent, abusive, or unlawful use of, or subscription to, such services;

(c) Resolve formal and informal complaints communicated to the company or commission by an applicant or customer;

(d) Provide records to a data base management system, as defined in WAC 480-120-340, or to any other database used in the provision of enhanced 9-1-1 or 9-1-1 service, or perform any other service for enhanced 9-1-1 or 9-1-1 purposes; and

(e) Comply with any applicable law, or any governmental rule, regulation or order, or any subpoena or other demand of apparently lawful authority.

#### NEW SECTION

**WAC 480-120-204 Using private account information in the provision of services.** Without seeking or obtaining customer approval, a company may use, disclose, or permit access to a customer's private account information to the extent necessary to:

(1) Initiate, render, coordinate, facilitate, bill, and collect for telecommunications services the customer has purchased or requested;

(2) Protect the rights or property of the company, or to protect users of those services and other companies from fraudulent, abusive, or unlawful use of, or subscription to, such services;

(3) Resolve formal and informal complaints communicated to the company or commission by a customer or applicant;

(4) Provide records to a data base management system, as defined in WAC 480-120-340, or to any other database used in the provision of enhanced 9-1-1 or 9-1-1 service, or perform any other service for enhanced 9-1-1 or 9-1-1 purposes; and

(5) Comply with any applicable law, or any governmental rule, regulation or order, or any subpoena or other demand of apparently lawful authority.

#### NEW SECTION

**WAC 480-120-205 Using private account information during an inbound call.** A company may use, disclose, or permit access to a customer's private account information to the extent necessary to provide any inbound telemarketing, referral, or administrative services to the customer for the duration of the call, if:

(1) Such call was initiated by the customer; and

(2) During the call and prior to the company's use of the information, the customer expresses approval for the company to use the information during the call.

#### NEW SECTION

**WAC 480-120-206 Using private account information for marketing telecommunications-related products and services and other products and services.** (1) Unless the customer directs otherwise, a telecommunications company and any entity under common control of or with the telecommunications company, may use a customer's private account information, with the exception of call detail, to offer or market telecommunications-related services and other products and services. Such company or entity may not disclose or permit access to private account information outside the company or entity unless a company has obtained approval under WAC 480-120-209, except that it may provide information to agents that are contractually bound to use the information only for the purposes permitted by this rule and to make no other use, or disclose, or permit access to the private account information.

(2) A company may not use a customer's private account information as provided for in subsection (1) of this section unless it has provided notice to each customer pursuant to WAC 480-120-207 and provides the customer with reasonable opportunity to direct the company not to use the information ("opt-out") pursuant to WAC 480-120-208.

#### NEW SECTION

**WAC 480-120-207 Notice when use of private account information is permitted unless a customer directs otherwise ("opt-out").** (1) This section applies when

a company, pursuant to WAC 480-120-206, uses a customer's private account information unless the customer directs otherwise ("opt-out"). If a company that is permitted to use the opt-out method voluntarily uses the opt-in method, the requirements of WAC 480-120-209 will apply.

(2) A company may not use a customer's private account information pursuant to WAC 480-120-206 unless, at least once in the past year, the company has provided a written notice to the customer, as provided for in this section, and provides the customer with a reasonable opportunity to opt-out at any time.

(3) The written notice must be mailed separately from any advertising or promotional material. It may be included with the customer's bill.

(4) The written notice must be posted on the company's web site and must be readily accessible from the company's home page.

(5) Any opt-out notice must include the following items:

(a) A statement that the name, address, and telephone number, if published in the telephone directory, are not private information and will not be withheld from telemarketers if the customer opts-out;

(b) A statement that private account information may be used to market (i) telecommunications-related products and services, or (ii) other products and services, or both (i) and (ii), whichever applies;

(c) A statement that the customer has a right to direct the company not to use the customer's private account information and that doing so will not affect the provision of any services to which the customer subscribes;

(d) A disclaimer that an opt-out directive for private account information does not prevent the company from making telephone solicitation or telemarketing calls to the customer and does not prevent the company from including the customer's listed name, address, and telephone number in lists sold, leased or provided to other firms. This disclaimer is not required if the company's practice is to exclude customers who opt-out of private account information use from use or disclosure for telemarketing purposes or if the company does not sell, lease, or directly provide such lists to other firms;

(e) A statement that the customer should expect to receive written confirmation within thirty days of the directive and suggest that the customer call the company if the confirmation is not received by this time;

(f) A prominent statement of specific instructions by which the customer can direct the company not to use the customer's private account information. The dedicated opt-out telephone number required by WAC 480-120-208 (2)(a) must be printed in bold type and in a size larger than the body of the notice.

(6) The notice must be in plain language and must not be misleading.

(7) The notice must be clearly legible, in twelve-point or larger type.

(8) A company may state in the notice that the use of private account information may enhance the company's ability to offer products and services tailored to the customer's needs, if such a statement is accurate.

(9) A company may state in the notice that the customer, upon affirmative written request, may compel the company to provide private account information to any person.

(10) If the company has a website, it must provide a link on the home page that is labeled "Customer Privacy" that will take a reader to the notice required in this section and the telephone number required in WAC 480-120-208 (2)(a).

#### NEW SECTION

**WAC 480-120-208 Mechanisms for opting out of use of private customer account information.** (1) This section applies when a company, pursuant to WAC 480-120-206, uses a customer's private account information unless the customer directs otherwise ("opt-out").

(2) At a minimum, companies must allow customers to opt-out using the following mechanisms, which must be provided by the company:

(a) Calling a dedicated, toll-free telephone number that provides access to a live or automated operator at all times. The telephone number must be accessible from all areas of the state and customers must have the option to direct the company to not use their private account information ("opt-out") without receiving additional information from the company before giving their directive;

(b) Calling any telephone number that the company provides for billing or customer service inquiries. This subsection permits companies to transfer customers directly to the number required in (a) of this subsection;

(c) Marking a box or blank on the notice and returning it to a stated address;

(d) Returning a postage-paid card included with the notice;

(e) Electronic mail, if the company otherwise receives or sends electronic-mail messages to its customers; and

(f) Submitting an opt-out form found on the company's web site. The opt-out form must be directly linked to the written notice required by WAC 480-120-207. The web site must be accessible to the public using generally available browser software.

(3) A company may require, as part of any opt-out mechanism, that the customer comply with reasonable procedures to verify the identity of the customer. Any opt-out verification procedure must be no more burdensome on the customer than any verification procedure used by the company when a customer provides explicit ("opt-in") approval or orders additional services on an existing account.

#### NEW SECTION

**WAC 480-120-209 Notice when explicit ("opt-in") approval is required and mechanisms for explicit approval.** (1) This section applies when explicit ("opt-in") approval of the customer is required for a company to use, disclose, or permit access to a customer's private account information.

(2) A company must maintain records of customer notification and approval.

(3) Any solicitation for explicit customer approval must be accompanied by a written notice to the customer of the customer's right to restrict use of, disclosure of, and access to that customer's private account information. The notice must state that private account information includes all information related to specific calls initiated or received by a customer.

(a) The notice must state that the customer has a right under federal and state law to protect the confidentiality and limit the use, disclosure, and access to the customer's private account information.

(b) The notice must state that the company has a duty under federal and state law to protect the confidentiality of private account information and to comply with the customer's limitations on use, disclosure of, and access to the information.

(c) The notice must state the types of information that constitute private account information. If a company is seeking explicit approval to use, disclose, or permit access to call detail information, the notice must specify that private account information includes the telephone numbers of all calls made or received by the customer.

(d) The notice must specify the names of entities, including affiliates, subsidiaries and companies under common control, which may receive private account information and whether the private account information can be used, disclosed, or accessed by any entity or person other than the company providing the notice.

(e) The notice must describe each purpose for which private account information can be used, disclosed, or accessed and specifically disclose whether the private account information can be used to market services to the customer.

(f) The notice must inform the customer that approval by the customer is voluntary and that no action is required to protect the customer's private account information.

(g) The notice must inform the customer that deciding not to approve will not affect the provision of any services to which the customer subscribes.

(h) The notice must be comprehensible and must not be misleading.

(i) The notice must be clearly legible, in twelve-point or larger type, and be placed so as to be readily apparent to a customer.

(j) If any portion of a notice is translated into another language, then all portions of the notice must be translated into that language.

(k) A company may state in the notice that the customer's approval to use, disclose, or permit access to private account information may enhance the company's ability to offer products and services tailored to the customer's needs, if the statement is accurate.

(l) A company may state in the notice that the customer, upon affirmative written request, may compel the company to disclose the customer's private account information to any person.

(m) The notice must state that any approval for use, disclosure of, or access to private account information may be revoked or limited at any time.

(n) The notice must state that the customer should expect to receive written confirmation within thirty days and suggest

that the customer call the company if the confirmation is not received by this time.

(4) Opt-in approval by the customer must be:

(a) In writing and may be made by e-mail; or

(b) Orally, if the oral approval is verified by an independent third-party using substantially the same procedures as provided in WAC 480-120-139 (1)(c).

(5) The following table illustrates information identified in subsection 208 and 209 and whether it would be considered to require explicit "opt-in" permission, an "opt-out" directive or is not covered by the rule.

Customer Approval Method Depends on the Type of Information and How the Company Will Use It

Type of Activity	Type of Information		
	Call Detail (identifies specific calls)	Other Private Account Information	Aggregate CPNI
Activities necessary to provide service or to comply with the law	No approval required.	No approval required.	Not covered by the rule.
Inbound customer service and marketing	Oral opt-in, good for duration of call.	Oral opt-in, good for duration of call.	Not covered by the rule.
Market new versions of existing services	Opt-in.	Opt-out.	Not covered by the rule.
Market telecom and telecom-related services	Opt-in.	Opt-out.	Not covered by the rule.
Market non-telecom-related services	Opt-in.	Opt-out.	Not covered by the rule.
Disclose to commonly controlled company	Opt-in.	Opt-out.	Not covered by the rule.
Disclose to other companies	Opt-in.	Opt-in.	Not covered by the rule.

**NEW SECTION**

**WAC 480-120-211 Confirming change in approval status.** (1) Each time a company receives a customer's "opt-out" directive or explicit "opt-in" approval, the company must confirm in writing the change in approval status to the customer within thirty days. The written confirmation must be mailed to the customer's billing address, but may be sent to the customer's e-mail address if the directive was sent to the company by e-mail, and must be separate from any other mail from the company. The confirmation must include a summary of the effect of the customer's opt-out or opt-in choice and must provide a reasonable method to notify the company if the company made an error in changing the customer's approval status.

(2) A company may not use, disclose, or permit access to a customer's private account information based on a customer's explicit "opt-in" approval until three weeks after mailing the confirmation to the customer.

PROPOSED

NEW SECTION

**WAC 480-120-212 Duration of customer approval or disapproval.** Any "opt-out" directive or explicit "opt-in" approval received by a company will remain in effect until the customer revokes, modifies, or limits such directive or approval.

NEW SECTION

**WAC 480-120-213 Safeguards required for using private account information.** Every company has a duty to protect the confidentiality of private account information.

(1) Companies must train all personnel who have access to private account information as to when they are and are not authorized to use, disclose, or permit access to private account information, and companies must implement an express disciplinary process to deal with violations of the requirement.

(2) Companies must establish a supervisory review process regarding company compliance with rules governing use, disclosure of, or access to private account information for outbound marketing situations and must maintain records of company compliance for at least two years. Specifically, sales personnel must obtain supervisory approval of any proposed outbound marketing request.

(3) Companies must have an officer, as an agent of the company, sign a compliance certificate on an annual basis stating the officer has personal knowledge that the company has established operating procedures that are adequate to ensure compliance with rules concerning private account information and call detail. The company must provide a statement accompanying the certificate explaining how its operating procedures ensure that it is or is not in compliance with the rules on this topic. The certificate and the compliance statement must be filed with the company's annual report to the commission.

NEW SECTION

**WAC 480-120-214 Disclosing customer proprietary network information.** A company must disclose any or all customer proprietary network information upon affirmative written request by the customer, to any person designated by the customer.

NEW SECTION

**WAC 480-120-215 Using privacy listings for telephone solicitation.** (1) A local exchange company may not make telephone solicitation or telemarketing calls using its list of customers with nonpublished or unlisted numbers unless it has notified each such customer at least once in the past year that the company makes such calls to its customers with nonpublished or unlisted numbers and that the customer has a right to direct that the company make no such calls.

(2) When the company provides the notice required in subsection (1) of this section in writing, the notice must include a toll-free number and an e-mail address the customer may use to state that solicitation should not be made.

(3) When the company provides the notice in subsection (1) of this section by phone call, the customer must be informed that inclusion in a solicitation list may be declined and if declined, the company must not make any additional solicitation.

NEW SECTION

**WAC 480-120-216 Using subscriber list information for purposes other than directory publishing.** If a company uses or provides subscriber list information for purposes other than directory publishing, it must exclude from use or disclosure the subscriber list information of any customer who subscribes to a privacy listing, including a nonpublished or unlisted number, or who directs the company to exclude subscriber list information relating to his or her service.

REPEALER

The following sections of the Washington Administrative Code are repealed:

480-120-144	Use of privacy listings for telephone solicitation.
480-120-151	Telecommunications carriers' use of customer proprietary network information (CPNI).
480-120-152	Notice and approval required for use of customer proprietary network information (CPNI).
480-120-153	Safeguards required for use of customer proprietary network information (CPNI).
480-120-154	Definitions.

**WSR 02-08-088**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Medical Assistance Administration)  
 [Filed April 3, 2002, 11:28 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 00-22-083.

Title of Rule: Chapter 388-535 WAC, Dental-related services.

Purpose: The Medical Assistance Administration (MAA) is proposing to amend chapter 388-535 WAC, Dental-related services, to clarify and update existing policy. This includes updating (and deleting where necessary) definitions; clarifying provider requirements and adding cross-references to other provider information; clarifying the services that are covered and not covered; clarifying policy regarding dentures (including replacements for lost dentures to be

included in the limitation of one set of dentures allowed in a ten-year period), partials, and laboratory fees; and reorganizing and rewriting sections within the chapter to improve readability and understanding to meet the requirements of Executive Order 97-02.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.035, 74.09.500, 74.09.520, 42 U.S.C. 1396d(a), 42 C.F.R. 440.100 and 440.225.

Statute Being Implemented: RCW 74.09.035, 74.09.500, 74.09.520, 42 U.S.C. 1396d(a), 42 C.F.R. 440.100 and 440.225.

Summary: The proposed rules update program definitions; clarify and add cross-references to provider information; clarify covered and noncovered services; clarify policy regarding dentures (including replacements for lost dentures to be included in the limitation of one set of dentures allowed in a ten-year period), partials, and laboratory fees; and reorganize and rewrite sections within the chapter to improve readability and understanding to meet the requirements of Executive Order 97-02.

Reasons Supporting Proposal: To ensure department policy is accurately reflected in rule, and meet the requirements of EO 97-03.

Name of Agency Personnel Responsible for Drafting: Ann Myers, 925 Plum Street S.E., Olympia, WA 98501, (360) 725-1345; Implementation: Carree Moore, 649 Woodland Square Loop Road, Lacey, WA 98503, (360) 725-1653; and Enforcement: Sharon Morrison, 623 8th Avenue S.E., Olympia, WA 98501, (360) 725-1671.

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

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

Explanation of Rule, its Purpose, and Anticipated Effects: The proposed rule clarifies policy regarding dental-related services, including program definitions; provider requirements; covered and noncovered services; and dentures, partials, and laboratory fees.

The purpose is to ensure department policy is accurately reflected in rule, and to meet the regulatory improvement goals of EO 97-02.

The anticipated effects are that department policy will reflect current policy and be more easily understood.

Proposal Changes the Following Existing Rules: The rules described above add and delete program definitions, add cross-references for provider requirements, clarify those services that are covered and noncovered, make replacements for lost dentures subject to the same one-set-in-ten-years requirement that original dentures are subject to, clarify that MAA does not pay laboratory fees directly to a laboratory, and reorganizes and rewrites sections within the section for clarity and readability.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

#### Small Business Economic Impact Statement

**SUMMARY OF PROPOSED RULES:** The Department of Social and Health Services' Medical Assistance Administra-

tion (MAA) is proposing to amend chapter 388-535 WAC, Dental-related services. The proposed amendments:

- Update program-related definitions;
- Clarify provider requirements and add cross-references for other provider information;
- Clarify the services that are covered and are not covered under this program;
- Clarify department policy regarding dentures, partials, and laboratory fees; and
- Reorganize and rewrite sections within the chapter to improve readability and understanding to meet the requirements of Executive Order 97-02.

**SMALL BUSINESS ECONOMIC IMPACT STATEMENT:** Chapter 19.85 RCW, the Regulatory Fairness Act, requires that the economic impact of proposed regulations be analyzed in relation to small businesses and outlines the information that must be included in a small business economic impact statement (SBEIS). Preparation of an SBEIS is required when a proposed rule has the potential of placing a more than minor economic impact on business.

The Medical Assistance Administration (MAA) has analyzed the proposed rule, and concluded that although there would likely be an economic impact on the small businesses affected by it, MAA is unable to calculate an exact dollar amount based on specific information. This is because the proposed rule could require dental office staff to contact MAA regarding client eligibility for replacement dentures, and MAA does not know how often this may occur or how much time it may take. In addition, MAA does not currently have the means to track how many dentures have been provided as replacements for lost ones. The proposed rule limits replacement dentures to one set in a ten-year period when the reason for the replacement is that the existing dentures were lost - the same limitation placed on original dentures. Providers may not replace lost dentures without prior authorization when the replacement dentures exceed this limit.

Even though MAA is unable to determine an economic impact which is based on specific information for staff costs and replacement of lost dentures, the following is an estimate based on the information that is available to MAA:

From 1997 through 2001, MAA reimbursed providers for approximately 22,000 "units" (a "unit" is either a partial or a denture) each year. In fiscal year 2000, MAA's reimbursement to providers was approximately \$8,200,000.00 for the entire prosthodontic program, including relines, rebases, repairs to bridges, etc. In order to arrive at a working figure for the calculations below, MAA disregarded the fact that expenses for services other than dentures were included in the total cost, and calculated an average reimbursement per unit of \$375.00 ( $\$8,200,000 \div 22,000 \text{ units} = \$372.73$ ).

Since MAA is currently unable to determine how many dentures are replacements for lost ones, some reasonable assumptions must be made for the purpose of this calculation. MAA assumes that one-third of the 22,000 units provided are dentures, and that one-third of those are replacements for lost dentures (this is based on the current policy of non-limited replacement of dentures that are: a) lost; b) damaged beyond repair; or c) unserviceable). MAA contracts with approximately 2,000 dental providers, and assumes that one-quarter,

or 500, of them provide dentures to Medicaid clients. Based on these figures, the following calculation shows a possible annual economic impact (not including staff time for client eligibility verification) on MAA providers:

- 22,000 total units ÷ 3 = 7,333 denture units.
- 7,333 denture units ÷ 3 reasons for replacements = 2,444 replacements for lost dentures
- 2,444 replacements x \$375 reimbursement per unit = \$916,500.00 reimbursement for lost dentures
- \$916,500 reimbursement ÷ 500 providers = \$1,833.00 reimbursement per provider per year

**EVALUATION OF PROBABLE COSTS AND PROBABLE BENEFITS:** The proposed amendments do "make significant amendments to a policy or regulatory program" (see RCW 34.05.328 (5)(c)(iii)). MAA is proposing to amend the policy regarding replacement dentures for those dentures that are lost, applying the same limitation as applies to original dentures. Therefore, MAA has determined the proposed rules do meet the definition of "significant" as defined by the legislature.

As required by RCW 34.05.328 (1)(c), the administration has analyzed the probable costs and probable benefits of the proposed amendments, taking into account both the qualitative and quantitative benefits and costs.

**Probable Costs:** MAA's analysis above reveals that while the proposed amendments impose no actual "new" costs, providers may receive approximately \$1,833.00 less per year in Medicaid reimbursement for replacement dentures that do not meet the one-set-in-ten-years limitation. Since dental office staff may need to contact MAA to verify a client's eligibility for replacement dentures, there could be some additional administrative costs associated with the proposed amendment, but MAA is unable to calculate these at this time.

**Probable Benefits:** It is generally recognized that Medicaid reimbursement does not cover the full cost of providing dentures. The proposed amendments require the provider to get prior approval from MAA for replacing lost dentures, if those dentures exceed the one-set-in-ten-years limitation. This allows the provider to verify client eligibility; if eligible, the provider can choose to provide the dentures and accept the Medicaid reimbursement. If the client is not eligible, the provider can choose not to provide the dentures, or make arrangements with the client to pay for the full cost of the dentures. Therefore, the provider has greater control over his/her costs.

Please contact me if you have any questions.

A copy of the statement may be obtained by writing to Ann Myers, DSHS Medical Assistance Administration, P.O. Box 45533, 925 Plum Street S.E., Olympia, WA 98501, phone (360) 725-1345, fax (360) 586-9727.

RCW 34.05.328 applies to this rule adoption. MAA analyzed the proposed rule and concluded that it meets the definition of a "significant legislative rule" as defined by the legislature. An analysis of the probable costs and probable benefits may be obtained by contacting the person listed above.

Hearing Location: Office Building - 2 Auditorium (DSHS Headquarters) (parking off 12th and Jefferson), 1115

Washington, Olympia, WA 98504, on May 21, 2002, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Andy Fernando, DSHS Rules Coordinator, by May 17, 2002, phone (360) 664-6094, TTY (360) 664-6178, e-mail fernaAX@dshs.wa.gov.

Submit Written Comments to: Identify WAC Numbers, DSHS Rules Coordinator, Rules and Policies Assistance Unit, P.O. Box 45850, Olympia, WA 98504-5850, fax (360) 664-6185, e-mail fernaax@dshs.wa.gov, by 5:00 p.m., May 21, 2002.

Date of Intended Adoption: No sooner than May 22, 2002.

March 28, 2002

Margaret J. Partlow  
for Brian H. Lindgren, Manager  
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 01-02-076, filed 12/29/00, effective 1/29/01)

**WAC 388-535-1050 Dental-related definitions.** ~~((This section contains definitions of words and phrases in bold that the department uses in this chapter. See also chapter 388-500 WAC for other))~~ The following definitions and abbreviations and those found in WAC 388-500-0005 apply to this chapter. ~~((Further))~~ The medical assistance administration (MAA) also uses dental definitions ((used by the department may be)) found in the American Dental Association's Current Dental Terminology ((CDT-2)) CDT-3 and the American Medical Association's Physician's Current Procedural Terminology 2002 (CPT@ 2002). Where there is any discrepancy between the ~~((CDT-2)) CDT-2~~ or ~~((CPT)) CPT@ 2002~~ and this section, this section prevails. (CPT@ is a trademark of the American Medical Association.)

**"Access to baby and child dentistry (ABCD)"** is a ~~((demonstration project))~~ program to increase access to dental services in targeted areas for Medicaid eligible infants, toddlers, and preschoolers up through the age of five. See WAC 388-535-1300 for specific information.

**"Adult"** for the general purposes of the medical assistance administration's (MAA) dental program, means a client ((nineteen)) twenty-one years of age or older (MAA's payment structure changes at age nineteen, which affects specific program services provided to adults or children).

**"Anterior"** means teeth in the front of the mouth. ~~((In relation to crowns, only these permanent teeth are considered anterior for laboratory processed crowns:))~~

- (1) **"Lower anterior,"** teeth twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, and twenty-seven; and
- (2) **"Upper anterior,"** teeth six, seven, eight, nine, ten, and eleven.

~~(("Arch" means the curving structure formed by the crowns of the teeth in their normal position, or by the residual ridge after loss of the teeth.))~~

**"Asymptomatic"** means having or producing no symptoms.

~~("Banding" means the application of orthodontic brackets to the teeth for the purpose of correcting dentofacial abnormalities.)~~

**"Base metal"** means dental alloy containing little or no precious metals.

**"Behavior management"** means managing the behavior of a client during treatment using the assistance of additional professional staff, and professionally accepted restraints or sedative agent, to protect the client from self-injury.

~~("Bicuspid" means teeth four, five, twelve, thirteen, twenty, twenty one, twenty eight, and twenty nine.)~~

**"By report"** - a method of payment for a covered service, supply, or equipment which:

- (1) Has no maximum allowable established by MAA,
- (2) Is a variation on a standard practice, or
- (3) Is rarely provided.

**"Caries"** means tooth decay through the enamel.

**"Child"** for the general purposes of the medical assistance administration's (MAA) dental program, means a client ~~((eighteen))~~ twenty years of age or younger. (MAA's payment structure changes at age nineteen, which affects specific program services provided to children or adults.)

~~("Cleft" means an opening or fissure involving significant dental processes, especially one occurring in the embryo. These can be:~~

- (1) Cleft lip,
- (2) Cleft palate (at the roof of the mouth), or
- (3) Transverse facial cleft (macrostomia).)

**"Comprehensive oral evaluation"** means a thorough evaluation and recording of the hard and soft tissues in and around the mouth, including the evaluation and recording of the ~~((patient's))~~ client's dental and medical history and a general health assessment.

~~("Corona")~~ **"Coronal"** is the portion of a tooth that is covered by enamel, and is separated from the root or roots by a slightly constricted region, known as the cemento-enamel junction.

~~("Craniofacial anomalies" means abnormalities of the head and face, either congenital or acquired, involving significant dental processes.~~

**"Craniofacial team"** means a department of health and MAA recognized cleft palate/maxillofacial team which is: Responsible for management (review, evaluation, and approval) of patients with cleft palate craniofacial anomalies to provide integrated case management, promote parent professional partnership, making appropriate referrals to implement and coordinate treatment plans.)

**"Crown (artificial)"** means a restoration covering or replacing the major part, or the whole of, the clinical crown of a tooth.

**"Current dental terminology (CDT), ((second)) third edition (((CDT-2)) CDT-3),"** a systematic listing of descriptive terms and identifying codes for reporting dental services and procedures performed by dental practitioners. CDT is published by the Council on Dental Benefit Programs of the American Dental Association (ADA).

**"Current procedural terminology 2002 (CPT@ 2002),"** means a description of medical procedures and is available from the American Medical Association of Chicago, Illinois. (CPT@ is a trademark of the American Medical Association.)

**"Dental general anesthesia"** means the use of agents to induce loss of feeling or sensation, a controlled state of unconsciousness, in order to allow dental services to be rendered to the client.

~~("Dentally necessary" means diagnostic, preventive, or corrective services that are accepted dental procedures appropriate for the age and development of the client to prevent the incidence or worsening of conditions that endanger teeth or periodontium (tissues around the teeth) or cause significant malfunction or impede reasonable development or homeostasis (health) in the stomatognathic (mouth and jaw) system:~~

- (1) Which may include simple observation with no treatment, if appropriate; and
- (2) Includes use of less costly, equally effective services.

**"Dentin"** is the mineralized tissue of the teeth, which surrounds the tooth pulp and is covered by enamel on the crown and by cementum on the roots of the teeth.)

**"Dentures"** are a set of ~~((prosthetic))~~ artificial teeth, including overdentures. See WAC 388-535-1240 for specific information.

~~("Dysplasia" means an abnormality in the development of the teeth.~~

**"Enamel"** is the white, compact, and very hard substance that covers and protects the dentin of the crown of a tooth.)

**"Endodontic"** means a root canal treatment and related follow-up.

**"EPSDT((/healthy kids))"** means the department's early and periodic screening, diagnosis, and treatment program for clients twenty years of age and younger as described in chapter 388-534 WAC.

**"Fluoride varnish or gel"** means a substance containing dental fluoride, ~~((for painting onto))~~ applied to teeth. ~~((When painted onto teeth, it sticks to tooth surfaces.~~

**"Gingiva"** means the gums.

**"Hemifacial microsomia"** means half or part of the face is smaller sized.

**"High noble metal"** means dental alloy containing at least sixty percent pure gold.

**"High risk child"** means any child who has been identified through an oral evaluation or assessment as being at a high risk for developing dental disease because of ~~caries~~ in the child's dentin; or a child identified by the department as developmentally disabled.

**"Hypoplasia"** means the incomplete or defective development of the enamel of the teeth.

**"Low risk child"** means any child who has been identified through an oral evaluation or assessment as being at a low risk for dental disease because of the absence of white spots or ~~caries~~ in the enamel or dentin. This category

includes ~~children with restorations who are otherwise without disease.~~)

**"Limited oral evaluation"** means an evaluation limited to a specific oral health condition or problem.

**"Major bone grafts"** means a transplant of solid bone tissue(s) ~~(, such as buttons or plugs.~~

**"Malocclusion"** means the contact between the upper and lower teeth that interferes with the highest efficiency during the movements of the jaw that are essential to chewing. The abnormality is categorized into four classes, graded by Angle's classification. For coverage, see WAC 388-535-1250.

**"Maxillofacial"** means relating to the jaws and face.)

**"Medically necessary"** see WAC 388-500-0005.

**"Minor bone grafts"** means a transplant of nonsolid bone tissue(s), such as powdered bone, buttons, or plugs.

**"Moderate risk child"** means a child who has been identified through an oral evaluation or assessment as being at a moderate risk for dental disease, based on presence of white spots, enamel caries or hypoplasia.

**"Molars"** means:

(1) Permanent teeth one, two, three, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, thirty, thirty one, and thirty two; and

(2) Primary teeth A, B, I, J, K, L, S and T.)

**"Noble metal"** means a dental alloy containing at least twenty-five percent but less than sixty percent pure gold.

**"Occlusion"** means the relation of the upper and lower teeth when in functional contact during jaw movement.)

**"Oral evaluation"** is a comprehensive oral health and developmental history; an assessment of physical and oral health development and nutritional status; and health education, including anticipatory guidance.

**"Oral health assessment or screening"** means a screening of the hard and soft tissues in the mouth.

**"Oral hygiene instruction"** means instruction for home oral hygiene care, such as tooth brushing techniques or flossing.

**"Oral health status"** refers to the client's risk or susceptibility to dental disease at the time an oral evaluation or assessment is done by a dental practitioner. This risk is designated as low, moderate or high based on the presence or absence of certain indicators.

**"Orthodontic"** is a treatment involving the use of any appliance, in or out of the mouth, removable or fixed, or any surgical procedure designed to redirect teeth and surrounding tissues.)

**"Partials" or "partial dentures"** means a ~~(prosthetic)~~ removable appliance replacing one or more missing teeth in one jaw, and receiving its support and retention from both the underlying tissues and some or all of the remaining teeth. See WAC 388-535-1240 for specific information.

**"Posterior"** means teeth and tissue towards the back of the mouth. Specifically, only these permanent teeth: One, two, three, four, five, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-eight, twenty-nine, thirty, thirty-one, and thirty-two.

**"Prophylaxis"** means intervention which includes the sealing and polishing of teeth to remove coronal plaque, calculus, and stains.)

**"Reline"** means to resurface the tissue side of a denture with new base material in order to achieve a more accurate fit.

**"Root planing"** is a procedure designed to remove microbial flora, bacterial toxins, calculus, and diseased cementum or dentin from the teeth's root surfaces and pock-ets.

**"Scaling"** means the removal of calculus material from the exposed tooth surfaces and that part of the teeth covered by the marginal gingiva.

**"Sealant"** is a material applied to teeth to prevent dental caries.

**"Sequestrectomy"** means removal of dead or dying bone that has separated from healthy bone.)

**"Symptomatic"** means having symptoms (e.g., pain, swelling, and infection).

**"Therapeutic pulpotomy"** means the surgical removal of a portion of the pulp (inner soft tissue of a tooth), to retain the healthy remaining pulp.

**"Usual and customary"** means the fee that the provider usually charges non-Medicaid customers for the same service or item. This is the maximum amount that the provider may bill MAA.

**"Wisdom teeth"** means teeth one, sixteen, seventeen, and thirty-two.

**"Xerostomia"** means a dryness of the mouth.

**AMENDATORY SECTION** (Amending WSR 99-07-023, filed 3/10/99, effective 4/10/99)

**WAC 388-535-1060 Clients who are eligible for dental-related (clients) services.** (1) Subject to the specific limitations described in WAC 388-535-1080, Covered services, clients ~~(of)~~ who receive services under the following ~~(MAA)~~ programs are eligible for the dental-related services described in this chapter:

(a) Categorically needy program (CN or CNP) ~~(, including:~~

(i) Children's health; and

(ii) Pregnant undocumented aliens;

(b) Medically needy (MN));

(b) Children's health insurance program (CNP-CHIP);

(c) Qualified Medicare beneficiary (CNP-QMB);

(d) Limited casualty program/medically needy program (LCP-MNP);

(e) Medically needy program - qualified Medicare beneficiary (MNP-QMB);

(f) Children's health (the state-funded only program); and

(g) Pregnant undocumented aliens.

(2) Clients ~~(with)~~ who receive services under the following state-~~(only)~~funded ~~(eligibility)~~ only programs ~~(receive the coverage)~~ are covered as described in WAC ~~(388-535-1260)~~ 388-535-1120:

(a) General assistance unemployable (GAU); and

(b) Alcohol and drug abuse treatment and support act (ADATSA).

(3) Clients ~~((of))~~ who receive services under the medically indigent (MI) program are ~~((limited to emergency hospital-based services only))~~ covered for only those medical conditions that are acute and emergent and treated in a hospital.

(4) Clients who are enrolled in a managed care plan are eligible for medical assistance administration (MAA)-covered dental services that are not covered by their plan, under fee-for-service.

#### NEW SECTION

**WAC 388-535-1070 Dental-related services provider information.** (1) The following providers are eligible to enroll with the medical assistance administration (MAA) to furnish and bill for dental-related services to eligible clients:

(a) Persons currently licensed by the state of Washington to:

- (i) Practice dentistry or specialties of dentistry;
- (ii) Practice medicine and osteopathy for:
  - (A) Oral surgery procedures; or
  - (B) Providing fluoride varnish under EPSDT;
- (iii) Practice as dental hygienists;
- (iv) Provide denture services;
- (v) Practice anesthesiology; or

(vi) Provide conscious sedation, when certified by the department of health and when providing that service in dental offices for dental treatments.

(b) Facilities that are:

- (i) Hospitals currently licensed by the department of health;
- (ii) Federally-qualified health centers (FQHCs);
- (iii) Medicare-certified ambulatory surgical centers (ASCs);
- (iv) Medicare-certified rural health clinics (RHCs); or
- (v) Community health centers.

(c) Participating local health jurisdictions; and

(d) Border area or out-of-state providers of dental-related services who are qualified in their states to provide these services.

(2) MAA pays licensed providers participating in the MAA dental program for only those services that are within their scope of practice.

(3) See WAC 388-502-0020 for provider documentation and record retention requirements. MAA may require additional documentation under specific sections in this chapter.

(4) See WAC 388-502-0100 and 388-502-0150 for provider billing and payment requirements.

(5) See WAC 388-502-0160 for regulations concerning charges billed to clients.

(6) See WAC 388-502-0230 for provider review and appeal.

(7) See WAC 388-502-0240 for provider audits and the audit appeal process.

AMENDATORY SECTION (Amending WSR 99-07-023, filed 3/10/99, effective 4/10/99)

**WAC 388-535-1080 Covered dental-related services.**

(1) ~~The medical assistance administration (MAA) pays ((only)) for covered dental and dental-related services((; equipment, and supplies)) listed in this section only~~ when they are:

(a) Within the scope of an eligible client's medical care program;

(b) ~~((Dentally))~~ Medically necessary; and

(c) Within accepted dental or medical practice standards and are:

(i) Consistent with a diagnosis of dental disease or condition; and

(ii) Reasonable in amount and duration of care, treatment, or service.

(2) ~~MAA covers the following dental-related services ((are covered):~~

~~(a) Oral health evaluations and assessments.~~

~~(i) Oral health evaluations no more than once every six months.~~

~~(ii) The evaluation services must be documented in the client's dental file.~~

~~(iii) These evaluations must include:~~

~~(A) A comprehensive oral health and developmental history;~~

~~(B) An assessment of physical and oral health development status;~~

~~(C) Health education, including anticipatory guidance; and~~

~~(D) Oral health status.~~

~~(b) Dentally necessary services for the identification of dental problems or the prevention of dental disease subject to limitations of this chapter;~~

~~(e) Prophylaxis treatment is allowed:~~

~~(i) Once every twelve months for adults including nursing facility clients.~~

~~(ii) Once every six months for children.~~

~~(iii) Three times a calendar year for clients of the division of developmental disabilities.~~

~~(d) Dental services or treatment necessary for the relief of pain and infections, including removal of symptomatic wisdom teeth. Routine removal of asymptomatic wisdom teeth without justifiable medical indications is not covered;~~

~~(e) Restoration of teeth and maintenance of dental health subject to limitations of WAC 388-535-1100, Dental services not covered;~~

~~(f) Complex orthodontic treatment for severe handicapping dental needs as specified in WAC 388-535-1250, Orthodontic coverage for DSHS clients;~~

~~(g) Complete and partial dentures, and necessary modifications, repairs, rebasing, relining and adjustments of dentures subject to the limitations of WAC 388-535-1240, Dentures;~~

~~(h) Dentally necessary oral surgery when coordinated with the client's managed care plan (if any);~~

~~(i) Endodontic (root canal) therapies for permanent teeth except for wisdom teeth;~~

~~(j) Nitrous oxide only when medically justified and a component of behavior management;~~

~~(k) Crowns as described in WAC 388-535-1230, Crowns;~~

~~(l) Therapeutic pulpotomies, once per tooth; and~~

~~(m) Sealants for:~~

~~(i) Occlusal surfaces of only these:~~

~~(A) Permanent teeth two, three, fourteen, fifteen, eighteen, nineteen, thirty and thirty-one; and~~

~~(B) Primary teeth A, B, I, J, K, L, S and T.~~

~~(ii) Lingual pits of teeth seven and ten;~~

~~(iii) Teeth with no decay;~~

~~(iv) Children only; and~~

~~(v) Once per tooth in a three-year period.)):~~

(a) Medically necessary services for the identification of dental problems or the prevention of dental disease, subject to the limitations of this chapter;

(b) Oral health evaluations and assessments, which must be documented in the client's file according to WAC 388-502-0020, as follows:

(i) MAA allows a comprehensive oral evaluation once per provider as an initial examination, and it must include:

(A) An oral health and developmental history;

(B) An assessment of physical and oral health status; and

(C) Health education, including anticipatory guidance.

(ii) MAA allows periodic oral evaluations once every six months. Six months must elapse between the comprehensive oral evaluation and the first periodic oral evaluation.

(iii) MAA allows limited oral evaluations only when the provider performing the limited oral evaluation is not providing pre-scheduled dental services for the client. The limited oral evaluation must be:

(A) To provide limited or emergent services for a specific dental problem; or

(B) To provide an evaluation for a referral.

(c) Radiographs (x-rays) for children and adults, as follows:

(i) Intraoral (complete series, including bitewings) - once in a three-year period;

(ii) Bitewings - total of four every twelve months;

(iii) Panoramic, for oral surgical purposes only, as follows:

(A) Not allowed with an intraoral complete series; and

(B) Once in a three-year period, except for preoperative or postoperative surgery cases. Preoperative x-rays must be provided within fourteen days prior to surgery, and postoperative x-rays must be provided within thirty days after surgery.

(d) Fluoride treatment (either gel or varnish, but not both) as follows (additional applications require prior authorization):

(i) For children through age eighteen, topical application of:

(A) Fluoride gel, once every six months; or

(B) Fluoride varnish, up to three times in a twelve-month period.

(ii) For adults age nineteen through sixty-four, topical application of fluoride gel or varnish for xerostomia only; this requires prior authorization. See subsection (3) of this

section for clients of the division of developmental disabilities;

(iii) For adults age sixty-five and older, topical application of fluoride gel or varnish for only:

(A) Rampant root surface decay; or

(B) Xerostomia.

(e) Sealants for children only, once per tooth in a three-year period for:

(i) The occlusal surfaces of:

(A) Permanent teeth two, three, fourteen, fifteen, eighteen, nineteen, thirty, and thirty-one only; and

(B) Primary teeth A, B, I, J, K, L, S, and T only.

(ii) The lingual pits of teeth seven and ten; and

(iii) Teeth with no decay.

(f) Prophylaxis treatment, which is allowed:

(i) Once every twelve months for adults age nineteen and older, including nursing facility clients;

(ii) Once every six months for children age eight through eighteen;

(iii) Only as a component of oral hygiene instruction for children through age seven; and

(iv) For clients of the division of developmental disabilities, see subsection (3) of this section.

(g) Space maintainers, for children through age eighteen only, as follows:

(i) Fixed (unilateral type), one per quadrant;

(ii) Fixed (bilateral type), one per arch; and

(iii) Recementation of space maintainer, once per quadrant or arch.

(h) Amalgam or composite restorations, as follows:

(i) Once in a two-year period; and

(ii) For the same surface of the same tooth.

(i) Crowns as described in WAC 388-535-1230, Crowns;  
(j) Restoration of teeth and maintenance of dental health, subject to limitations of WAC 388-535-1100 and as follows:

(i) Multiple restorations involving the proximal and occlusal surfaces of the same tooth are considered to be a multisurface restoration, and are reimbursed as such; and

(ii) Proximal restorations that do not involve the incisal angle in the anterior tooth are considered to be a two-surface restoration, and are reimbursed as such;

(k) Endodontic (root canal) therapies for permanent teeth except for wisdom teeth;

(l) Therapeutic pulpotomies, once per tooth, on primary teeth only;

(m) Pulp vitality test, as follows:

(i) Once per day (not per tooth);

(ii) For diagnosis of emergency conditions only; and

(iii) Not allowed when performed on the same date as any other procedure, with the exception of an emergency examination or palliative treatment.

(n) Periodontal scaling and root planing as follows:

(i) For clients age nineteen and older only. See subsection (3) of this section for clients of the division of developmental disabilities;

(ii) Only when the client has radiographic (x-ray) evidence of periodontal disease. There must be supporting documentation, including complete periodontal charting and a definitive periodontal diagnosis;

(iii) Once per quadrant in a twenty-four month period; and

(iv) Not allowed when performed on the same date of service as adult prophylaxis, gingivectomy, or gingivoplasty.

(o) Subject to WAC 388-535-1240 and as follows, complete and partial dentures, and necessary modifications, repairs, rebasing, relining, and adjustments of dentures (includes partial payment in certain situations for laboratory and professional fees for dentures and partials as specified in WAC 388-535-1240(5)). MAA covers:

(i) One set of dentures per client in a ten-year period, with the exception of replacement dentures which may be allowed as specified in WAC 388-535-1240(4); and

(ii) Partial dentures as specified in WAC 388-535-1240(2), once every five years.

(p) Complex orthodontic treatment for severe handicapping dental needs as specified in chapter 388-535A WAC, Orthodontic services;

(q) Occlusal orthotic appliance for temporomandibular joint disorder (TMJ) or bruxism, one in a two-year period;

(r) Medically necessary oral surgery when coordinated with the client's managed care plan (if any);

(s) Dental services or treatment necessary for the relief of pain and infections, including removal of symptomatic wisdom teeth. MAA does not cover routine removal of asymptomatic wisdom teeth without justifiable medical indications;

(t) Behavior management for children through age eighteen only, whose documented behavior requires the assistance of more than one additional dental professional staff to protect the client from self-injury during treatment. See subsection (3) of this section for clients of the division of developmental disabilities.

(u) Nitrous oxide for children through age eighteen only, when medically necessary. See subsection (3) of this section for clients of the division of developmental disabilities.

(v) Professional visits, as follows:

(i) Bedside call at a nursing facility or residence, at the physician's request - one per day (see subsection (7) of this section).

(ii) Hospital call, including emergency care - one per day.

(w) Emergency palliative treatment, as follows:

(i) Allowed only when no other definitive treatment is performed on the same day; and

(ii) Documentation must include tooth designation and a brief description of the service.

(3) For clients ((identified by the department as developmentally disabled, the following preventive services may be allowed more frequently than the limits listed in (3) of this section)) of the division of developmental disabilities, MAA allows services as follows:

(a) Fluoride application, either varnish or gel, but not both - three times per calendar year;

(b) Periodontal scaling and root planing - once every six months; ((and))

(c) ((Prophylaxis scaling and coronal polishing.)) Prophylaxis - three times per calendar year;

(d) Nitrous oxide;

(e) Behavior management that requires the assistance of more than one additional dental professional staff and the use of advanced behavior techniques; and

(f) Panoramic radiographs, with documentation that behavior management is required.

(4) ((Panoramic radiographs are allowed only for oral surgical or orthodontic purposes.

(5) The department)) MAA covers ((dentally)) medically necessary services provided in a hospital under the direction of a physician or dentist for:

(a) The care or treatment of teeth, jaws, or structures directly supporting the teeth if the procedure requires hospitalization; and

(b) Short stays when the procedure cannot be done in an office setting. See WAC ((388-550-1100(4))) 388-550-1100(6), Hospital coverage.

(5) MAA covers anesthesia for medically necessary services as follows:

(a) The anesthesia must be administered by:

(i) An oral surgeon;

(ii) An anesthesiologist;

(iii) A Certified Registered Nurse Anesthetist (CRNA);

or

(iv) A general dentist who has a current conscious sedation permit from the department of health (DOH).

(b) MAA reimburses for anesthesia services per WAC 388-535-1350.

(6) For clients residing in nursing facilities or group homes:

(a) Dental services must be requested by the client or a referral for services made by the attending physician, ((facility)) the director of nursing or the nursing facility supervisor, or the client's legal guardian;

(b) Mass screening for dental services of clients residing in a facility is not permitted; and

(c) Nursing facilities must provide dental-related necessary services per WAC ((388-97-225)) 388-97-012, Nursing facility care.

(7) A request to exceed stated limitations or other restrictions on covered services is called a limitation extension (LE), which is a form of prior authorization. MAA evaluates and approves requests for LE for dental-related services when medically necessary, under the provisions of WAC 388-501-0165.

AMENDATORY SECTION (Amending WSR 99-07-023, filed 3/10/99, effective 4/10/99)

WAC 388-535-1100 Dental-related services not covered. (1) The medical assistance administration (MAA) does not cover dental-related services described in subsection (2) of this section ((are not covered)) unless the services are:

(a) Required by a physician as a result of an EPSDT((Healthy Kids)) screen((:

(i) Except that all of the orthodontic limitations of WAC 388-535-1250, Orthodontic coverage for DSHS clients, still apply; and

(ii) Such services must be dentally necessary)) as provided under chapter 388-534 WAC;

(b) Included in ((a)) an MAA waived program; or  
 (c) Part of one of the Medicare programs for qualified Medicare beneficiaries (QMB) except for QMB-only, which is not covered.

(2) MAA does not cover:

(a) ~~((Services, procedures, treatment, devices, drugs, or application of associated services which MAA or the Health Care Financing Administration (HCFA) consider investigative or experimental on the date the services are provided;~~

~~(b) Cosmetic treatment or surgery, except for medically or dentally necessary reconstructive surgery to correct defects attributable to an accident, birth defect, or illness;~~

~~(c) Teeth whitening;~~

~~(d) Orthodontic care for adults;~~

~~(e) Orthodontic care for cosmetic reasons and for children who do not meet the criteria in WAC 388-535-1250; Orthodontic coverage for DSHS clients;~~

~~(f) Any service specifically excluded by statute;~~

~~(g) More costly services when less costly equally effective services as determined by the department are available;~~

~~(h) Nonmedical equipment, supplies, personal or comfort items and/or services;~~

~~(i) Root planing for children unless clients of the division of developmental disabilities;~~

~~(j) Root canal services for primary teeth;~~

~~(k) Routine fluoride treatments for adults, unless clients of the division of developmental disabilities;~~

~~(l) Extraction of asymptomatic teeth;~~

~~(i) Except as a necessary part of orthodontic treatment, or (ii) Unless their removal is the most cost effective dental procedure related to dentures;~~

~~(m) Crowns for wisdom teeth; and~~

~~(n) Amalgam or acrylic build-up for wisdom teeth.~~

(3) MAA does not pay for the following services/supplies:

(a) Missed or canceled appointments;

(b) Provider mileage or travel costs;

(c) Take-home drugs;

(d) Dental supplies such as toothbrushes (manual, automatic, or electric), toothpaste, floss, or whiteners;

(e) Educational supplies;

(f) Reports, client charts, insurance forms, copying expenses;

(g) Service charges/delinquent payment fees;

(h) Dentist's time writing prescriptions or calling in prescriptions or prescription refills to a pharmacy;

(i) Supplies used in conjunction with an office visit;

(j) Transitional/immediate dentures;

(k) Teeth implants including follow up and maintenance;

(l) Bridges;

(m) Nonemergent oral surgery for adults performed in an inpatient setting;

(n) Minor bone grafts; or

(o) Temporary crowns) Any service specifically excluded by statute;

(b) More costly services when less costly, equally effective services as determined by the department are available;

(c) Services, procedures, treatment, devices, drugs, or application of associated services which the department or

the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)) consider investigative or experimental on the date the services were provided;

(d) Routine fluoride treatments (gel or varnish) for adults, unless the clients are:

(i) Clients of the division of developmental disabilities;

(ii) Diagnosed with xerostomia, in which case the provider must request prior authorization; or

(iii) High-risk adults sixty-five and over. High-risk means the client has at least one of the following:

(A) Rampant root surface decay; or

(B) Xerostomia.

(e) Crowns, as follows:

(i) For wisdom and peg teeth;

(ii) Laboratory processed crowns for posterior teeth;

(iii) Temporary crowns, including stainless steel crowns placed as temporary crowns; and

(iv) Post and core for crowns.

(f) Root canal services for primary or wisdom teeth;

(g) Root planing for children, unless they are clients of the division of developmental disabilities;

(h) Bridges;

(i) Transitional or treatment dentures;

(j) Teeth implants, including follow up and maintenance;

(k) Cosmetic treatment or surgery, except for medically necessary reconstructive surgery to correct defects attributable to an accident, birth defect, or illness;

(l) Porcelain margin extensions (also known as crown lengthening), due to receding gums;

(m) Extraction of asymptomatic teeth;

(n) Minor bone grafts;

(o) Nonemergent oral surgery for adults performed in an inpatient setting, except for the following:

(i) For clients of the division of developmental disabilities, or for children eighteen years of age or younger whose surgeries cannot be performed in an office setting. This requires written prior authorization for the inpatient hospitalization; or

(ii) As provided in WAC 388-535-1080(4).

(p) Dental supplies such as toothbrushes (manual, automatic, or electric), toothpaste, floss, or whiteners;

(q) Dentist's time writing prescriptions or calling in prescriptions or prescription refills to a pharmacy;

(r) Educational supplies;

(s) Missed or canceled appointments;

(t) Nonmedical equipment, supplies, personal or comfort items or services;

(u) Provider mileage or travel costs;

(v) Service charges or delinquent payment fees;

(w) Supplies used in conjunction with an office visit;

(x) Take-home drugs;

(y) Teeth whitening; or

(z) Restorations for anterior or posterior wear with no evidence of decay.

(3) MAA evaluates a request for any service that is listed as noncovered under the provisions of WAC 388-501-0165.

NEW SECTION

**WAC 388-535-1120 Coverage limits for dental-related services provided under state-only funded programs.** (1) Clients who receive services under the following state-funded only programs receive only the limited coverage described in this section:

(a) General assistance unemployable (GAU); and  
(b) Alcohol and drug abuse treatment and support act (ADATSA) (GAU-W).

(2) The medical assistance administration (MAA) covers the dental services described and limited in this chapter for clients eligible for GAU or GAU-W only when those services are provided as part of a medical treatment for:

(a) Apical abscess verified by clinical examination, and treated by:

(i) Open and drain palliative treatment;  
(ii) Tooth extraction; or  
(iii) Root canal;  
(b) Cysts or tumor therapies;  
(c) Maxillofacial fracture;  
(d) Radiation therapy for cancer of the mouth, only for a total dental extraction performed prior to and because of that radiation therapy;

(e) Sequestrectomies;  
(f) Systemic or presystemic cancer, only for oral hygiene related to those conditions; or

(g) Tooth fractures (limited to extraction).  
(3) MAA may require prior authorization for any dental treatment provided to a GAU or GAU-W client.

AMENDATORY SECTION (Amending WSR 99-07-023, filed 3/10/99, effective 4/10/99)

**WAC 388-535-1200 Dental services requiring prior authorization.** The following services require prior ~~(approval)~~ authorization:

(1) Nonemergent inpatient hospital dental admissions as described under WAC ~~((388-550-1100(1) Hospital coverage)) 388-535-1100(2)(c) and 388-550-1100(1);~~

(2) ~~((Orthodontic treatment as described under WAC 388-535-1250))~~ Crowns as described in WAC 388-535-1230;

(3) Dentures as described in WAC 388-535-1240;  
(4) ~~((Crowns as described in WAC 388-535-1230))~~ Routine fluoride treatment (gel or varnish) for adults age nineteen through sixty-four who are diagnosed with xerostomia; and

(5) Selected procedures identified by the medical assistance administration (MAA((;))) and published in its current dental billing instructions, which are available from MAA ((æt)) in Olympia, Washington.

AMENDATORY SECTION (Amending WSR 99-07-023, filed 3/10/99, effective 4/10/99)

**WAC 388-535-1220 Obtaining prior authorization for dental services.** ~~((Authorization by MAA only indicates that the specific treatment is dentally necessary. Authorization for dental services does not guarantee payment))~~ When the medical assistance administration (MAA) authorizes a

service, that authorization indicates only that the specific service is medically necessary; it is not a guarantee of payment. The client must be eligible for covered services at the time those services are provided.

(1) ~~((When requesting prior authorization, the dental provider must submit to MAA, in writing, sufficient objective clinical information to establish dental necessity including, but not limited to))~~ MAA requires a dental provider who is requesting prior authorization to submit sufficient objective clinical information to establish medical necessity. The request must be submitted in writing on an American Dental Association (ADA) claim form, which may be obtained by writing to the American Dental Association, 211 East Chicago Avenue, Chicago, Illinois 60611. The request must include at least all of the following:

(a) Physiological description of the disease, injury, impairment, or other ailment;  
(b) X-ray(s);  
(c) Treatment plan;  
(d) Study model, if requested; and  
(e) Photographs, if requested.

(2) ~~((When the requested service meets the criteria in WAC 388-535-1080, Covered services, it will be authorized))~~ MAA authorizes requested services that meet the criteria in WAC 388-535-1080.

(3) MAA denies a request for dental services ~~((will be denied))~~ when the requested service is:

(a) Not ~~((dentally))~~ medically necessary; or  
(b) A service, procedure, treatment, device, drug, or application of associated service which ~~((MAA))~~ the department or the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)) consider investigative or experimental on the date the service is provided.

(4) MAA may require second opinions and/or consultations ~~((may be required))~~ before ~~((the authorization of))~~ authorizing any ~~((elective))~~ procedure.

(5) Authorization is valid only if the client is eligible for covered services on the date of service.

~~((6) Miscellaneous or unspecified procedures may require prior authorization at MAA's discretion.))~~

AMENDATORY SECTION (Amending WSR 01-07-077, filed 3/20/01, effective 4/20/01)

**WAC 388-535-1230 Crowns.** (1) Subject to the limitations in WAC 388-535-1100, the medical assistance administration (MAA) covers the following crowns without prior authorization:

(a) Stainless steel((;)). MAA considers these as permanent crowns, and does not cover them as temporary crowns; and

(b) Nonlaboratory resin for primary anterior teeth.  
(2) MAA does not cover laboratory-processed crowns for posterior teeth.

(3) MAA requires prior authorization for the following crowns, which are limited to single restorations for permanent anterior (upper and lower) teeth:

(a) ~~((Porcelain fused to a high noble metal))~~ Resin (laboratory);

(b) Porcelain (~~fused to a predominately base metal~~) with ceramic substrate;

(c) Porcelain fused to ((a)) high noble metal;

(d) Porcelain (~~with ceramic substrate~~) fused to predominantly base metal; and

(e) ~~((Full cast high noble metal~~;

(f) ~~Full cast predominately base metal~~;

(g) ~~Full cast noble metal~~; and

(h) ~~Resin (laboratory))~~ Porcelain fused to noble metal.

(4) Criteria for covered crowns as described in subsections (1) and (3) of this section:

(a) Crowns may be authorized when the crown is ~~((dentally))~~ medically necessary.

(b) Coverage is based upon a supportable five year prognosis that the client will retain the tooth if the tooth is crowned. The provider must submit the following client information:

(i) The overall condition of the mouth;

(ii) Oral health status;

(iii) ~~((Patient))~~ Client maintenance of good oral health status;

(iv) Arch integrity; and

(v) Prognosis of remaining teeth (that is, no more involved than periodontal case type II).

(c) Anterior teeth must show traumatic or pathological destruction to loss of at least one incisal angle.

(5) The laboratory processed crowns described in subsection (3) are covered:

(a) Only when a lesser service will not suffice because of extensive coronal destruction, and treatment is beyond intra-coronal restoration;

(b) Only once per permanent tooth in a five year period;

(c) For endodontically treated anterior teeth only after satisfactory completion of the root canal therapy. Post-endodontic treatment X-rays must be submitted for prior authorization of these crowns.

(6) MAA reimburses only for covered crowns as described in subsections (1) and (3) of this section. The reimbursement is full payment; all of the following are included in the reimbursement and must not be billed separately:

(a) Tooth and soft tissue preparation;

(b) Amalgam or acrylic build-ups;

(c) Temporary restoration;

(d) Cement bases;

(e) Insulating bases;

(f) Impressions;

(g) Seating; and

(h) Local anesthesia.

**AMENDATORY SECTION** (Amending WSR 99-07-023, filed 3/10/99, effective 4/10/99)

**WAC 388-535-1240 Dentures, partials, and overdentures.** (1) ~~((Initial dentures do not require prior authorization except as described in subsection (4))~~ Subject to the limitations in WAC 388-535-1100, the medical assistance administration (MAA) covers only one set of dentures per client in a ten-year period, and considers that set to be the first set. The exception to this is replacement dentures, which may be

allowed as specified in subsection (4) of this section. Except as described in subsection (5) of this section, MAA does not require prior authorization for the first set of dentures. The first set of dentures may be any of the following:

(a) An immediate set (constructed prior to removal of the teeth);

(b) An initial set (constructed after the client has been without teeth for a period of time); or

(c) A final set (constructed after the client has received immediate or initial dentures).

~~((Partial dentures are covered under these limits))~~ The first set of dentures must be of the structure and quality to be considered the primary set. MAA does not cover transitional or treatment dentures.

(3) MAA covers partials (resin and cast base) once every five years, except as noted in subsection (4) of this section, and subject to the following limits:

(a) Cast base partials only when replacing three or more teeth per arch excluding wisdom teeth; and

(b) No partials are covered when they replace wisdom teeth only.

~~((3))~~ (4) Except as stated below, MAA does not require prior authorization for replacement dentures or partials ((is not required)) when:

(a) The client's existing dentures or partials ~~((are))~~ meet any of the following conditions. MAA requires prior authorization for replacement dentures or partials requested within one year of the seat date. The dentures or partials must be:

(i) No longer serviceable and cannot be relined or rebased; or

(ii) ~~((Are lost, or~~

~~((iii) Are))~~ Damaged beyond repair.

(b) The client's health would be adversely affected by absence of dentures;

(c) The client has been able to wear dentures successfully; ~~((and))~~

(d) The ~~((denture meets))~~ dentures or partials meet the criteria of ((dentally)) medically necessary((-

~~(4) Payment (which may be partial) for laboratory and professional fees for dentures and partials requires prior authorization when the client)) ; and~~

(e) The dentures are replacing lost dentures, and the replacement set does not exceed MAA's limit of one set in a ten-year period as stated in subsection (1) of this section.

(5) MAA does not reimburse separately for laboratory and professional fees for dentures and partials. However, MAA may partially reimburse for these fees when the provider obtains prior authorization and the client:

(a) Dies;

(b) Moves from the state;

(c) Cannot be located; or

(d) Does not participate in completing the dentures.

~~((5))~~ (6) The provider must document in the client's medical or dental record:

(a) Justification for replacement of dentures; ~~((and))~~

(b) Charts of missing teeth, for replacement of partials; and

(c) Receipts for laboratory costs or laboratory records and notes.

~~((6))~~ (7) For billing purposes, the provider may use the impression date ((may be used)) as the service date for dentures, including partials, only when:

(a) Related dental services including laboratory services were provided during a client's eligible period; and

(b) The client is not eligible at the time of delivery.

(8) For billing purposes, the provider may use the delivery date as the service date when the client is using the first set of dentures in lieu of noncovered transitional or treatment dentures after oral surgery.

(9) MAA includes the cost of relines and adjustments that are done within six months of the seat date in the reimbursement for the dentures.

(10) MAA covers one rebase in a five-year period; the dentures must be at least three years old.

(11) The requirements in this section also apply to overdentures.

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

**AMENDATORY SECTION** (Amending WSR 99-07-023, filed 3/10/99, effective 4/10/99)

**WAC 388-535-1350 Payment methodology for dental-related services**~~((—Payment methodology))~~. The ~~((department))~~ medical assistance administration (MAA) uses the description of dental services described in the American Dental Association's Current Dental Terminology, ((2nd) third edition (((CDT-2) CDT-3), and the American Medical Association's Physician's Current Procedure Terminology (((CPT). The department) 2002 (CPT@ 2002). MAA uses state-assigned procedure codes to identify services not fully described in the ((CDT-2) CDT-3 or CPT@ 2002 descriptions. (CPT@ is a trademark of the American Medical Association.)

(1) For covered dental-related services provided to eligible clients, MAA pays dentists and related providers on a fee-for-service or contractual basis, subject to the exceptions and restrictions listed under WAC 388-535-1100((, Dental services not covered, and WAC)) and 388-535-1400((, Dental payment limits)).

(2) ((MAA may pay providers a higher reimbursement rate for selected dental services provided to children in order to increase children's access to dental services.

~~(3))~~ MAA sets maximum allowable fees for dental services provided to children ((are set)) as follows:

(a) ((The department's) MAA's historical reimbursement rates for various procedures are compared to usual and customary charges.

(b) ((The department) MAA consults with ((and seeks input from)) representatives of the provider community to identify program areas and concerns that need to be addressed.

(c) ((The department) MAA consults with dental experts and public health professionals to identify and prioritize dental services and procedures ((in terms of)) for their effectiveness in improving or promoting children's dental health.

(d) Legislatively authorized vendor rate increases and/or earmarked appropriations for children's dental services are allocated to specific procedures based on ((this priority list)) the priorities identified in (c) of this subsection and considerations of access to services.

(e) Larger percentage increases may be given to those procedures which have been identified as most effective in improving or promoting children's dental health.

(f) Budget-neutral rate adjustments are made as appropriate based on the department's evaluation of utilization trends, effectiveness of interventions, and access issues.

~~((4))~~ (3) MAA reimburses dental general anesthesia services for ((all) eligible clients ((are reimbursed)) on the basis of base anesthesia units plus time. Payment for dental general anesthesia is calculated as follows:

(a) Dental procedures are assigned an anesthesia base unit of five;

(b) ((Twelve) Fifteen minutes constitute one unit of time. When a dental procedure requiring dental general anesthesia results in multiple time units and a remainder (less than ((twelve) fifteen minutes), the remainder or fraction is considered as one time unit;

(c) Time units are added to the anesthesia base unit of five and multiplied by the anesthesia conversion factor;

(d) The formula for determining payment for dental general anesthesia is: (5.0 base anesthesia units + time units) x conversion factor = payment.

(4) When billing for anesthesia, the provider must show the actual beginning and ending times on the claim. Anesthesia time begins when the provider starts to physically prepare the client for the induction of anesthesia in the operating room area (or its equivalent), and ends when the provider is no longer in constant attendance (i.e., when the client can be safety placed under post-operative supervision).

(5) MAA may pay anesthesiologists ((may be paid)) for general dental anesthesia provided in dental offices. Only anesthesiologists specially contracted by ((MAA will be)) the department are paid an additional fee for that service.

(6) Dental hygienists who have a contract with MAA are paid at the same rate as dentists who have a contract with MAA, for services allowed under The Dental Hygienist Practice Act, which is available from the department of health, Olympia, Washington.

(7) Licensed denturists ((or dental laboratories billing independently are paid at MAA's allowance for prosthetics (dentures and partials) services)) who have a contract with MAA are paid at the same rate as dentists who have a contract with MAA, for providing dentures and partials.

(8) MAA makes fee schedule changes ((are made)) whenever the legislature authorizes vendor rate increases or decreases ((are authorized by the legislature)).

(9) ((The department) MAA may adjust maximum allowable fees to reflect changes in ((the)) services or procedure code descriptions.

**AMENDATORY SECTION** (Amending WSR 99-07-023, filed 3/10/99, effective 4/10/99)

**WAC 388-535-1400 Payment for dental ((payment limits))-related services.** (1) ((Provision of)) The medical

assistance administration (MAA) considers that a provider who furnishes covered dental services to an eligible client ((constitutes acceptance by the provider of the department's)) has accepted MAA's rules and fees.

(2) Participating providers must bill ((the department)) MAA their usual and customary fees.

(3) Payment for dental services is based on ((the department's)) MAA's schedule of maximum allowances. Fees listed in the MAA fee schedule are the maximum allowable fees.

(4) ((Payment to)) MAA pays the provider ((will be)) the lesser of the billed charge (usual and customary fee) or ((the department's)) MAA's maximum allowable fee.

(5) ((If a covered service is performed for which no fee is listed, the service is paid)) MAA pays "by report" on a case-by-case basis ((as determined by MAA)), for a covered service that does not have a set fee.

(6) If the client's eligibility for dental services ends before the conclusion of the dental treatment, payment for any remaining treatment is the client's responsibility. The exception to this is dentures and partials as stated in WAC 388-535-1240.

(7) The client is responsible for payment of any dental treatment or service received during any period of ineligibility with the exception described in WAC 388-535-1240(4) even if the treatment was started when the client was eligible.

AMENDATORY SECTION (Amending WSR 99-07-023, filed 3/10/99, effective 4/10/99)

**WAC 388-535-1450 Payment for denture laboratory services**~~(--Payment)~~. ((A dentist using the services of an independent denture laboratory must bill MAA for the services of the laboratory.

No payment will be made to a dentist for services performed and billed by an independent dentist)) The medical assistance administration (MAA) does not directly reimburse denture laboratories. MAA's reimbursement for dentures, partials, and overdentures includes laboratory fees. The provider is responsible to pay a denture laboratory for services furnished to the provider.

AMENDATORY SECTION (Amending WSR 99-07-023, filed 3/10/99, effective 4/10/99)

**WAC 388-535-1500 Payment for dental-related hospital services**~~(--Payment)~~. The medical assistance administration (MAA) pays for ((dentally)) medically necessary dental-related hospital inpatient and outpatient services in accord with WAC 388-550-1100.

AMENDATORY SECTION (Amending WSR 99-07-023, filed 3/10/99, effective 4/10/99)

**WAC 388-535-1550 Payment for dental care provided out-of-state**~~(--Payment)~~. (1) Clients, except those receiving ((medical care)) services ((f)) under state~~((only funding))~~funded only programs, who are temporarily outside the state receive the same dental care services as clients in the state, subject to the same exceptions and limitations.

(2) The medical assistance administration (MAA) does not cover out-of-state dental care ((received by)) for clients receiving ((medical care)) services ((f)) under state~~((only funding) is not covered)~~funded only programs.

(3) Eligible clients in MAA-designated border areas may receive the same dental services as if provided in state.

(4) Dental providers who are out-of-state must meet the same criteria for payment as in-state providers, including the requirements to contract with MAA. See WAC 388-535-1070, Dental-related services provider information.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 388-535-1010 Dental-related program introduction.
- WAC 388-535-1150 Becoming a DSHS dental provider.
- WAC 388-535-1260 Dental-related limits of state-only funded programs.

**WSR 02-08-089  
PROPOSED RULES  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES**  
(Medical Assistance Administration)

[Filed April 3, 2002, 11:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 01-03-096.

Title of Rule: Amending WAC 388-551-2000 Home health services—General, 388-551-2010 Home health services—Definitions, 388-551-2020 Home health services—Eligible clients, 388-551-2100 Covered home health services—Nursing, 388-551-2110 Home health services—Specialized therapy, 388-551-2120 Home health aid services, 388-551-2130 Noncovered home health services, 388-551-2200 Home health services—Eligible providers, 388-551-2210 Home health services—Provider requirements, 388-551-2220 Home health services—Provider payments; and new section WAC 388-551-2030 Home health skilled services—Requirements.

Purpose: To meet the requirements of the Centers for Medicare and Medicaid Services (CMS), formerly Health Care Financing Administration (HCFA), the department is amending home health services sections in chapter 388-551 WAC that refer to "homebound" criteria. At the same time, the department is changing references to "plan of treatment (POT)" to "plan of care (POC)" to be consistent with Department of Health (DOH). Also, to update rule content, including the addition of a new section, and to reflect current department policy and business practices.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520, 74.09.530, and 74.09.500.

PROPOSED

Statute Being Implemented: RCW 74.08.090, 74.09.520, 74.09.530, and 74.09.500.

Summary: The rules amend language in the home health services sections that refers to "homebound" criteria. The rules also clarify and update rule content to reflect current department policy, including POC requirements.

Reasons Supporting Proposal: To meet the requirements of CMS to amend sections in the home health services sections that refer to "homebound" criteria. To update rule content to reflect current department policy.

Name of Agency Personnel Responsible for Drafting: Kathy Sayre, P.O. Box 45533, Olympia, WA 98504, (360) 725-1342; Implementation and Enforcement: Pam Colyar, P.O. Box 45506, Olympia, WA 98504, (360) 725-1582.

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

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

Explanation of Rule, its Purpose, and Anticipated Effects: The proposed amendments incorporate into rule a mandate by CMS that requires the department to remove references to the "homebound" criteria from the home health services program and rule. In addition, the new rules update, clarify, and add new language to the home health services program.

The purpose of these rules is to meet the mandate to remove the "homebound" requirement from the program's rule and provide clearly written language that is easier to understand.

The anticipated effects are (1) to increase effectiveness of MAA's staff who administer and enforce home health services rules; (2) to improve the quality of home health service care provided to clients; (3) to reduce confusion and, consequently, provide savings to service providers in time and money due to the clarification of the format and content of the POC and what to add to it during a review; (4) to increase the quality of care that a client receives by assuring follow through with needed care from the DSHS case manager after the client discharges from home health services; and (5) to provide savings to home health agency providers by allowing the providers to utilize a client's DSHS case manager instead of their agency's social worker for services that are not MAA-covered services.

Proposal Changes the Following Existing Rules: All references to "homebound" criteria are removed. The verbiage "plan of treatment (POT)" is changed to "plan of care (POC)." The proposal adds a new section WAC 388-551-2030 that incorporates existing MAA policy requirements for home health agency to provide home health skilled services.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed the new rules and concluded that no new costs will be imposed on businesses affected by them. The analysis is contained in the cost benefit analysis described below.

RCW 34.05.328 applies to this rule adoption. Although the adoption of WAC 388-551-2030 (new section) meets the definition of a "significant legislative rule," this section and amendments to the other listed sections impose no additional costs to businesses. A cost benefit analysis was completed and is available upon request from Kathy Sayre, Medical

Assistance Administration, P.O. Box 45533, Olympia, WA 98504-5533, phone (360) 725-1342, fax (360) 586-9727, e-mail SayreK@dshs.wa.gov.

Hearing Location: Office Building - 2 (DSHS Headquarters) (parking off 12th and Jefferson), 1115 Washington, Olympia, WA 98504, on May 21, 2002, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Andy Fernando, DSHS Rules Coordinator, by May 17, 2002, phone (360) 664-6094, TTY (360) 664-6178, e-mail fernaax@dshs.wa.gov.

Submit Written Comments to: Identify WAC Numbers, DSHS Rules Coordinator, Rules and Policies Assistance Unit, P.O. Box 45850, Olympia, WA 98504-5850, fax (360) 664-6185, e-mail fernaax@dshs.wa.gov, by 5:00 p.m., May 21, 2002.

Date of Intended Adoption: No sooner than May 22, 2002.

March 29, 2002

Brian H. Lindgren, Manager  
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 99-16-069, filed 8/2/99, effective 9/2/99)

**WAC 388-551-2000 Home health services—General.** The purpose of the medical assistance administration (MAA) home health program is to reduce the costs of health care services by providing equally effective, ~~((more conservative, and/or less costly treatment in a client's home))~~ less restrictive quality care to the client in the client's residence, subject to the restrictions and limitations in this subchapter.

~~((Home health services consist of skilled nursing and specialized therapies provided in a client's residence. Home health aide services may be provided in addition to these services. The client must be homebound, as determined by documentation submitted to MAA during the client's focused program review period.))~~ Home health skilled services are provided ((are)) for acute, intermittent, short-term, and intensive courses of treatment. See chapter 388-515 and 388-71 WAC for programs administered to clients ((needing)) who need chronic, long-term maintenance care.

AMENDATORY SECTION (Amending WSR 99-16-069, filed 8/2/99, effective 9/2/99)

**WAC 388-551-2010 Home health services—Definitions.** ~~((Words))~~ The following definitions and abbreviations ((in bold have the following definitions for this chapter. See also chapter 388-500 WAC for other definitions and abbreviations used by the department.)) and those found in WAC 388-500-0005 apply to this subchapter:

"Acute care" means care provided by a home health agency for clients who are not medically stable or have not attained a satisfactory level of rehabilitation. These clients require frequent intervention by a registered nurse or licensed therapist.

"Brief skilled nursing visit" means a registered nurse, or a licensed practical nurse under the supervision of a regis-

tered nurse, performs only one of the following activities during a visit to a client:

- (1) An injection;
- (2) Blood draw; or
- (3) Placement of medications in containers.

"Chronic care" means long-term care for medically stable clients.

"Full skilled nursing visit" means a registered nurse, or a licensed practical nurse under the supervision of a registered nurse, performs one or more of the following activities during a visit to a client:

- (1) Observation;
- (2) Assessment;
- (3) Treatment;
- (4) Teaching;
- (5) Training;
- (6) Management; and
- (7) Evaluation.

"Home health agency" means an agency or organization certified under Medicare to provide comprehensive health care on ((a)) an intermittent or part-time ((or intermittent)) basis to a patient in the patient's place of residence.

"Home health aide" means an individual registered or certified as a nursing assistant under chapter 18.88 RCW who, under the direction and supervision of a registered nurse or licensed therapist, assists in the delivery of nursing or therapy related activities, or both, to patients of a home health or hospice agency, or hospice care center.

"Home health aide services" means services provided by a home health aide when a client has an acute, intermittent, short-term need for the services of a registered nurse, physical therapist, occupational therapist, or speech therapist who is employed by or under contract with a home health agency. Such services are provided under the supervision of the previously identified authorized practitioners, and include ambulation and exercise, assistance with self-administered medications, reporting changes in a client's condition and needs, and completing appropriate records.

"Home health skilled services" means skilled health care (nursing, specialized therapy, and home health aide) services provided in the client's residence on ((a part-time or)) an intermittent or part-time basis by a ((Title XVIII Medicare and Title XIX Medicaid home health provider)) Medicare-certified home health agency with a current medical assistance administration (MAA) provider number. See also WAC 388-551-2000.

((("Homebound" means a physician has certified that the client is medically or physically confined to the home, and under normal circumstances, lacks the ability to leave home without a considerable and taxing effort. The client may be considered homebound if absences from the home are infrequent or for periods of relatively short duration, or are attributable to the need to receive medical treatment.))

"Long-term care" is a generic term referring to various programs and services, including services provided in home and community settings, administered directly or through contract by the department's aging and adult services administration (AASA) or division of developmental disabilities (DDD).

"Plan of ((~~treatment (POT)~~) care (POC))" (also known as "plan of ((~~care (POC)) treatment (POT))"~~) means a written plan of ((treatment)) care that is established and periodically reviewed and signed by both a physician and a home health agency provider~~((, that))~~. The plan describes the home health care to be provided at the client's residence. See WAC 388-551-2210.

"Residence" means a client's home or place of living, including an adult family home and/or boarding home, but not including a hospital, skilled nursing facility, or residential facility with skilled nursing services available.

"Review period" means the three-month period the medical assistance administration (MAA) assigns to a home health agency, based on the address of the agency's main office, during which MAA reviews all claims submitted by that agency.

"Specialized therapy" means skilled therapy services provided to ((homebound)) clients ((which)) that include((s)):

- (1) Physical;
- (2) Occupational; or
- (3) Speech/audiology services.

(See WAC 388-551-2110.)

AMENDATORY SECTION (Amending WSR 99-16-069, filed 8/2/99, effective 9/2/99)

**WAC 388-551-2020 Home health services—Eligible clients.** (1) Clients in the following fee-for-service MAA programs are eligible to receive home health services subject to the limitations described in this chapter. ((Chapter 388-551-WAC does not apply to)) Clients enrolled in ((MAA's)) a healthy options managed care ((plans)) plan receive all home health services through their designated plan, subject to the plan's coverages and limitations.

- (a) Categorically needy program (CNP);
- (b) Limited casualty program - medically needy program (LCP-MNP);
- (c) General assistance expedited (GA-X) (disability determination pending); and
- (d) Medical care services (MCS) under the following programs:

- (i) General assistance - unemployable (GA-U); and
- (ii) Alcoholism and drug addiction treatment and support act (ADATSA) (GA-W).

(2) Clients in the following emergency-only MAA programs are eligible to receive home health services, subject to the limitations described in this chapter. Coverage is ((also)) limited to two skilled nursing visits per eligibility enrollment period. Specialized therapy services and home health aide visits are not covered:

- (a) ((Categorically needy program (-))CNP((+))-emergency((-)) medical only((+)); and
- (b) ((Limited casualty program - medically needy program (-))LCP-MNP((+))- emergency medical only.

See WAC 388-551-2100(3) for limitations of coverage under these programs.

NEW SECTION

**WAC 388-551-2030 Home health skilled services—Requirements.** (1) MAA reimburses for covered home health skilled services provided to eligible clients, subject to the restrictions or limitations in this section and other applicable published WAC.

(2) Home health skilled services provided to eligible clients must:

(a) Meet the definition of "acute care" in WAC 388-551-2010.

(b) Provide for the treatment of an illness, injury, or disability.

(c) Be medically necessary as defined in WAC 388-500-0005.

(d) Be reasonable, based on the community standard of care, in amount, duration, and frequency.

(e) Be provided under a plan of care (POC), as defined in WAC 388-551-2010 and described in WAC 388-551-2210. Any statement in the POC must be supported by documentation in the client's medical records.

(f) Be used to prevent placement in a more restrictive setting. In addition, the client's medical records must justify the medical reason(s) that the services should be provided in the client's residence instead of a physician's office, clinic, or other outpatient setting. This includes justification for services for a client's medical condition that requires teaching that would be most effectively accomplished in the client's home on a short-term basis.

(g) Be provided in the client's residence, as defined in WAC 388-551-2010. MAA does not reimburse for services if provided at the workplace, school, child day care, adult day care, skilled nursing facility, or any other place that is not the client's place of residence.

(h) Be provided by a home health agency that is Title XVIII (Medicare) certified and state-licensed.

AMENDATORY SECTION (Amending WSR 99-16-069, filed 8/2/99, effective 9/2/99)

**WAC 388-551-2100 Covered home health services—Nursing.** (1) ~~MAA covers home health acute care skilled nursing services ((involve observation, assessment, treatment, teaching, training, management and/or evaluation requiring the skills of:~~

~~(a) A registered nurse; or~~

~~(b) A licensed practical nurse under the supervision of a registered nurse.~~

~~(2) MAA may pay for up to two skilled nursing visits per day. See WAC 388-551-2220 (3), (4) and (5).~~

~~(3) Coverage for home health nursing services is limited to homebound clients, except as listed in subsection (4) of this section.~~

~~(4) MAA covers home health nursing services for non-homebound clients on a limited basis only when the client is unable to access similar services in a less costly setting, as documented by the provider and approved by MAA.~~

~~(5) A brief skilled nursing visit occurs when only one of the following activities is performed during a visit:~~

~~(a) An injection or blood draw;~~

~~(b) Placement of oral medications in containers (e.g., envelopes, cups, medisets); or~~

~~(c) A prefill of insulin syringes.~~

~~(6) MAA may cover brief skilled nursing visits for a client with chronic needs, for a short time, until a long-term care plan is implemented.~~

~~(7) MAA limits services provided to a client enrolled in either of the emergency medical programs listed in WAC 388-551-2020 (2)(a) and (b), to two skilled nursing visits within their eligibility enrollment period.~~

~~(8) To receive infusion therapy clients must:~~

~~(a) Be willing and capable of learning and managing their infusion care; or~~

~~(b) Have a caregiver willing and capable of learning and managing the client's infusion care.~~

~~(9) MAA covers infant phototherapy:~~

~~(a) For up to five skilled nursing visits per infant;~~

~~(b) When provided by a Medicaid approved infant phototherapy agency; and~~

~~(c) When the infant is diagnosed with hyperbilirubinemia.~~

~~(10) MAA covers limited high risk obstetrical services:~~

~~(a) For a medical condition that complicates pregnancy and may result in a poor outcome for the mother, unborn, or newborn;~~

~~(b) During the span of home health agency services, if enrollment in or referral to the following providers of First Steps has been verified:~~

~~(i) Maternity support services (MSS); or~~

~~(ii) Maternity case management (MCM);~~

~~(c) When provided by a registered nurse who has either:~~

~~(i) National prenatal certification; or~~

~~(ii) A minimum of one year of labor, delivery, and post-partum experience at a hospital within the last five years; and~~

~~(d) For up to three home health visits per pregnancy))~~

listed in this section when furnished by a qualified provider. MAA evaluates a request for covered services that are subject to limitations or restrictions, and approves such services beyond those limitations or restrictions when medically necessary, under the standard for covered services in WAC 388-501-0165.

(2) MAA covers the following home health acute care skilled nursing services, subject to the limitations in this section:

(a) Full skilled nursing services that require the skills of a registered nurse or a licensed practical nurse under the supervision of a registered nurse if the services involve one or more of the following:

(i) Observation;

(ii) Assessment;

(iii) Treatment;

(iv) Teaching;

(v) Training;

(vi) Management; and

(vii) Evaluation.

(b) A brief skilled nursing visit if only one of the following activities is performed during the visit:

(i) An injection;

(ii) Blood draw; or

(iii) Placement of medications in containers (e.g., envelopes, cups, medisets).

(c) Home infusion therapy only if the client:

(i) Is willing and capable of learning and managing the client's infusion care; or

(ii) Has a volunteer caregiver willing and capable of learning and managing the client's infusion care.

(d) Infant phototherapy for an infant diagnosed with hyperbilirubinemia:

(i) When provided by an MAA-approved infant phototherapy agency; and

(ii) For up to five skilled nursing visits per infant.

(e) Limited high-risk obstetrical services:

(i) For a medical diagnosis that complicates pregnancy and may result in a poor outcome for the mother, unborn, or newborn;

(ii) For up to three home health visits per pregnancy if:

(A) Enrollment in or referral to the following providers of First Steps has been verified:

(I) Maternity support services (MSS); or

(II) Maternity case management (MCM); and

(B) The visits are provided by a registered nurse who has either:

(I) National perinatal certification; or

(II) A minimum of one year of labor, delivery, and postpartum experience at a hospital within the last five years.

(3) MAA limits skilled nursing visits provided to eligible clients to two per day, except clients eligible under either of the emergency medical programs listed in WAC 388-551-2020 (2)(a) and (b) are limited to two skilled nursing visits within the eligibility enrollment period.

AMENDATORY SECTION (Amending WSR 99-16-069, filed 8/2/99, effective 9/2/99)

**WAC 388-551-2110 ((Covered)) Home health services—Specialized therapy.** (1) MAA ((may pay for up to one)) limits specialized therapy ((visit)) visits to one per client, per day, per type of specialized therapy. Specialized therapy is defined in WAC 388-551-2010.

(2) ((To receive)) MAA does not allow duplicate services for any specialized therapy ((services, a client must be homebound)) for the same client when both providers are performing the same or similar procedure(s).

AMENDATORY SECTION (Amending WSR 99-16-069, filed 8/2/99, effective 9/2/99)

**WAC 388-551-2120 Home health aid services((—Aides)).** (1) MAA ((may pay for up to one)) limits home health aide ((visit)) visits to one per day.

(2) MAA ((pays)) reimburses for home health aide services, as defined in WAC 388-551-2010, only when the services are provided under the supervision of, and in conjunction with, practitioners who provide:

(a) Skilled nursing services; or

(b) Specialized therapy services.

(3) MAA covers home health aide services only when a registered nurse or licensed therapist visits the client's residence at least once every fourteen days to monitor or super-

vised home health aide services, with or without the presence of the home health aide.

AMENDATORY SECTION (Amending WSR 99-16-069, filed 8/2/99, effective 9/2/99)

**WAC 388-551-2130 Noncovered home health services((—Noncovered)).** (1) MAA does not cover the following home health services ((and expenses)) under the home health program, unless otherwise specified:

(a) ((Medical)) Chronic long-term care skilled nursing visits or specialized therapy visits for a medically stable client when a long-term care skilled nursing plan or specialized therapy plan is in place through the department of social and health services aging and adult services administration (AASA) or division of developmental disabilities (DDD).

(i) MAA considers requests for interim chronic long-term care skilled nursing services or specialized therapy services for a client while the client is waiting for AASA or DDD to implement a long-term care skilled nursing plan or specialized therapy plan; and

(ii) On a case-by-case basis, MAA may authorize long-term care skilled nursing visits or specialized therapy visits for a client for a limited time until a long-term care skilled nursing plan or specialized therapy plan is in place. Any services authorized are subject to the restrictions and limitations in this section and other applicable published WACs.

(b) Social work services((;

~~(;))~~.

(c) Psychiatric skilled nursing services((;

~~(;))~~.

(d) Pre- and postnatal skilled nursing services, except as listed under WAC 388-551-2100((+10);

~~(+10))~~ Additional administrative costs billed above the visit rate (these costs are included in the visit rate and may not be billed separately);(2)(e).

(e) Well-baby follow-up care((;))

(f) Services performed in hospitals, correctional facilities, skilled nursing facilities, or a residential facility with skilled nursing services available((;))

(g) Home health aide services that are not provided in conjunction with skilled nursing or specialized therapy services((;))

(h) Health care for a medically stable client (e.g., one who does not have an acute episode, a disease exacerbation, or treatment change)((;))

(i) Home health specialized therapies and home health aide visits for clients in the following programs:

(i) CNP - emergency medical only; and

(ii) LCP-MNP - emergency medical only((;))

(j) Skilled nursing visits for a client when a home health agency cannot safely meet the medical needs of that client within home health services program limitations (e.g., for a client to receive infusion therapy services, the caregiver must be willing and capable of managing the client's care)((;))

(k) More than one of the same type of specialized therapy and/or home health aide visit per day((;))

(l) MAA does not reimburse for duplicate services for any specialized therapy for the same client when both providers are performing the same or similar procedure(s).

(m) Home health visits made without a written physician's order, unless the verbal order is:

(i) ~~((Written))~~ Documented prior to ~~((or on the date of))~~ the visit; and

(ii) The document is signed by the physician within forty-five days of the order being given.

(2) MAA does not cover additional administrative costs billed above the visit rate (these costs are included in the visit rate and will not be paid separately).

(3) MAA evaluates a request for any service that is listed as noncovered under the provisions of WAC 388-501-0165.

**AMENDATORY SECTION** (Amending WSR 99-16-069, filed 8/2/99, effective 9/2/99)

**WAC 388-551-2200 Home health services—Eligible providers.** A home health ~~((provider))~~ agency may contract with MAA to be a ~~((Medicaid))~~ provider if the ~~((provider is Title XVIII (Medicare) certified and licensed by the state as a home health agency. Providers must have an active Medicaid provider number to bill MAA))~~ agency:

(1) Is Title XVIII (Medicare) certified;

(2) Is department of health (DOH) licensed as a home health agency;

(3) Meets DOH requirements;

(4) Submits a completed, signed core provider agreement to MAA; and

(5) Is assigned a provider number.

**AMENDATORY SECTION** (Amending WSR 99-16-069, filed 8/2/99, effective 9/2/99)

**WAC 388-551-2210 Home health services—Provider~~(s)~~ requirements.** For any delivered home health service to be payable, MAA requires home health providers to develop and implement an individualized plan of ~~((treatment (POF)))~~ care (POC) for the client.

(1) The ~~((POF))~~ POC must:

(a) Be documented in writing and be located in the client's home health medical record;

(b) Be developed ~~((and)),~~ supervised, and signed by a licensed registered nurse or licensed therapist;

(c) Reflect the physician's orders and client's current health status;

(d) Contain specific goals and treatment plans;

~~((e))~~ Be reviewed and revised by a physician at least every sixty~~((two))~~ calendar days ~~((and)),~~ signed by a physician within forty-five days of the verbal order, and returned to the home health agency's file;

~~((e)) Contain specific goals and treatment plans;~~ and

(f) Be available to department staff or its designated contractor(s) on request.

(2) The provider must include in the ~~((POF))~~ POC all of the following:

(a) The primary diagnosis (the diagnosis that is most related to the reason the client qualifies for home health services) or the diagnosis that is the reason for the visit frequency;

~~((The))~~ All secondary medical diagnoses ~~((and prognosis)),~~ including date(s) of onset or exacerbation;

~~((A discharge plan))~~ The prognosis;

The type(s) of equipment required;

A description of each planned service and goals related to the services provided;

Specific procedures and modalities;

A description of the client's mental status;

A description of the client's rehabilitation potential;

A list of permitted activities;

A list of safety measures taken on behalf of the client; and

A list of medications which indicates:

Any new prescription ~~((prescribed));~~ and

Which medications are changed for dosage or route of administration.

(3) The provider must include in or attach to the ~~((POF))~~ POC:

(a) A description of the client's functional limits and the effects;

Documentation that justifies why the medical services should be provided in the client's residence instead of a physician's office, clinic, or other outpatient setting;

Significant clinical findings;

~~((e))~~ (d) Dates of recent hospitalization; ~~((and~~

if the client is not homebound, a description of why home health services are necessary. The description must include:

A written statement noting coordination with, or referral to, the client's department of social and health services assigned case manager; or

An assessment of the client and the client's access to community resources, including attempts to use appropriate alternatives to meet the client's home health needs))

Notification to the DSHS case manager of admittance; and

A discharge plan, including notification to the DSHS case manager of the planned discharge date and client disposition at time of discharge.

(4) The individual client medical record must comply with community standards of practice, and must include documentation of:

Visit notes for every billed visit;

Supervisory visits for home health aide services ~~((per))~~ as described in WAC 388-551-2120(3);

~~((b))~~ (c) All medications administered and treatments provided;

~~((e))~~ (d) All physician orders, new orders, and change orders, with notation that the order was received prior to treatment;

~~((d))~~ (e) Signed physician new orders and change orders;

~~((e))~~ (f) Home health aide services as indicated by a registered nurse or licensed therapist in a home health aide care plan;

~~((f))~~ (g) Interdisciplinary and multidisciplinary team communications;

~~((g))~~ (h) Inter-agency and intra-agency referrals;

~~((h))~~ (i) Medical tests and results; ~~((and~~

~~(i))~~ (j) Pertinent medical history; and  
 (k) Notations and charting with signature and title of writer.

(5) The provider must document at least the following in the client's medical record:

- (a) Skilled interventions per the ~~((POT))~~ POC;  
 (b) Client response to the POC;  
 (c) Any clinical change in client status;  
~~((e))~~ (d) Follow-up interventions specific to a change in status with significant clinical findings; and  
~~((e))~~ (e) Any communications with the attending physician.

(6) The provider must include the following documentation in the client's visit notes when appropriate:

- (a) Any teaching, assessment, management, evaluation, ~~((patient))~~ client compliance, and client response;  
 (b) Weekly documentation of wound care, size (dimensions), drainage, color, odor, and identification of potential complications and interventions provided; ~~((and))~~  
 (c) Referral to a wound care specialist, if wound is not healing; and  
 (d) The client's physical system assessment as identified in the ~~((POT))~~ POC.

AMENDATORY SECTION (Amending WSR 99-16-069, filed 8/2/99, effective 9/2/99)

**WAC 388-551-2220 Home health services—Provider~~((s—))~~ payments.** (1) In order to be reimbursed, the home health provider must bill MAA according to the conditions of payment under WAC 388-502-0150 and other issuances.

(2) Payment to home health providers is:

- (a) A set rate per visit ~~((rate))~~ for each discipline provided to a client;  
 (b) Based on the county location of the providing home health agency; and  
 (c) Updated by general vendor rate changes.

~~((2))~~ (3) For clients eligible for both Medicaid and Medicare, MAA may pay for services described in this chapter only when Medicare does not cover those services. The maximum payment for each service is Medicaid's maximum payment.

~~((3))~~ (4) Providers must submit documentation to ~~((the department during any MAA focused program))~~ MAA during the home health agency's review period. Documentation includes, but is not limited to, the requirements listed in WAC 388-551-2210.

~~((4))~~ (5) After MAA receives the documentation, the MAA ~~((s))~~ medical director or designee reviews the client's medical records for program compliance and quality of care.

~~((5))~~ (6) MAA may take back or deny payment for any insufficiently documented home health care service when the MAA medical director or designee determines that:

- (a) The service ~~((was not medically necessary (defined in WAC 388-500-0005) or reasonable;~~  
 (b) ~~Clients were able to receive care outside of the home (see definition of homebound in this chapter and WAC 388-551-2100(3)); or~~

~~((e))~~ did not meet the conditions described in WAC 388-550-2030; or

(b) The service was not in compliance with program policy.

~~((6))~~ (7) Covered home health services for clients enrolled in a Healthy Options managed care plan are paid for by that plan.

## WSR 02-09-002

### PROPOSED RULES

#### DEPARTMENT OF CORRECTIONS

[Filed April 3, 2002, 2:55 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 02-02-075.

Title of Rule: Amendments to chapter 137-28 WAC, Prisons discipline: WAC 137-28-160 Definitions, 137-28-220 General infractions, 137-28-240 General infractions—Sanctions, 137-28-260 Serious infractions, 137-28-310 Decision of hearing officer, 137-28-350 Sanctions—Authority to impose, and 137-28-380 Appeal.

Purpose: Refine the definitions of general and serious infractions for the purposes of prison discipline.

Statutory Authority for Adoption: RCW 72.01.090, 72.09.130, and 9.94.070.

Statute Being Implemented: RCW 72.09.130 and 9.94.070.

Summary: The amendments refine the definitions for general and serious infractions, reclassify a serious infraction as a general infraction, add new infractions, eliminate a stay of sanctions pending appeal to the superintendent and make corrections to preserve internal cross references. These rule amendments facilitate a review of and provide an opportunity for comment on the department's entire disciplinary code in view of the potential for felony impact of serious infractions under RCW 9.94.070.

Reasons Supporting Proposal: These changes are necessary to maintain discipline within state correctional institutions. The opportunity for public comment and review of the disciplinary code and the proposed serious infraction amendments furthers the department's intent to implement its authority delegated pursuant to RCW 72.09.130 and 9.94.070.

Name of Agency Personnel Responsible for Drafting: John Nispel, P.O. Box 41114, Olympia, WA 98504-1114, (360) 586-2160; Implementation and Enforcement: Eldon Vail, Deputy Secretary, P.O. Box 41118, Olympia, WA 98504-1118, (360) 753-1502.

Name of Proponent: Washington State Department of Corrections, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The proposed changes will enhance discipline in the institutions operated by the department, further refining and clarifying disciplinary behavior. The following changes are proposed:

WAC 137-28-160 Definitions, change internal cross reference to redesignated infractions.

WAC 137-28-220 General infractions, add two general infractions, #357 Unauthorized use of martial arts and #307 Unauthorized marriage, which were downgraded from serious infractions; redesignate infraction #728(a) as #328.

WAC 137-28-240 General infractions—Sanctions, correct typographical error in title.

WAC 137-28-260 Serious infractions, reclassify two serious infractions, #520 Unauthorized use of martial arts and #661 Unauthorized marriage, as general infractions (see WAC 137-28-220); add three new serious infractions: (1. #611 sexual assault of a staff member or 2. #635 Sexual assault of another offender and 3. #739 possession of personal information about DOC staff); delete three infractions: #599 Careless behavior, #699 Careless behavior and #799 Careless behavior; refine the definitions of the following serious infractions: #717 Causing threat of injury, #777 Causing injury, #682 Organized work stoppage, #746 Organized hunger strike, #551 Providing false information, #552 Causing an innocent person to be penalized and #706 Giving false information; redesignate infraction #728(b) as #728.

WAC 137-28-310 Decision of hearing officer, change internal cross reference to redesignated infractions.

WAC 137-28-350 Sanctions—Authority to impose, delete the stay of sanctions pending appeal to the superintendent.

WAC 137-28-380 Appeal to superintendent, delete the stay of sanctions pending appeal to the superintendent.

Proposal Changes the Following Existing Rules: See above.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules effect incarcerated offenders only and will not impose costs on businesses.

RCW 34.05.328 does not apply to this rule adoption. RCW 34.05.328 does not apply to this rule adoption as the agency is not named in RCW 34.05.328 (5)(a)(i).

Hearing Location: Department of Corrections, 2nd Floor Conference Room, 410 West 5th Street, Olympia, WA 98504, on May 21, 2002, at 10 a.m.

Assistance for Persons with Disabilities: Contact John R. Nispel by May 13, 2002, (360) 586-2160.

Submit Written Comments to: John R. Nispel, Rules Coordinator, Department of Corrections, P.O. Box 41114, Olympia, WA 98504-1114, fax (360) 664-2009, by May 13, 2002.

Date of Intended Adoption: May 22, 2002.

April 3, 2002

Patricia Robinson-Martin  
Chief of Staff  
for Joseph D. Lehman  
Secretary

**AMENDATORY SECTION** (Amending WSR 00-10-079, filed 5/2/00, effective 6/2/00)

**WAC 137-28-160 Definitions.** For the purposes of this chapter, the following words have the following meanings:

Adult correctional institution and institution - a facility identified in RCW 72.01.050(2) and any similar facility hereinafter established.

Aggravated assault - an assault resulting in physical injury and requiring medical care (see definition of medical care).

Assault - a physical attack upon the body of another person. The attack may be made with any instrument including, but not limited to weapons, body parts, food products or bodily secretions.

Attempt - putting forth an effort to commit any infraction shall be considered the same as commission of the infraction. However, attempted aggravated assault shall be considered an attempted assault.

Bodily harm - physical pain or injury, illness, or impairment of physical condition.

Cell tag - if contraband or other violation is discovered in an area under control of the inmate (such as within the confines or contents of a cell), the contraband or other violation shall be constructively attributed to the inmate(s) assigned to that area, unless the inmate(s) can establish a lack of involvement in the infraction at the disciplinary hearing.

Conspiracy - an agreement between two or more persons to commit an infraction. Conspiracy to commit an infraction shall be considered the same as commission of the infraction.

Deputy secretary - the deputy secretary of the office of correctional operations of the Washington state department of corrections, or the deputy secretary's designee.

Discovery - when a staff member discovers that an infraction has occurred or when an investigation into the incident is concluded.

Earned time - means that portion of time an offender is eligible to earn for program participation approved by the classification process and consistent with his/her case management plan.

Earned release time - means the combined earned time and good conduct time credit an offender is eligible to earn off the minimum term established by the indeterminate sentence review board or the sentencing court.

Good conduct time credits - that portion of an inmate's potential reduction to minimum term which is authorized by RCW 9.95.070 and 72.09.130 and which may be lost by receiving serious infractions.

Hearing officer - Staff member(s) designated by the superintendent to conduct disciplinary hearings.

Infraction - commission of, attempt to commit, or conspiracy with another to commit any violation of prison rules as enumerated in this code. Aiding or abetting another to commit an infraction will be considered the same as commission of the infraction.

Infraction review officer - staff member(s) designated by the superintendent to review a serious infraction.

Lesser included offense - any infraction that must necessarily have been committed in order to commit another infraction.

Medical care - any care conducted in a medical facility/treatment center by medical staff to treat a documented, physical injury, including, but not limited to bandaging, suturing, surgery, etc. An examination conducted by medical

staff to determine whether an injury has been sustained shall not be considered medical care.

Mitigating factors - factors to be considered by the infracting officer in deciding whether to charge a #((728(a))) 328 general infraction rather than a #728((b)) serious infraction. Also, factors to be considered by the infraction review officer, hearings officer, and superintendent for the purpose of deciding whether a #728((b)) serious infraction should be reduced to a #((728(a))) 328 general infraction. Mitigating factors may include the seriousness of the sexually explicit material involved, whether the inmate has been convicted of a sexually motivated crime, the treatment needs of the inmate, the prior history of similar behavior, and the source of the material.

Possession - established when an item(s) is found on a person or in an area which is under the control of the individual(s) charged.

Promptly - to act as soon as reasonably possible, consistent with institutional goals of safety, security, and rehabilitation.

Secretary - the secretary of the Washington state department of corrections, or the secretary's designee.

Sexual harassment - any word, action, gesture or other behavior that is sexual in nature and that would be offensive to a reasonable person.

Sexually explicit - means a depiction of one of the following:

- One of the participants in the sexual act is, or appears to be, nonconsenting;
- One of the participants in the sexual act appears to be forceful, threatening, or violent;
- One of the partners in the sexual act is dominating one of the other participants and one of the individuals is obviously in a submissive role or one of the participants is degraded, humiliated, or willingly engages in behavior that is degrading or humiliating;
- One of the participants in the sexual act is a minor, or appears to be a minor, or a minor alone is depicted in a sexually suggestive way;
- Actual penetration, be it penile/vaginal-oral, penile-anal, or penile-vaginal; digital-anal; digital-vaginal; or insertion of any inanimate object in the vaginal or anal cavity, and the depiction in the context presented is deemed to be a threat to legitimate penological objectives;
- Any bodily excretory function which is sexual in nature;
- Bestiality, sadomasochistic behavior, bondage; or
- Material reasonably deemed to be a threat to legitimate penological objectives.

Staff member - for purposes of this chapter includes employees of the department of corrections, contract employees, and volunteers.

Superintendent - superintendent of an adult correctional institution or the superintendent's designee.

Working days - Monday through Friday, excluding weekends and holidays.

AMENDATORY SECTION (Amending WSR 01-22-094, filed 11/6/01, effective 12/6/01)

**WAC 137-28-220 General infractions.** (1) Any of the following types of behavior may constitute a general infraction:

**Unauthorized possession/theft**

- 051 - Unauthorized possession of money, stamps or negotiable instruments the total value of which is less than five dollars.
- 053 - Possession of anything not authorized for retention or receipt by an inmate and/or not issued to an inmate by regular institutional channels.
- 255 - Misuse or waste of issued supplies, goods, services or property, the replacement value of which is less than ten dollars.
- 310 - Pretending or failing to take prescribed medication that the inmate has accepted by concealing or retaining a single or daily dose.
- 354 - Theft of food, the value of which is five dollars or less.
- 356 - Possession of unauthorized amount of otherwise authorized clothing, bedding, or issued supplies.

**Loaning/trading**

- 052 - Loaning of property for profit.
- 351 - Giving, selling, borrowing, lending, or trading money or anything of value to, or accepting or purchasing money or anything of value from, another inmate or that inmate's friend(s) or family the value of which is less than ten dollars.

**Altering/destroying property**

- 055 - Mutilating, altering, defacing or destroying any item valued at less than ten dollars and that is not the personal property of the inmate.

**Disruptive behavior/lying**

- 202 - Abusive language, harassment or other offensive behavior directed to or in the presence of staff, visitors, inmates, or other persons or groups.
- 203 - Lying to a staff member.
- 244 - Unauthorized displays of sexual affection with another inmate.
- 353 - Disruptive behavior.
- 355 - Horseplay, roughhousing or any other unauthorized physical contact between inmates.

PROPOSED

- ~~((520~~ - ~~Unauthorized demonstration, practice or use of martial arts.))~~
- 357 - Unauthorized demonstration, practice or use of martial arts.

**Failure to follow rules and orders**

- 102 - Failure to follow any written rules or policies adopted by the institution and not specified within this chapter or in local disciplinary rules.
- 103 - Refusing or failing to obey an order, oral or written, of any staff member.
- 210 - Out of bounds; being in an area where the presence of the inmate is unauthorized.
- 214 - Interfering or failing to comply with count procedures.
- 251 - Smoking and possession of tobacco products where prohibited.
- 301 - Failure to keep your person or your quarters in accordance with institution rules or policies.
- ~~((661~~ - ~~Performing or taking part in an unauthorized marriage.))~~
- 307 - Performing or taking part in an unauthorized marriage.

**Unauthorized communication/visitor contact**

- 303 - Unauthorized use of mail or telephone.
- 304 - Unwanted written and telephonic communications to any person.
- 305 - Correspondence or conduct with a visitor in violation of published or posted rules and policies.
- 309 - Unauthorized display of affection with a visitor.

**Inappropriate use of equipment**

- 212 - Using any equipment or machinery when not specifically authorized.
- 213 - Using any equipment or machinery contrary to instructions or safety standards.

**Unexcused absence/feigning illness**

- 104 - Unexcused absence from work or any assignment, scheduled meeting, appointment, or call out.
- 352 - Pretending to be ill or injured contrary to medical/mental health screening results.

**Inappropriate sexual behavior**

- ~~((728(a))~~ - Possession of any written, photographic or hand-drawn material that depicts a sexually explicit act as defined in WAC 137-28-160.

(2) In determining whether a ~~#((728(a)))~~ 328 infraction or a #728~~((b))~~ infraction pursuant to WAC 137-28-260 should be charged, the infracting officer shall consider mitigating factors as defined in WAC 137-28-160.

AMENDATORY SECTION (Amending WSR 01-22-094, filed 11/6/01, effective 12/6/01)

**WAC 137-28-240 General infractions**~~((~~Sanctions~~))~~—**Sanctions.** ~~((~~Sanctions~~))~~

For being found guilty of any general infraction, one or more of the following sanctions may be imposed:

- (1) Reprimand or warning;
- (2) Issuance of a written order to cease a problematic behavior. The order will include a warning that if the behavior is repeated within a specified period (not to exceed one hundred eighty days) the inmate will be charged with violation of serious violation (WAC 137-28-260) #658.
- (3) Loss of a privilege or privileges as specified by the supervisor or unit team for not more than ten days on a first offense, twenty days on a second offense, and thirty days on a third offense within a six-month period;
- (4) Confinement to room or cell except for attendance at work or school assignment, religious service, or meals, or law library if a documented court deadline has been imposed, not to exceed ten days;
- (5) Up to one hundred twenty hours of extra work duty.

AMENDATORY SECTION (Amending WSR 01-22-094, filed 11/6/01, effective 12/6/01)

**WAC 137-28-260 Serious infractions.**

**(1) Assault/threatening actions/causing injury to another person**

- 501 - Committing homicide.
- 502 - Aggravated assault on another offender.
- 503 - Extortion, blackmail, or demanding or receiving money or anything of value in return for protection against others, or under threat of informing.
- 505 - Fighting with any person.
- 506 - Threatening another with bodily harm or with any offense against another person, property or family.
- 508 - Throwing objects, materials, substances or spitting at staff, visitors, or other inmates.
- 511 - Aggravated assault on a visitor.
- ~~((520~~ - ~~Unauthorized demonstration, practice or use of martial arts.))~~
- 521 - Taking or holding any person hostage.
- 588 - Causing a valid and documented threat of transmission of a contagious disease to any person due to intentional, negligent or reckless action.

PROPOSED

~~((599 - Careless behavior that causes injury to another offender.))~~

604 - Aggravated assault on a staff member.

611 - Sexual assault on a staff member.

633 - Assault on another offender.

635 - Sexual assault on another offender.

663 - Using physical force, intimidation or coercion against any person.

~~((699 - Careless behavior that causes injury to a staff member.))~~

704 - Assault on a staff member.

711 - Assault on a visitor.

717 - Causing a threat of injury to another person by ~~((disregard of orders, careless behavior-  
resisting orders))~~ resisting orders, resisting assisted movement or physical efforts to restrain.

777 - Causing injury to ~~((a staff member) [another person])~~ another person by resisting orders, resisting assisted movement or physical efforts to restrain.

~~((799 - Careless behavior that causes injury to a visitor.))~~

#### Unauthorized possession

559 - Gambling; possession of gambling paraphernalia.

601 - Possession, manufacture or introduction of an explosive device or any ammunition, or any components of an explosive device or ammunition.

602 - Possession, manufacture or introduction of any gun, firearm, weapon, sharpened instrument, knife, or poison or any components thereof.

620 - Receipt or possession of contraband during participation in off-grounds or outer perimeter activity or work detail.

660 - Unauthorized possession of money, stamps, or negotiable instruments, the value of which is five dollars or more.

702 - Possession, manufacture or introduction of an unauthorized tool.

736 - Possession, manufacture or introduction of unauthorized keys.

738 - Possession of the clothing of a staff member.

~~((739 - Possession of personal information about currently employed staff, contractors or volunteers, or their immediate family members, including, but not limited to: Social Security numbers, home addresses or telephone numbers, drivers license numbers, medical, personnel, financial or real estate records, bank or credit card numbers, or other like information not authorized by the court or the superintendent.))~~

739 - Possession of personal information about currently employed staff, contractors or volunteers, or their immediate family members, not voluntarily given to the offender by the individual involved, including, but not limited to: Social Security numbers, unpublished home addresses or telephone numbers, drivers license numbers, medical, personnel, financial or real estate records, bank or credit card numbers, or other like information not authorized by the court or the superintendent.

#### Tattooing

710 - Being tattooed while incarcerated, tattooing another, or possessing tattoo paraphernalia.

#### Theft/possession of stolen property

555 - Theft of property or possession of stolen property.

741 - Theft of food, the value of which is more than five dollars.

755 - Misuse or waste of issued supplies, goods, services or property, the replacement value of which is ten dollars or more.

#### Forgery

654 - Counterfeiting, forging, altering or unauthorized reproduction of any document, article of identification, money, security, or official paper.

#### Setting fire, damaging or destroying property

553 - Setting a fire.

554 - Mutilating, altering, defacing or destroying any item, the value of which is ten dollars or more and that is not the personal property of the inmate.

563 - Making a false fire alarm or tampering with, damaging, blocking or interfering with fire alarms, fire extinguishers, fire hoses, fire exits, or other fire fighting equipment or devices.

600 - Tampering with, damaging, blocking, or interfering with any locking or security device.

720 - Flooding a cell or other area of the institution.

**Inciting others/participation in unacceptable group behavior**

- 650 - Rioting.
- 651 - Inciting others to riot.
- 652 - Engaging in or inciting a group demonstration.
- ~~661 - Performing or taking part in an unauthorized marriage.~~
- 682 - Engaging in ~~((for inciting))~~ or inciting an organized work stoppage.
- 708 - Organizing or participating in an unauthorized group activity or meeting.
- 734 - Participating or engaging in the activities of any unauthorized club, organization, gang or security threat group; or wearing or possessing the symbols of an unauthorized club, organization, gang or security threat group.
- 746 - ~~((Participating) (Engaging))~~ Engaging in or inciting ~~((others to go on a) (an organized))~~ an organized hunger strike.

**Inappropriate sexual behavior**

- 504 - Engaging in sexual acts with others with the exception of spouses during approved extended family visits.
- 659 - Sexual harassment; any word, action, gesture or other behavior that is sexual in nature and that would be offensive to a reasonable person.
- 728~~((b))~~ - Possession of any written, photographic or hand-drawn material that depicts a sexually explicit act as defined in WAC 137-28-160.
- 750 - Indecent exposure.

**Providing false statements**

- 551 - ~~((Lying) (Providing false information))~~ Providing false information to ~~((the) (a))~~ a disciplinary hearing officer or ~~((lying))~~ on a disciplinary appeal.
- 552 - Causing an innocent person to be penalized or proceeded against by ~~((lying) (providing false information))~~ providing false information.
- 706 - ~~((Lying or) (Giving))~~ Giving false information about proposed community residence when proposing a release plan, community placement, etc.

**Interfering with staff/impersonating**

- 558 - Interfering with staff members, medical personnel, fire fighters, or law enforcement personnel in the performance of their duties.
- 605 - Impersonating any staff member, other inmate or visitor.

**Failure to follow orders and rules**

- 509 - Refusing a direct order by any staff member to proceed to or disperse from a particular area.

- 556 - Refusing to submit to or cooperate in a search when ordered to do so by a staff member.
- 557 - Refusing to participate in an available education or work program or other mandatory programming assignment.
- 609 - Refusing or failing to submit to testing required by policy, statute, or court order, such as DNA blood tests, when ordered to do so by a staff member.
- 658 - Failing to comply with any administrative or posthearing sanction imposed for committing any general or serious infraction.
- 724 - Refusing a cell or housing assignment.
- 745 - Refusing a transfer to another facility.

**Counts/unauthorized absence**

- 653 - Causing an inaccurate count by means of unauthorized absence, hiding, concealing ones self or other form of deception or distraction.

**Escape/attempted escape**

- 525 - Violating conditions of furlough.
- 550 - Escape or attempted escape.
- 560 - Unauthorized possession of items or materials likely to be used in an escape attempt.

**Committing crimes/excess infractions**

- 507 - Committing any act that is a felony under state or federal law that is not otherwise included in these rules.
- 517 - Committing any act that is a misdemeanor under local, state, or federal law that is not otherwise included in these rules.
- 657 - Being found guilty of four or more general infractions which have been reported in writing arising out of separate incidents, all of which occur within a six-month period.

**Unacceptable communication**

- 718 - Use of mail or telephone in violation of court order or local, state or federal law.
- 726 - Telephoning or sending written communication or otherwise initiating communication with a minor without the approval of that minor's parent or guardian.
- 727 - Telephoning or sending written communications to any person contrary to previous written warnings and/or documented disciplinary actions.

**Misuse of controlled substances, drugs, alcohol and related programs**

- 603 - Possession, introduction, or transfer of any narcotic, controlled substance, illegal drug, unauthorized drug or drug paraphernalia.

- 606 - Possession of tobacco products and/or matches in close/maximum housing units where strictly prohibited.
- 607 - Refusing to submit to a urinalysis and/or failure to provide a urine sample when ordered to do so by a staff member.
- 608 - Refusing or failing to submit to a breathalyzer or other standard sobriety test when ordered to do so by a staff member.
- 610 - Unauthorized accumulation of prescribed medication greater than a single or daily dose.
- 655 - Making intoxicants, alcohol, controlled substances, narcotics, or the possession of ingredients, equipment, items, formulas or instructions that are used in making intoxicants, alcohol, controlled substances, or narcotics.
- 707 - Possession, introduction, or transfer of any alcoholic or intoxicating beverage.
- 716 - Unauthorized use of drugs, alcohol or other intoxicants.
- 752 - Receiving a positive test for use of unauthorized drugs, alcohol, or other intoxicants.

#### Soliciting/fraud

- 656 - Giving, offering or receiving from any person a bribe or anything of value for an unauthorized favor or service.
- 662 - Soliciting goods or services for which the provider would expect payment when the inmate knows or should know that no funds are available to pay for those goods or services.
- 714 - Giving, selling, borrowing, lending, or trading money or anything of value to, or accepting or purchasing money or anything of value from, another inmate or that inmate's friend(s) or family, the value of which is ten dollars or more.
- 740 - Fraud, embezzlement, or obtaining goods, services, money, or anything of value under false pretense.

#### Creating an emergency situation

- 712 - Attempted suicide or self-mutilation.
- 742 - Creating a false emergency by feigning illness when contrary to medical/mental health screening results.
- 744 - Making a bomb threat.

(2) In determining whether a # 728((b)) infraction or a # ((728(a))) 328 infraction pursuant to WAC 137-28-220 should be charged, the infracting officer shall consider mitigating factors as defined in WAC 137-28-160.

AMENDATORY SECTION (Amending WSR 00-10-079, filed 5/2/00, effective 6/2/00)

**WAC 137-28-310 Decision of hearing officer.** (1) A report of the hearing shall be made.

(a) The report shall include:

(i) The charge;

(ii) Names of witnesses;

(iii) Inmate plea(s);

(iv) Summary of the testimony and cross-examination;

(v) A description of the physical evidence used;

(vi) Reasons for denying witnesses or the fact that written witness statements were not returned to the hearing officer; and

(vii) The decisions and reasons.

(b) The written report shall be placed in the inmate's institutional file if he/she is found guilty.

(c) All reports and attachments shall be maintained by the clerk as part of the hearing officer's permanent records. A complete taped record of the hearing shall be taken but the tape shall not become a part of the inmate's file, and may be destroyed one hundred twenty days after the date of the hearing unless the hearing officer becomes aware that an appeal or court proceeding is pending.

(2) In reaching a decision on the guilt or innocence of the inmate, the hearing officer must rely solely on evidence considered at the hearing. However, during the dispositional stage of the hearing, other factors, such as the inmate's institutional file, prior conduct, mental status, and overall institution adjustment, may be considered.

(3) The hearing officer may not find an inmate guilty of committing a #((728(a))) 328 or #728((b)) infraction if the inmate possesses sexually explicit materials depicting **only** actual penetration and such sexually explicit material was screened and approved by a mail room staff member prior to delivery to the inmate. Nothing herein shall be construed to limit the ability to remove such material from the inmate's possession and cell.

(4) The hearing officer shall consider mitigating factors in determining whether to reduce a #728((b)) serious infraction to a #((728(a))) 328 general infraction.

(5) The hearing officer is authorized to find an inmate guilty of a lesser included offense without issuing a new infraction report or conducting a new hearing.

(6) Where the evidence suggests an inmate is guilty of an offense not charged and which is not a lesser included offense to a charged offense, the hearing officer may recommend that new charges be filed to address such offenses. The inmate may waive the right to a separate hearing on the new charges and may allow the hearing officer to enter a finding of guilty or not guilty and impose sanctions.

(7) The inmate shall be informed of the decision of the hearing officer in writing within three working days of the hearing, unless extended by the superintendent.

(8) The inmate shall be informed of his/her right to appeal the decision of the hearing officer to the superintendent.

**AMENDATORY SECTION** (Amending WSR 00-10-079, filed 5/2/00, effective 6/2/00)

**WAC 137-28-350 Sanctions—Authority to impose.**

(1) If the hearing officer determines that an inmate is guilty of a serious infraction, he/she may impose one or more of the following sanctions:

- (a) Any of the sanctions available for general infractions;
- (b) Any of the sanctions available under DOC 320.150;
- (c) Loss of a privilege or privileges as specified by the hearing officer not to exceed: Thirty days on a first offense, ninety days on a second offense, and one hundred eighty days on a third offense, within a one-year period;
- (d) Evening lockup or confinement to quarters for ten days;
- (e) Weekend and/or holiday lockup or confinement to quarters for a period of one or more weekends but not to exceed twelve consecutive weekends per incident. For purposes of this rule, a "weekend" shall begin at the end of the Friday workday and terminate at the beginning of the Monday workday;
- (f) Confinement to quarters except for meals, or with meals in cell, with or without curtailment of job assignment for a period not to exceed thirty days;
- (g) Recommendation to the unit team/classification committee/assignment officer for reconsideration of custody classification or program change;
- (h) Recommendations to the classification committee/classification officer for transfer to another institution when, as a result of the infraction committed, the inmate is unable to function in the institution of present confinement, or if other disciplinary methods have been attempted and failed;
- (i) Confinement on segregation status for a period not to exceed thirty consecutive days;
- (j) Confinement on isolation status for a period not to exceed ten consecutive days; however, where a serious infraction occurs during a period of isolation imposed under this rule, additional periods of isolation not to exceed ten days may be imposed. In situations where an inmate is in isolation for more than ten consecutive days, the director's prior approval is required unless the inmate is released from isolation for at least seventy-two consecutive hours between the end of one isolation sanction and the beginning of another;
- (k) Restitution;
- (l) Recommendation to the superintendent that he/she not certify good conduct time credit for an inmate subject to the jurisdiction of the indeterminate sentence review board, pursuant to RCW 9.95.070 or that he/she approve the denial of good conduct time credit for those inmates not under the jurisdiction of the board.
  - (i) The recommendation will be consistent with guidelines established by the secretary of the department of corrections.
  - (ii) Any sanctions for loss of good conduct credits in excess of the guidelines established by the secretary of the department of corrections must have final approval by the deputy secretary.
  - (iii) For inmates not under the board's jurisdiction, all awards of good conduct time shall be considered tentative

and therefore all good conduct time credits earned or to be earned may be addressed under this rule;

(m) Recommendation to the indeterminate sentence review board for a disciplinary hearing or reconsideration of minimum term should occur only with infractions providing for actual time loss of twelve months or more and consistent with guidelines established by the department;

(n) Interruption of visitation between the offender and a specified individual(s) for a period of up to one hundred eighty consecutive days when there has been an infraction for visit related behavior or behavior that presents a security or safety threat. In cases of multiple or very serious offenses, recommendations may be made to the superintendent for extended or permanent loss of the privilege of visitation with a specified individual(s);

(o) Restrictions, interruption or termination of correspondence, and/or telephone privileges with specified individuals. Sanctions for offense(s) within any one-year period may not exceed: Up to ninety consecutive days for the first offense, one hundred eighty consecutive days for the second offense and permanent loss for the third offense. Termination of correspondence and/or telephone privileges may be permanent for the first offense if:

- (i) The recipient so requests; or
  - (ii) A parent or guardian of the recipient, if a minor or an incompetent person, so requests; or
  - (iii) A felony was involved in the incident; or
  - (iv) If the contact violates a court order;
- (p) The sanction for infraction #557 shall be the loss of available earned release credits and other privileges as outlined in division directives. Progressively more severe sanctions will be utilized for subsequent infractions #557.

(2) If the hearing officer determines that more than one infraction occurred as a result of the same incident, he/she shall not impose consecutive sanctions for the separate infractions but shall consider them together and impose penalties for the group of infractions.

(3) The hearing officer may suspend the execution of a disciplinary sanction for a fixed period of time, not to exceed three hundred sixty-five consecutive days, subject to the good behavior of the inmate or to meeting other conditions as specified by the hearing officer. If the subsequent behavior of the inmate is appropriate, the hearing officer may, at or before the end of the fixed period, cancel the sanction. A suspended sanction may be imposed if the inmate has been found guilty of a general or serious infraction or of violating the conditions attached to the original suspension. A suspended sanction may be imposed by the hearing officer following notice to, and an in-person meeting with, the inmate.

(4) The hearing officer may review any decision he/she previously made and may modify downward any sanction previously imposed.

(5) ~~((Sanctions shall not be imposed while an appeal from the hearing officer's decision is under consideration by the superintendent.~~

(6)) In all cases, regardless whether an appeal is taken, the superintendent may review a sanction imposed and may reduce its severity.

((7)) (6) Nothing in this section limits the superintendent's discretion to grant, deny, suspend, or revoke any privilege.

AMENDATORY SECTION (Amending WSR 00-10-079, filed 5/2/00, effective 6/2/00)

**WAC 137-28-380 Appeal to superintendent.** (1) An inmate or the inmate's staff advisor may appeal the decision of the hearing officer to the superintendent by filing a written request for review with his/her reasons with the clerk within fifteen days, exclusive of weekends and holidays, after receiving notice of the decision of the hearing officer. The superintendent may consider appeals filed beyond the fifteen-day period.

(2) The clerk shall promptly transmit the appeal and the hearing record to the superintendent.

(3) The superintendent shall act on the appeal within ten working days of its receipt. The superintendent may affirm the decision of the hearing officer; reduce the charge to a lesser included offense; reduce a #728((b)) serious infraction to a #((728(a))) 328 general infraction based upon mitigating factors; reduce the severity of the sanctions imposed; vacate the judgment of the hearing officer; or remand the matter for a new hearing. Any new hearing may not result in an increase in the severity of the sanctions originally imposed unless the inmate is charged with related or additional offenses.

(4) ~~((Pending the decision of the superintendent, disciplinary sanctions shall not be imposed on the inmate.~~

(5)) The inmate shall be notified promptly of the decision of the superintendent.

**WSR 02-09-005**

**PROPOSED RULES**

**DEPARTMENT OF AGRICULTURE**

[Filed April 4, 2002, 10:45 a.m.]

Continuance of WSR 01-22-104.

Title of Rule: Termination of the Washington Asparagus Marketing Order, chapter 16-557 WAC.

Purpose: To continue the adoption date. This is to allow for time to conduct a referendum and tally the results of the referendum.

Statutory Authority for Adoption: Chapter 15.65 RCW.

Statute Being Implemented: RCW 15.65.050 through 15.65.200 and applicable provisions of chapter 34.05 RCW, Part III.

Summary: The Washington State Department of Agriculture was petitioned by a portion of the asparagus growers to terminate the Washington Asparagus Commission. This proposal would repeal the rules under which the commission is established and thereby terminate the commission.

Name of Agency Personnel Responsible for Drafting and Implementation: Deborah Anderson, P.O. Box 42560, Olympia, WA 98504-2560, (360) 902-2043; and Enforcement: William E. Brookreson, P.O. Box 42560, Olympia, WA 98504-2560, (360) 902-1800.

Name of Proponent: Names of proponents are contained in petitions filed with the director of the Washington State Department of Agriculture and are available for public inspection, private.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The repeal of chapter 16-557 WAC would terminate the Washington Asparagus Commission effective December 31, 2002.

Proposal Changes the Following Existing Rules: Repeals the chapter 16-557 WAC.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.030 requires a small business economic impact statement for the adoption of a rule. This proposal repeals chapter 16-557 WAC.

RCW 34.05.328 does not apply to this rule adoption. The Washington State Department of Agriculture is not a named agency.

Date of Intended Adoption: May 15, 2002.

April 4, 2002

William E. Brookreson

Acting Director

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 16-557-010 Definition of terms.
- WAC 16-557-020 Asparagus commodity board.
- WAC 16-557-025 Rules for implementation of promotional hosting by the Washington asparagus commission.
- WAC 16-557-030 Marketing order purposes.
- WAC 16-557-040 Assessments and collections.
- WAC 16-557-041 Time—Place—Method for payment and collection of assessments.
- WAC 16-557-050 Obligations of the board.
- WAC 16-557-060 Termination of the order.
- WAC 16-557-070 Effective time.
- WAC 16-557-080 Separability.

**WSR 02-09-011**

**PROPOSED RULES**

**DEPARTMENT OF LICENSING**

[Filed April 5, 2002, 10:05 a.m.]

Original Notice.

PROPOSED

Preproposal statement of inquiry was filed as WSR 02-05-079.

Title of Rule: Chapter 308-15 WAC, the law relating to geologists, amending WAC 308-15-040 What are the minimum requirements to be eligible for a geologist or specialty license? and new section WAC 308-15-140 What are the rules of professional conduct?

Purpose: The department has reviewed WAC 308-15-040 and recommends amending for clarification and adding a new section, WAC 308-15-140, to describe rules of professional conduct.

Statutory Authority for Adoption: RCW 18.220.040(1), 18.220.050(1).

Statute Being Implemented: RCW 18.220.040(1), 18.220.050(1).

Summary: Amend and add new rule for chapter 308-15 WAC for clarification.

Reasons Supporting Proposal: WAC 308-15-040 is unclear and needed to be rewritten for clarification. WAC 308-15-140 is a new section added to implement the rules of professional conduct.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Margaret Epting, 405 Black Lake Boulevard, Olympia, WA 98502, (360) 664-1386.

Name of Proponent: Industry stakeholders, public.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Amend WAC 308-15-040 and add new section WAC 308-15-140.

Proposal Changes the Following Existing Rules: Amendment of WAC 308-15-040 simplifies and clarifies language.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There will not be a burden on the industry due to increased fees or increased workloads.

RCW 34.05.328 does not apply to this rule adoption. Department of Licensing is exempt from this law.

Hearing Location: Department of Licensing, 405 Black Lake Boulevard, Second Floor, Conference Room 4, Olympia, WA 98502, on May 23, 2002, at 9:00 a.m.

Assistance for Persons with Disabilities: Contact Susan Colard by May 17, 2002, TTY (360) 586-2788, or (360) 664-1497.

Submit Written Comments to: Geologist Licensing Board, P.O. Box 9045, Olympia, WA 98507-9045, fax (360) 664-2551, by May 17, 2002.

Date of Intended Adoption: May 24, 2002.

April 5, 2002

Margaret Epting, Administrator  
Geologist Licensing Program

**AMENDATORY SECTION** (Amending WSR 01-12-023, filed 5/25/01, effective 6/25/01)

**WAC 308-15-040 What are the minimum requirements to be eligible for a geologist or specialty license?**

You are eligible for licensure as a professional geologist or specialist if you meet the following minimum requirements:

(1) You are of good moral character, as attested to by two references.

(2) You must meet the following education requirements:

(a) You must have graduated from an accredited college or university with a degree in geology, engineering geology, hydrogeology or one of the related geological sciences(;;); or ((~~educational equivalents, and~~))

(b) You must have completed a minimum of 30 semester/45 quarter hours or their equivalent of course work in geological science(~~(-This)~~), which include((s)) classes in physical geology, historical geology, structural geology, mineralogy/petrology and sedimentary geology/stratigraphy.

(c) If you do not meet these requirements, you must demonstrate to the board that you have completed educational equivalents in WAC 308-15-040 (2)(b).

(d) You must document your college or university educational experience by submitting official sealed transcripts to the board. Educational equivalents must be documented by providing a course syllabus or outline, along with a certificate documenting satisfactory completion.

(3) You have at least five years of professional geological or specialty practice or, if applying for a specialty, five years of specialty practice satisfactory to the board, after receipt of a bachelor's degree. The following education and experience criteria qualify toward accumulation of the required years of professional work:

(a) You will receive up to two years' credit, one year for each year of full time graduate study in geology, engineering geology, hydrogeology or one of the related geological sciences, as documented in the transcripts provided;

(b) You must have at least three years of geological experience under the supervision of state-licensed geologists or specialty geologists or others who, in the opinion of the board, are qualified to have responsible charge as provided by the information supplied on forms provided by the board.

(i) Your geological experience may include geological research or teaching at the university or college level which, in the judgment of the board, is comparable to experience obtained in the practice of geology or a specialty.

(ii) If requested by the board, you may be required to submit one or more reports which were prepared by you or where you contributed to their preparation.

(c) If you are applying under the grandparenting provisions in this chapter, you may comply with this requirement by providing documentation of geological experience where you were the person in responsible charge and meet the requirements in (b) of this subsection.

(4) You must have passed a geologist examination and, if applying for a specialty, a specialty examination, unless you are eligible for licensure by grandparenting. All examinations must be adopted by or acceptable to the board.

**NEW SECTION****WAC 308-15-140 What are the rules of professional conduct? (1) What are the general responsibilities of a geologist?**

(a) A geologist must undertake professional service or render expert opinion only when qualified by training or experience in the technical areas involved.

(b) When serving as an expert or technical witness before a court, commission, or other tribunal, a geologist must express only those opinions founded upon adequate professional knowledge of the matters at issue.

(c) A geologist must sign and stamp only professional work, including, but not limited to, maps and reports for which the geologist has direct professional knowledge, and for which the geologist is in responsible charge.

(d) A geologist must not take credit for work conducted by others. When using the results of other geologists' work in the performance of the practice of geology, a geologist must give due credit to the other geologists by citation or acknowledgement. Work of other geologists which is proprietary, or was not intended to be made generally available, must not be used without the permission of the other geologist.

(e) A geologist must not knowingly make false statements or misrepresentations, or permit the publication or use of the geologist's name or work in association with any fraudulent activities.

(f) A geologist must make full disclosure to all parties concerned of any conflict of interest in projects or properties on which the geologist performs work.

(g) If a geologist has knowledge or reasonable cause to believe another person or geologist is in violation of the licensing law, chapter 18.220 RCW, or the related administrative rules, the geologist must present such information in writing to the Washington geologist licensing board.

(h) If a geologist's professional judgment is overruled or not adhered to under circumstances where the geologist has reasonable cause to believe there is a clear and present threat to the public health or welfare or property, the geologist must immediately notify the client/employer. If the client/employer does not take appropriate action within a reasonable amount of time under the circumstances, the geologist must notify in writing the agency of local government having jurisdiction, or in the case of state/federal property the state/federal agency having land management responsibility, and the board of the nature of the public threat.

(i) When a geologist issues a statement or document about the geologic work of others, he or she must disclose the name of the client who requested the review.

(j) Geologists must continue their professional development throughout their careers, and must provide opportunities for the professional development of those individuals under their supervision.

**(2) What are the specific responsibilities of a geologist to an employer or client?**

(a) A geologist must avoid conflict of interest with a client/employer and must disclose the circumstances to the client/employer if a conflict is unavoidable.

(b) A geologist must not, during the time of the geologist's retention or employment by a client/employer, use

information developed for, or the resources of, said client/employer for private gain or in any other manner that may conflict with the client/employer's interest without the knowledge and consent of the client/employer, except as specified in subsection (1)(h) of this section. In the case of a former client/employer, a geologist must honor agreements with that former client/employer with regard to proprietary information, except as specified by subsection (1)(h) of this section.

(c) A geologist must either engage or advise a client/employer to engage other experts or specialists if the client/employer's interests are best served by such service.

(d) A geologist must give due notice of withdrawal of service from a client/employer. Due notice must be either thirty days or a time mutually agreed to by the geologist and the client/employer, whichever is less. However, a geologist may withdraw from service without due notice if:

(i) The geologist fails to receive compensation, or has reasonable cause to believe that compensation for services performed must not be received;

(ii) The geologist knows, or has reasonable cause to believe, that continued employment will result in a violation of this code, or will otherwise be illegal;

(iii) The geologist knows, or has reasonable cause to believe, that the client/employer is involved in illegal or fraudulent practices, or practices dangerous to the life, health, property and welfare of the public;

(iv) The geologist knows, or has reasonable cause to believe, that continued employment would result in sickness or injury to the geologist or the geologist's dependents.

(e) A geologist must not accept compensation concurrently from more than one client/employer on a project, unless the circumstances of payment are fully disclosed and agreed to by all financially interested parties.

(f) Geologists must advise their employers or clients when, as a result of their studies, they believe a project must not be successful.

(g) Geologists must negotiate contracts for professional services fairly and on the basis of demonstrated competence and qualifications for the type of professional service required and not on the basis of cost.

(h) Geologists must not request, propose or accept professional commissions on a contingent basis under circumstances in which their professional judgment may be compromised.

**(3) What are the specific responsibilities of a geologist to the board?**

(a) A geologist must respond to board formal requests within thirty days of receipt of the request by registered or certified mail.

(b) A geologist, when requested by the board, must present information and assistance to the board in pursuing violations of laws and rules relating to the practice of geology in the state of Washington.

(4) **What are prohibited acts?** The prohibited acts are found in RCW 18.220.130 and 18.220.170.

**WSR 02-09-019**  
**PROPOSED RULES**  
**DEPARTMENT OF REVENUE**

[Filed April 5, 2002, 2:43 p.m.]

**Original Notice.**

Preproposal statement of inquiry was filed as WSR 01-24-039.

Title of Rule: WAC 458-12-140 (~~Listing of property—Boundary changes—~~) Taxing district boundaries—Designation of tax code area.

Purpose: To provide information about taxing district boundaries and tax code areas to county assessors, their staff, and the public.

Statutory Authority for Adoption: RCW 84.08.010.

Statute Being Implemented: RCW 84.09.030, 84.09.035, 84.09.037, and 84.40.090.

Summary: This rule explains when the boundaries of a taxing district must be established for the purpose of levying property taxes, and that county assessors are required to transmit taxing district boundary information to the property tax division of the Department of Revenue when there is a change in taxing district boundaries or when a new taxing district is established. The proposed revisions to this rule provide this information in a more comprehensive manner.

Reasons Supporting Proposal: This rule needs to be revised to incorporate changes to the statutes being implemented, information from other related statutes, and information presently contained in WAC 458-12-135 Listing of property—Taxing district designation. The department anticipates repealing WAC 458-12-135 in conjunction with this rule-making action.

Name of Agency Personnel Responsible for Drafting: Mark Mullin, 1025 Union Avenue S.E., Suite #400, Olympia, WA, (360) 570-6112; Implementation and Enforcement: Sandy Guilfoil, 1025 Union Avenue S.E., Suite #200, Olympia, WA, (360) 570-5860.

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 important information for county assessors, their staff, and the general public regarding the establishment of taxing district boundaries. It explains when these boundaries must be established for the purpose of levying property taxes. This rule also explains that county assessors are required to transmit taxing district boundary information to the property tax division of the Department of Revenue when there is a change in tax district boundaries or when a new taxing district is established.

This rule is being revised to reflect changes to RCW 84.09.030, the statute being implemented. Also, the department intends to expand the rule to incorporate information regarding taxing district boundaries from RCW 17.28.253, 84.09.035 and 84.09.037. RCW 17.28.253 provides information regarding the establishment of the boundaries of mosquito control district for property tax purposes. RCW 84.09.035 provides information regarding the effective date of a boundary change for a library district, metropolitan park

district, fire protection district, or public hospital district that withdraws an area from its boundaries. RCW 84.09.037 provides information about the effect of school district boundary changes on excess tax levies.

The department also intends to update and incorporate the information presently contained in WAC 458-12-135 into this rule. WAC 458-12-135 provides guidance to assessors in designating tax code areas to be used in the listing of real and personal property. The department plans on canceling WAC 458-12-135 in conjunction with this rule-making action.

Proposal Changes the Following Existing Rules: This is a change to WAC 458-12-140, as explained above.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule does not impose a responsibility or require a small business to perform something that is not already required by law.

RCW 34.05.328 does not apply to this rule adoption. This rule is an interpretive rule as defined in RCW 34.05.328.

Hearing Location: Capital Plaza Building, 4th Floor, Large Conference Room, 1025 Union Avenue S.E., Olympia, WA, on May 21, 2002, at 9:30 a.m.

Assistance for Persons with Disabilities: Contact Sandy Davis, no later than ten days before the hearing date, TTY 1-800-451-7985, or (360) 570-6175.

Submit Written Comments to: Mark Mullin, Department of Revenue, P.O. Box 47467, Olympia, WA 98504-7467, fax (360) 664-0693, e-mail MarkM@dor.wa.gov, by May 21, 2002.

Date of Intended Adoption: May 28, 2002.

April 5, 2002

Claire Hesselholt, Rules Manager  
 Legislation and Policy Division

AMENDATORY SECTION (Amending Order PT 68-6, filed 4/29/68)

**WAC 458-12-140 (~~Listing of property—Boundary changes—~~) Taxing district boundaries—Designation of tax code area.** (~~The official boundaries of all taxing districts are fixed for purposes of property taxation and levy of property taxes as of the first day of March each year.~~

~~The county assessor shall transmit one copy of each instrument filed with the county auditor or any other county official, which sets forth any change in taxing district boundaries, or for the establishment of any new taxing district, together with a copy of a plat showing such change, to the property tax division, department of revenue, on or before the first day of March each year. (Rule derived from RCW 84.04.120, 84.09.030, 84.40.100-))~~ **(1) Introduction.** This rule explains when the boundaries of a taxing district must be established for the purpose of levying property taxes. No property tax levy can be made for a given year on behalf of any taxing district whose boundaries are not established as of the dates provided in this rule. This rule also explains that county assessors are required to transmit taxing district boundary information to the property tax division of the department of revenue (department) when there is a change in taxing district boundaries or when a new taxing district is established. Lastly, this rule provides guidance to assessors

in designating tax code areas to be used in the listing of real and personal property.

For purposes of this rule, the definition of "taxing district" is the same as in WAC 458-19-005.

**(2) Establishment of taxing district boundaries.**

Except as follows, the boundaries of counties, cities, and all other taxing districts, for purposes of property taxation and the levy of property taxes, must be the established official boundaries of the taxing districts existing on March 1st of the year in which the property tax levy is made.

**(a) Boundaries of certain newly incorporated taxing districts.** The official boundaries of certain newly incorporated taxing districts will be established at a different date in the year in which the incorporation occurred as follows:

**(i) Newly incorporated cities.** Boundaries for a newly incorporated city must be the established official boundaries existing on March 31st of the year in which the initial property tax levy is made. The boundaries of a road district, library district, or fire protection district or districts, that include any portion of the area that was incorporated within the boundaries of a newly incorporated city, must be altered as of March 31st to exclude this area if the budget for the newly incorporated city is filed as provided in RCW 84.52.020 and the levy request of the newly incorporated city is made in accordance with RCW 84.52.070. Whenever a proposed city incorporation is on the March special election ballot, the county auditor must submit the legal description of the proposed city to the department on or before March 1st.

**(ii) Newly incorporated port districts.** Boundaries for a newly incorporated port district must be the established official boundaries existing on October 1st of the year in which the initial property tax levy is made if the boundaries of the newly incorporated port district are coterminous with the boundaries of another taxing district, as they existed on March 1st of that year.

**(iii) Newly incorporated water-sewer districts.** Boundaries for a newly incorporated water-sewer district must be the established official boundaries existing on June 15th of the year in which the proposition under RCW 57.04.050 is approved authorizing a water-sewer district excess levy.

**(iv) Other newly incorporated taxing districts.** Boundaries of any other newly incorporated taxing district must be the established official boundaries existing on June 1st of the year in which the initial property tax levy is made if the taxing district has boundaries coterminous with the boundaries of another taxing district, as they existed on March 1st of that year.

**(b) Mosquito control districts.** Boundaries of a mosquito control district must be the established official boundary existing on September 1st of the year in which the property tax levy is made.

**(c) Addition or removal of property from a taxing district after March 1st.** Except as otherwise provided in this rule, the boundaries of a taxing district will be established on June 1st if territory with boundaries coterminous with the boundaries of another taxing district as they existed on March 1st of that year has been added to, or removed from, the taxing district after March 1st of that year. The

boundaries of a road district, library district, or fire protection district or districts, that include any portion of the area that was annexed to a city or town within its boundaries, must be altered as of June 1st to exclude this area.

**(3) Withdrawal of certain areas of a library district, metropolitan park district, fire protection district, or public hospital district.** Notwithstanding the provisions of RCW 84.09.030 and subsection (2) of this rule, the boundaries of a library district, metropolitan park district, fire protection district, or public hospital district, that withdraws an area from its boundaries under RCW 27.12.355, 35.61.360, 52.04.056, or 70.44.235, which area has boundaries that are coterminous with the boundaries of a tax code area, will be established as of October 1st in the year in which the area is withdrawn.

**(4) School district boundary changes.** Each school district affected by a transfer of territory from one school district to another school district under chapter 28A.315 RCW must retain its preexisting boundaries for the purpose of the collection of excess tax levies authorized under RCW 84.52.053 before the effective date of the transfer. The pre-existing boundaries must be retained for such tax collection years and for such excess tax levies as the regional committee on school district organization (committee) may approve. The committee may order that the transferred territory will either be subject to or relieved of such excess levies. For the purpose of all other excess tax levies previously authorized under chapter 84.52 RCW and all excess tax levies authorized under RCW 84.52.053 subsequent to the effective date of a transfer of territory, the boundaries of the affected school districts must be modified to recognize the transfer of territory subject to RCW 84.09.030 and subsection (2) of this rule.

**(5) Copy of instrument setting forth taxing district boundary changes must be provided to the department.** Any instrument setting forth the official boundaries of a newly established taxing district, or setting forth any change in taxing district boundaries, that is required by law to be filed in the office of the county auditor or other county official must be filed in triplicate. The county official with whom the instrument is filed must forward two copies to the county assessor. The assessor must provide one copy of the instrument, together with a copy of a plat showing the new boundaries, to the property tax division of the department of revenue within thirty days of the establishment of the boundaries of such taxing district.

**(6) Designation of tax code areas.** Assessors must designate the name or number of each tax code area in which each description of real or personal property is located and assessed. The tax code area designation must be entered opposite each assessment in a column provided for that purpose in the detail and assessment list.

For purposes of this rule, the definition of "tax code area" is the same as in WAC 458-19-005.

**(a) Personal property.** Assessors must designate the tax code area on all listings of personal property in accordance with the applicable rules controlling "taxable situs" as of the assessment date.

**(b) Property located in more than one tax code area.**

When real and personal property of any person is located and assessable in more than one tax code area, a separate listing must be made on the detail and assessment list and identified by the name or number of the tax code area in which each portion of the property or properties is located.

**WSR 02-09-020**  
**PROPOSED RULES**  
**DEPARTMENT OF REVENUE**

[Filed April 5, 2002, 2:44 p.m.]

## Original Notice.

Preproposal statement of inquiry was filed as WSR 01-24-038.

Title of Rule: Amending WAC 458-16-115 Personal property exemptions(~~(—Exceptions)~~) for household goods, furnishings, and personal effects, and for the head of a family; and repealing WAC 458-12-090 Listing of personalty—\$300 exemption and its effect on listing, 458-12-270 Listing of property—Household goods and personal effects, 458-12-275 Listing of property—\$300—Head of family—In general, and 458-12-280 Listing of property—\$300—Head of family—Definition.

Purpose: To provide information about the personal property tax exemptions for the head of a family and for household goods, furnishings, and personal effects to county assessors, their staff, and the public.

Statutory Authority for Adoption: RCW 84.36.865.

Statute Being Implemented: RCW 84.36.110.

Summary: These rules provide information about the personal property tax exemptions for the head of a family and for household goods, furnishings, and personal effects. These exemptions are provided by RCW 84.36.110.

Reasons Supporting Proposal: Consolidating these rules into a single document will provide information about these exemptions in a more efficient and user-friendly manner. Also, the amount of the exemption for the head of a family needs to be updated in the rule to reflect the current amount of the exemption (\$3,000 as opposed to \$300).

Name of Agency Personnel Responsible for Drafting: Mark Mullin, 1025 Union Avenue S.E., Suite #400, Olympia, WA, (360) 570-6112; Implementation and Enforcement: Sandy Guilfoil, 1025 Union Avenue S.E., Suite #200, Olympia, WA, (360) 570-5860.

Name of Proponent: Department of Revenue, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: These rules provide important information for county assessors, their staff, and the general public regarding the personal property tax exemptions for the head of a family and for household goods, furnishings, and personal effects. Consolidating these rules into a single document will present information about these exemptions in a more clear, efficient, and user-friendly manner. Also, the amount of the exemption for the head of a family needs to be updated in the rule to

reflect the current amount of the exemption (\$3,000 as opposed to \$300).

Proposal does not change existing rules. This is a revision to WAC 458-16-115 to incorporate and update information currently contained in WAC 458-12-090, 458-12-270, 458-12-275, and 458-12-280. The department intends to repeal these latter rules.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule does not impose a responsibility or require a small business to perform something that is not already required by law.

RCW 34.05.328 does not apply to this rule adoption. This rule is an interpretive rule as defined in RCW 34.05.328.

Hearing Location: Capital Plaza Building, 4th Floor, Large Conference Room, 1025 Union Avenue S.E., Olympia, WA, on May 21, 2002, at 9:30 a.m.

Assistance for Persons with Disabilities: Contact Sandy Davis, no later than ten days before the hearing date, TTY 1-800-451-7985, or (360) 570-6175.

Submit Written Comments to: Mark Mullin, Department of Revenue, P.O. Box 47467, Olympia, WA 98504-7467, fax (360) 664-0693, e-mail MarkM@dor.wa.gov, by May 21, 2002.

Date of Intended Adoption: May 28, 2002.

April 5, 2002

Claire Hesseholt, Rules Manager  
 Legislation and Policy Division

AMENDATORY SECTION (Amending Order 89-7, filed 5/26/89)

**WAC 458-16-115 Personal property exemptions(~~(—Exceptions)~~) for household goods, furnishings, and personal effects, and for the head of a family. (~~((1) The personal property exemption in RCW 84.36.110 shall not be applied to:~~**

~~(a) Houses, cabins, boathouses, boatdocks or other similar improvements which are located on publicly owned lands;~~

~~(b) Mobile homes; or~~

~~(c) Floating homes.)) (1) Introduction. This rule~~

explains the personal property tax exemption for household goods, furnishings, and personal effects. It also explains the exemption available to the head of a family for otherwise taxable personal property up to a value of three thousand dollars. These exemptions are provided by RCW 84.36.110.

(2) **Exemption for household goods, furnishings, and personal effects.** All household goods and furnishings actually being used to equip and outfit the owner's residence or place of abode and all personal effects held by any person for his or her exclusive use and benefit are exempt from property taxation. Any household goods and furnishings or personal effects held for sale or commercial use do not qualify for this exemption. RCW 84.36.110(1).

(a) **What are household goods and furnishings?** "Household goods and furnishings" are all items of tangible personal property normally located in or about a residence and used or held to enhance the value or enjoyment of the residence, including its premises. The phrase includes, but is not limited to, movable items of necessity, convenience, or

decoration, such as furniture, appliances, food, pictures, and tools and equipment used to maintain the residence. Personal property qualifying for this exemption retains its exempt status while temporarily in storage or while being used temporarily at locations other than the owner's residence.

"Household goods and furnishings" do not include items of personal property constructed primarily for use independent of and separate from a residence such as boats, motor vehicles, campers, and travel trailers. However, certain motor vehicles, campers, and travel trailers may be entitled to an exemption from property taxation under RCW 84.36.595. Also, some boats may be wholly or partially exempt from property taxation under RCW 84.36.080 and 84.36.090.

(b) What are personal effects? "Personal effects" are items of tangible property of a personal or intimate nature that usually and ordinarily accompany a person such as wearing apparel, jewelry, and articles of a similar nature. RCW 84.36.120.

(c) When are household goods, furnishings, and personal effects not exempt? Personal property held for sale or used for any business or commercial purpose does not qualify for the household goods exemption. Thus, property used to equip and outfit a motel, hotel, apartment, sorority, fraternity, boarding house, rented home, duplex, or any other premises not used by the owner for his or her own personal residence or place of abode does not qualify for this exemption. Likewise, a hairdresser who uses any portion of his or her home as a beauty salon cannot claim a household goods exemption for personal property held for sale or otherwise used in the business. Business inventories, however, are exempt from property taxation under RCW 84.36.477.

Following is a nonexclusive list of items that are exempt as household goods or furnishings if they are used in a residence or place of abode but are fully taxable if they are used for business or commercial purposes.

(i) Desks are exempt as household goods if they are used in a residence but are taxable if they are used in a business office.

(ii) Silverware and china are exempt if they are used in a residence but are taxable if they are used in a restaurant.

(iii) Art or other collections are exempt if they are located in a residence but are taxable if they are located in a public display or used for commercial purposes.

(iv) Power lawnmowers or small tractors used to enhance the value or enjoyment of a residence, including its premises, are exempt, but they are taxable when used to maintain a golf course.

(3) Exemption for the head of a family. Each head of a family is entitled to an exemption from his or her taxable personal property in an amount up to three thousand dollars of actual value. RCW 84.36.110(2). For purposes of this exemption, "actual value" has the same meaning as "true and fair value" as defined in WAC 458-07-030. The taxpayer must qualify for the head of a family exemption on January 1st of the assessment year (the assessment date) or the exemption is lost for taxes payable the following year. As noted above, household goods, furnishings, and personal effects not used for business or commercial purposes are

exempt from property taxation; therefore, the exemption for the head of a family does not apply to such property.

(a) Who qualifies as the head of a family? The "head of a family" includes the following residents of the state of Washington:

(i) Any person receiving an old age pension under the laws of this state;

(ii) Any citizen of the United States, over the age of sixty-five years, who has resided in the state of Washington continuously for ten years;

(iii) The husband or wife, when the claimant is a married person, or a surviving spouse not remarried; and

(iv) Any person who resides with, and has under his or her care and maintenance, any of the following:

(A) His or her minor child or grandchild, or the minor child or grandchild of his or her deceased spouse;

(B) His or her minor brother or sister or the minor child of a deceased brother or sister;

(C) His or her father, mother, grandmother, or grandfather, or the father, mother, grandmother, or grandfather of a deceased spouse; or

(D) Any of the other relatives mentioned in this subsection who have attained the age of majority and are unable to take care of or support themselves.

(b) What property is not exempt? The personal property exemption for the head of a family does not apply to the following:

(i) Private motor vehicles. A "private motor vehicle" is any motor vehicle used for the convenience or pleasure of the owner, which carries a licensing classification other than motor vehicle for hire, auto stage, auto stage trailer, motor truck, motor truck trailer, or dealer's license. RCW 84.36.120;

(ii) Mobile homes. A "mobile home" is a trailer designed for human habitation, which is capable of being moved upon the public streets and highways and is either more than thirty-five feet in length or more than eight feet in width. RCW 84.36.120;

(iii) Floating homes. A "floating home" is a building on a float, used in whole or in part for human habitation as a single-family dwelling and is on the property tax rolls of the county in which it is located. A floating home is not designed for self propulsion by mechanical means or by means of wind. RCW 82.45.032; or

(iv) Houses, cabins, boathouses, boat docks, or other similar improvements that are located on publicly owned land.

(4) How do the exemptions included in this rule affect listing? If the county assessor is satisfied that all of the personal property of any person is exempt from taxation, no listing is required by the owner or taxpayer. If the value of taxable personal property exceeds three thousand dollars, then the taxpayer must make a complete listing, and the assessor will deduct three thousand dollars from the total amount of the assessment and assess the remainder. RCW 84.36.-110(2).

**WSR 02-09-026**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**

[Filed April 9, 2002, 1:33 p.m.]

**Original Notice.**

Preproposal statement of inquiry was filed as WSR 02-03-138.

Title of Rule: WAC 246-338-020 and 246-338-990 Fees, medical test site rules.

Purpose: WAC 246-338-020 establishes the license requirements for each type of license and WAC 246-338-990 sets the fee for medical test sites. The medical test site rules enable licensure of all sites that perform clinical testing in the state. The fees defray the cost of administering the medical test site licensure program under RCW 70.42.090.

Statutory Authority for Adoption: RCW 70.42.090, ESSB 6387.PL, section 220(1).

Statute Being Implemented: RCW 70.42.090.

Summary: The proposed changes to medical test site rules (WAC 246-338-020 and 246-338-990) adjust the licensing fees. Fees will be adjusted to correspond to the federal Clinical Laboratory Improvement Amendments of 1988 (CLIA) fee structure.

Reasons Supporting Proposal: ESSB 6387.PL, section 220 permits the department to increase fees over the I-601 limit. The proposed fee schedule will generate additional revenue to pay the increased federal (CLIA) exemption fee. This will keep regulation of clinical laboratories at the state level rather than under federal regulation.

Name of Agency Personnel Responsible for Drafting and Implementation: Gail Neuenschwander, 1610 N.E. 150th Street, Seattle, 98155-9701, (206) 361-2805; Enforcement: Gary Bennett, 2725 Harrison Avenue, Olympia, WA 98504-7852.

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: The medical test site rules license all sites that perform clinical laboratory testing in the state. The state law was passed to take the place of federal regulation (CLIA). An amendment is needed to increase the medical test site license fees in order to generate revenue to pay the increased fee charged by the federal government for exemption from federal regulation. This will keep regulation of clinical laboratories at the state level rather than under federal regulation. Advantages of keeping regulation at the state level include outreach and educational services such as training classes, technical assistance, monthly newsletter, consultation and other educational materials that would not be funded under CLIA. Maintaining licensing and regulation at the state level also provides faster response time for requests from licensees and for any enforcement action that is needed. The proposed fee schedule will generate sufficient revenue to fund the state medical test site program.

Proposal Changes the Following Existing Rules: The proposed fee schedule will set fees at the same level that they would be if the laboratories were licensed federally under

CLIA. Along with the change in fees will be a restructuring of fee categories (WAC 246-338-020) based on the CLIA model.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposal is exempt under RCW 34.05.310(4) and therefore does not require a small business economic impact statement.

RCW 34.05.328 does not apply to this rule adoption. Section 201, chapter 403, Laws of 1995 do not apply to rules that set or adjust fees or rates pursuant to legislative standards (RCW 34.05.328 (5)(b)(vi)).

Hearing Location: Department of Health, Target Plaza, Training Room, 2725 Harrison Avenue N.W., Olympia, WA 98502, on May 21, 2002, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Yvette Lenz by May 14, 2002, TDD (800) 833-6388, or (360) 705-6652.

Submit Written Comments to: Yvette Lenz, Facilities and Services Licensing, P.O. Box 47852, Olympia, WA 98504-7852, e-mail REGMAIL@doh.wa.gov, fax (360) 705-6654, by May 21, 2002.

Date of Intended Adoption: June 1, 2002.

April 8, 2002

Mary C. Selecky  
Secretary

**AMENDATORY SECTION** (Amending WSR 01-02-069, filed 12/29/00, effective 1/29/01)

**WAC 246-338-020 Licensure—Types of medical test site licenses.** After July 1, 1990, any person advertising, operating, managing, owning, conducting, opening, or maintaining a medical test site must first obtain a license from the department. License types are described in Table 020-1.

**(1) Certificate of waiver.**

Applicable if the medical test site performs only the tests classified as waived.

**(2) Provider performed microscopic procedures (PPMP).**

Applicable if the medical test site restricts its testing performance to one or more of the following moderate complexity tests performed by one of the licensed professionals listed, in conjunction with a patient's visit. In addition, the medical test site can perform tests classified as waived with this type of license.

(a) PPMP may be performed only by one of the following licensed professionals:

(i) Physician licensed under chapter 18.71 RCW, Physicians; chapter 18.57 RCW, Osteopathy—Osteopathic medicine and surgery; or chapter 18.22 RCW, Podiatric medicine and surgery;

(ii) Advanced registered nurse practitioner, licensed under chapter 18.79 RCW, Nursing care;

(iii) Midwife licensed under chapter 18.50 RCW, Midwifery;

(iv) Physician assistant licensed under chapter 18.71A RCW, Physician assistants;

(v) Naturopath licensed under chapter 18.36A RCW, Naturopathy; or

- (vi) Dentist licensed under chapter 18.32 RCW, Dentistry.
- (b) Microscopic procedures authorized under a PPMP license are:
  - (i) All direct wet mount preparations for the presence or absence of bacteria, fungi, parasites, and human cellular elements;
  - (ii) All potassium hydroxide (KOH) preparations;
  - (iii) Pinworm examinations;
  - (iv) Fern tests;
  - (v) Postcoital direct, qualitative examinations of vaginal or cervical mucous;
  - (vi) Urine sediment examinations;
  - (vii) Nasal smears for granulocytes;
  - (viii) Fecal leukocyte examinations;
  - (ix) Qualitative semen analysis (limited to the presence or absence of sperm and detection of motility); and

- (x) Any other tests subsequently categorized under CLIA as provider-performed microscopy procedures.
- (3) **Moderate/high complexity.**
  - (a) ~~((Limited testing,))~~ **Low volume, Category A-J**, as described in Table 990-1.
 

Applicable if the medical test site performs any tests that are not classified as waived or qualified as PPMP under subsection (2) of this section. Under this type of license, the medical test site may also perform tests classified as waived.
  - (b) **Accredited: Low volume, Category A-J**, as described in Table 990-1.
 

Applicable if the medical test site performs any tests that are not classified as waived, and is accredited and inspected by an accreditation organization approved by the department under WAC 246-338-040. Under this type of license, the medical test site may also perform tests classified as waived.

**020-1 Table of Requirements for Each License Type**

LICENSE TYPE	REQUIREMENTS	INSPECTIONS	
		TYPE	FREQUENCY
(1) <b>Certificate of Waiver</b>	<ul style="list-style-type: none"> <li>• Restrict testing to tests classified as waived.</li> <li>• Meet the requirements of WAC 246-338-020 Licensure—Types of Medical Test Site Licenses; WAC 246-338-022 Initial Application for Medical Test Site License; WAC 246-338-024 License Renewal/Reapplication Process; WAC 246-338-026 Notification Requirements; WAC 246-338-028 On-site Inspections.</li> <li>• Follow manufacturers' instructions for performing the test.</li> </ul>	<ul style="list-style-type: none"> <li>• Complaint</li> <li>• Technical assistance</li> </ul>	<ul style="list-style-type: none"> <li>• When indicated</li> </ul>
(2) <b>PPMP</b>	<ul style="list-style-type: none"> <li>• Restrict testing to tests classified as PPMP or waived.</li> <li>• Meet the requirements of WAC 246-338-020 Licensure—Types of Medical Test Site Licenses; WAC 246-338-022 Initial Application for Medical Test Site License; WAC 246-338-024 License Renewal/Reapplication Process; WAC 246-338-026 Notification Requirements; WAC 246-338-028 On-site Inspections; WAC 246-338-050 Proficiency Testing (if applicable); WAC 246-338-060 Personnel; WAC 246-338-070 Records; WAC 246-338-080 Quality Assurance; WAC 246-338-090 Quality Control.</li> <li>• Follow manufacturers' instructions for performing the test.</li> </ul>	<ul style="list-style-type: none"> <li>• Complaint</li> <li>• Technical assistance</li> </ul>	<ul style="list-style-type: none"> <li>• When indicated</li> </ul>

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LICENSE TYPE	REQUIREMENTS	INSPECTIONS	
		TYPE	FREQUENCY
<p>(3) <b>Moderate/High Complexity</b></p> <p>(a) <del>((Limited Testing,))</del> <b>Low Volume, Category A-J</b></p>	<ul style="list-style-type: none"> <li>• Perform tests classified as moderate or high complexity.</li> <li>• Meet the requirements of WAC 246-338-020 Licensure—Types of Medical Test Site Licenses; WAC 246-338-022 Initial Application for Medical Test Site License; WAC 246-338-024 License Renewal/Reapplication Process; WAC 246-338-026 Notification Requirements; WAC 246-338-028 On-site Inspections; WAC 246-338-050 Proficiency Testing (if applicable); WAC 246-338-060 Personnel; WAC 246-338-070 Records; WAC 246-338-080 Quality Assurance; WAC 246-338-090 Quality Control.</li> <li>• Follow manufacturers' instructions for performing test.</li> </ul>	<ul style="list-style-type: none"> <li>• Initial</li> <li>• Routine</li> <li>• Complaint</li> <li>• On-site follow-up</li> <li>• Technical assistance</li> </ul>	<ul style="list-style-type: none"> <li>• First 6 months of license</li> <li>• Every 2 years</li> <li>• When indicated</li> <li>• When indicated</li> <li>• When indicated</li> </ul>
<p>(b) <b>Accredited; Low Volume, Category A-I</b></p>	<ul style="list-style-type: none"> <li>• Perform tests classified as moderate or high complexity.</li> <li>• Meet the requirements of WAC 246-338-020 Licensure—Types of Medical Test Site Licenses; WAC 246-338-022 Initial Application for Medical Test Site License; WAC 246-338-024 License Renewal/Reapplication Process; WAC 246-338-026 Notification Requirements; WAC 246-338-028 On-site Inspections; WAC 246-338-050 Proficiency Testing (if applicable); WAC 246-338-060 Personnel; WAC 246-338-070 Records; WAC 246-338-080 Quality Assurance; WAC 246-338-090 Quality Control.</li> <li>• Follow manufacturers' instructions for performing the test.</li> <li>• Submit to the department upon request, or authorize the accreditation organization to submit:                             <ul style="list-style-type: none"> <li>• Proof of accreditation;</li> <li>• On-site inspection results;</li> <li>• Statement of deficiencies;</li> <li>• Plan of correction for the deficiencies cited;</li> <li>• Any disciplinary action and results of any disciplinary action taken by the accreditation organization against the medical test site.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Validation</li> <li>• Complaint</li> <li>• On-site follow-up</li> <li>• Technical assistance</li> </ul>	<ul style="list-style-type: none"> <li>• 2.5 % of accredited sites annually</li> <li>• When indicated</li> <li>• When indicated</li> <li>• When indicated</li> </ul>

PROPOSED

AMENDATORY SECTION (Amending WSR 01-02-069, filed 12/29/00, effective 1/29/01)

**WAC 246-338-990 Fees.** (1) The department will assess and collect biennial fees for medical test sites as follows:

- (a) Charge fees, based on the requirements authorized under RCW 70.42.090 and this section;
- (b) Assess additional fees when changes listed in WAC 246-338-026 occur that require a different type of license than what the medical test site currently holds; and
- (c) Determine fees according to criteria described in Table 990-1.

**Table 990-1 License Categories and Fees**

Category of License	Number of Tests/Year	Biennial Fee
Certificate of Waiver	N/A	\$ <del>((108))</del> <u>150</u>
PPMP	N/A	\$ <del>((163))</del> <u>200</u>
<del>((Accredited Limited Testing</del>	<del>N/A</del>	<del>\$ 325</del>
Low Volume	<del>((751))</del> 1-2,000 tests	<del>\$((1,086))</del> <u>450</u>
Category A	2,001-10,000 tests, 1-3 specialties	<del>\$((1,629))</del> <u>1,364</u>
Category B	2,001-10,000 tests, 4 or more specialties	<del>\$((1,955))</del> <u>1,769</u>
Category C	10,001-25,000 tests, 1-3 specialties	<del>\$((2,281))</del> <u>2,454</u>
Category D	10,001-25,000 tests, 4 or more specialties	<del>\$((2,715))</del> <u>2,818</u>
Category E	25,001-50,000 tests	<del>\$((3,259))</del> <u>3,382</u>
Category F	50,001-75,000 tests	<del>\$((3,802))</del> <u>4,187</u>
Category G	75,001-100,000 tests	<del>\$((4,453))</del> <u>4,991</u>
Category H	100,001-500,000 tests	<del>\$((5,105))</del> <u>5,835</u>
Category I	500,001-1,000,000 tests	<del>\$((5,432))</del> <u>10,369</u>
Category J	> 1,000,000 tests	<del>\$((5,974))</del> <u>12,443</u>
<u>Accredited:</u>		
<u>Low Volume</u>	<u>1-2,000 tests</u>	<u>\$ 165</u>
<u>Category A</u>	<u>2,001-10,000 tests, 1-3 specialties</u>	<u>\$ 211</u>

<u>Category B</u>	<u>2,001-10,000 tests, 4 or more specialties</u>	<u>\$ 231</u>
<u>Category C</u>	<u>10,001-25,000 tests, 1-3 specialties</u>	<u>\$ 531</u>
<u>Category D</u>	<u>10,001-25,000 tests, 4 or more specialties</u>	<u>\$ 559</u>
<u>Category E</u>	<u>25,001-50,000 tests</u>	<u>\$ 787</u>
<u>Category F</u>	<u>50,001-75,000 tests</u>	<u>\$1,254</u>
<u>Category G</u>	<u>75,001-100,000 tests</u>	<u>\$1,722</u>
<u>Category H</u>	<u>100,001-500,000 tests</u>	<u>\$2,227</u>
<u>Category I</u>	<u>500,001-1,000,000 tests</u>	<u>\$6,428</u>
<u>Category J</u>	<u>&gt; 1,000,000 tests</u>	<u>\$8,168</u>
	Follow-up survey for deficiencies	Direct staff time
	Complaint investigation	Direct staff time

(2) The following programs are excluded from fee charges when performing only waived hematocrit or hemoglobin testing for nutritional evaluation and food distribution purposes:

- (a) Women, infant and children programs (WIC); and
- (b) Washington state migrant council.

**WSR 02-09-029  
PROPOSED RULES  
BOARD OF TAX APPEALS**  
[Filed April 9, 2002, 3:32 p.m.]

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

Title of Rule: WAC 456-09-950 and 456-10-750 Final decision—Precedential decisions.

Purpose: The purpose of the amendments is to inform everyone who deals with the board how the board will consider its own decisions for purposes of deciding cases.

Statutory Authority for Adoption: RCW 82.03.170.

Summary: These proposed amendments to WAC 456-09-950 and 456-10-750 inform and provide notice to all who come before the Board of Tax Appeals regarding which decisions of the board are considered precedential and binding in accordance with the legal doctrine of *stare decisis*, and which decisions are considered merely persuasive.

Reasons Supporting Proposal: The board has treated decisions as precedential in the past, but has not clearly informed all who deal with the board as to the basis for that

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determination. These proposed rule amendments will put all parties on an equal footing relative to use of board decisions.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Richard A. Virant, 910 5th Avenue S.E., Olympia, WA 98504-0915, (360) 753-5446.

Name of Proponent: Board of Tax Appeals, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The proposed amendments to the rules make it clear to all, which decisions the board considers to be precedential and binding, and which decisions are merely persuasive. All final decisions signed by at least two board members are precedential and binding in accordance with the legal doctrine of *stare decisis*. All other decisions issued by the board are merely persuasive authority. The purpose of the proposed amendments is to inform everyone who deals with the board how the board will consider its own decisions for purposes of deciding cases. The proposed amendments should bring more consistency and reliability to the use of the board's decisions by those who appear before it and/or cite the board's decisions and also to the board's decision-making processes.

Proposal Changes the Following Existing Rules: The proposed amendments add new subsections that clarify which decisions of the board are considered precedential and binding in accordance with the legal doctrine of *stare decisis*, and which decisions are considered merely persuasive.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules are exempt from the statute because the rules are procedural in nature and have no significant impact on business or industry.

RCW 34.05.328 does not apply to this rule adoption. The proposed amendments are exempt from RCW 34.05.328 by RCW 34.05.328 (5)(b)(iv) which states that this section does not apply to procedural rules that "clarify language of a rule without changing its effect."

Hearing Location: Board of Tax Appeals, 910 5th Avenue S.E., Olympia, WA 98504-0915, on June 13, 2002, at 10 a.m.

Assistance for Persons with Disabilities: Contact Susan Riddle by May 24, 2002, voice or TDD (360) 753-5446.

Submit Written Comments to: Board of Tax Appeals, P.O. Box 40915, Olympia, WA 98504-0915, fax (360) 586-9020, by May 31, 2002.

Date of Intended Adoption: June 13, 2002.

April 8, 2002

R. A. Virant  
Executive Director

AMENDATORY SECTION (Amending Order 89-02, filed 5/2/89)

**WAC 456-09-950 Final decision—Precedential decisions.** (1) When an appeal has been heard or the record considered by a majority of the board, a final decision may be adopted which shall contain findings and conclusions as to each contested issue of fact and law.

(2) All final decisions signed by at least two members of the board are precedential and binding in accordance with the legal doctrine of *stare decisis*.

(3) All other decisions issued by the board or any hearing officer may be cited to the board and may be considered by the board or any hearing officer as persuasive, but nonbinding, authority.

AMENDATORY SECTION (Amending Order 89-03, filed 5/2/89)

**WAC 456-10-750 Final decision—Precedential decisions.** (1) When an appeal has been heard or the record considered by a majority of the board, a final decision may be adopted which shall contain findings and conclusions as to each contested issue of fact and law.

(2) All final decisions signed by at least two members of the board are precedential and binding in accordance with the legal doctrine of *stare decisis*.

(3) All other decisions issued by the board or any hearing officer may be cited to the board and may be considered by the board or any hearing officer as persuasive, but nonbinding, authority.

WSR 02-09-038

PROPOSED RULES

BELLEVUE COMMUNITY COLLEGE

[Filed April 10, 2002, 4:30 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 02-03-105.

Title of Rule: Withholding services and refunds for outstanding debts and financial obligation.

Purpose: These amendments clarify for students who have outstanding debts with Bellevue Community College that services and refunds will be withheld from them until they satisfy their obligations with the college.

Other Identifying Information: WAC 132H-122-020 and 132H-160-190.

Statutory Authority for Adoption: RCW 28B.50.140.

Summary: The two amendments to WAC 132H-122-020 Withholding services for outstanding debts and 132H-160-190 are being amended to more clearly state that the student has an obligation to request information from the college as to why services are being denied when they have an outstanding debt. It also identifies bankruptcy as a reason for discharging the student's debt.

Reasons Supporting Proposal: The proposed amendments clarify the rules and add bankruptcy as a legitimate reason to discharge a student's debt.

Name of Agency Personnel Responsible for Drafting and Implementation: Tika Esler, B125, (425) 564-2206; and Enforcement: Mary Hansen, Lincoln Center, (425) 564-4250.

Name of Proponent: Bellevue Community College, public.

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

Explanation of Rule, its Purpose, and Anticipated Effects: These amendments will clarify that services or refunds will be withheld when a student does not discharge his/her debt to Bellevue Community College. It also places the onus on the student to inquire in writing if he/she needs an explanation as to why services or a refund are being withheld. The amendments add bankruptcy as a legitimate reason for the college to discharge the student's debt.

Proposal Changes the Following Existing Rules: See above.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule has no impact on small business.

RCW 34.05.328 does not apply to this rule adoption. This rule applies only to internal college operations.

Hearing Location: Bellevue Community College, 3000 Landerholm Circle S.E., Room D104, Bellevue, WA 98007-6484, on May 24, 2002, at 9:00 a.m.

Assistance for Persons with Disabilities: Contact Susan Gjølmesli by May 21, 2002, TDD (425) 564-4110, or (425) 564-2498.

Submit Written Comments to: Elise Erickson, Bellevue Community College, Room A201, 3000 Landerholm Circle S.E., Bellevue, WA 98007-6484, fax (425) 564-2261, by May 21, 2002.

Date of Intended Adoption: June 18, 2002.

April 8, 2002

Elise J. Erickson  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 92-19-054, filed 9/10/92)

**WAC 132H-122-020 Withholding services for outstanding debts.** (1) Where there is an outstanding debt owed to the college and upon ((Upon)) receipt of a written request inquiring as to the reason(s) for services or refund being withheld ((where there is an outstanding debt owed to the college from the requesting person;)) the college shall reply in writing to ((notify)) the person((-in writing by certified mail to the last known address;)) that the services and/or refund will not be provided. The college will include the amount of the ((since there is an)) outstanding debt, and further explain that until that debt is satisfied((-;)) (or stayed by bankruptcy proceedings or discharged in bankruptcy), no such services and/or refund will be provided to the individual.

(a) The notice shall include a statement to inform the ((college)) individual that he or she has a right to a hearing before a person designated by the president of the college if he or she believes that no debt is owed. The notice shall state that the request for the hearing must be made within twenty-one days from the date of notification.

(2) Upon receipt of a timely request for a hearing, the person designated by the president shall have the records and files of the college available for review and, at that time, shall hold a brief adjudicative proceeding concerning whether the individual owes or owed any outstanding debts to the institu-

tion. After the brief adjudicative proceeding, a decision shall be rendered by the president's designee indicating whether the college is correct in withholding services and/or applying off-set for the outstanding debt.

(a) If the outstanding debt is found to be owed by the individual involved, no further services shall be provided.

(b) Notice of the decision shall be sent to the individual within five days after the hearing.

**AMENDATORY SECTION** (Amending Order 14, filed 4/18/73)

**WAC 132H-160-190 Financial obligation.** Community College District VIII board of trustees has authorized the registrar to place a hold on the records of any student who has a financial obligation due the college. Until this financial obligation is cleared (or stayed by bankruptcy proceedings or discharged in bankruptcy), the college((-;)) 1) Will not release the student's record or any information based upon the record((-;)); 2) will not prepare transcript(s)((-;)); and 3) will deny registration for a subsequent quarter as well as graduation from the college.

WSR 02-09-043

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed April 12, 2002, 1:07 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 01-10-131.

Title of Rule: Pediatric education requirements (PER) for designated trauma care services and pediatric trauma care services, WAC 246-976-500, 246-976-510, 246-976-560, 246-976-600, 246-976-610, 246-976-650, 246-976-720, 246-976-730, 246-976-770, 246-976-780, 246-976-810, 246-976-820 and 246-976-885, and new sections WAC 246-976-886 and 246-976-887.

Purpose: The purpose of the proposed rule change is to ensure that all level I, II, III, and IV designated trauma care facilities and all level I, II, and III designated pediatric trauma care facilities have the appropriate pediatric education pertinent to the level of care that they provide and relevant to each of the various types of providers.

Statutory Authority for Adoption: Chapter 70.168 RCW.

Statute Being Implemented: Chapter 70.168 RCW.

Summary: The current rule requires pediatric advanced life support (PALS) or equivalent training. This amendment will add two additional training methods for clinical personnel to obtain PER. There would now be three ways for clinical personnel in all designated trauma services to obtain PER.

Reasons Supporting Proposal: The amendments create a set of pediatric education requirements that are more relevant to the various types of providers and which will better meet the intent of the statute (chapter 70.168 RCW).

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Scott Hogan, 20435 72nd

Avenue South, Suite 200, Mailstop TB-33A, Kent, WA 98032, (253) 395-7009.

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: The current rule requires PALS or equivalent training. This amendment will add two additional training methods for clinical personnel to obtain PER. There would now be three ways for clinical personnel in all designated trauma services to obtain PER.

The purpose of the proposed rule change is to ensure that all level I, II, III, and IV designated trauma care facilities and all level I, II, and III designated pediatric trauma care facilities have the appropriate pediatric education pertinent to the level of care that they provide and relevant to each of the various types of providers.

Pediatric trauma care is an important piece of the trauma system. With limited number and geographic distribution of children's hospitals, all injured pediatric patients cannot be cared for in these institutions; therefore, other institutions must also be available to provide this resource to the communities. By establishing pediatric education requirements that are pertinent to the level of care that the facility provides and relevant to each of the various types of providers we have established an efficient and well-coordinated statewide emergency medical services and trauma care system.

Proposal Changes the Following Existing Rules: In addition to the current requirement of a one-time completion of PALS, or a substantially equivalent training course, providers will now be able to choose from two additional methods for completing their PER. These two additional methods include (1) current certification in advanced trauma life support (ATLS) or (2) documentation of contact hours of pediatric trauma education during each designation period (five hours for nonpediatric designated facilities or seven hours for designated pediatric facilities).

Two new sections of WAC have been created (WAC 246-976-886 and 246-976-887) that clearly outline what methods may be used for completing the PER. WAC 246-976-886 outlines the PER methods for nonpediatric designated facilities and 246-976-887 outlines the methods for pediatric designated facilities. These WAC sections are referenced throughout WAC 246-976-500, 246-976-510, 246-976-560, 246-976-600, 246-976-610, 246-976-650, 246-976-720, 246-976-730, 246-976-770, 246-976-780, 246-976-810, 246-976-820, and 246-976-885 Designation of trauma care facilities.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule has been reviewed and analyzed, and it has been determined that no small business economic impact statement is required. The proposed rule amendment would reduce costs by expanding the options available for pediatric education requirements. To obtain a copy of the analysis contact Tami Schweppe, DOH, EMS and Trauma, P.O. Box 47853, Olympia, WA 98504-7853, (360) 705-6748, fax (360) 705-6706, e-mail tami.schweppe@doh.wa.gov.

RCW 34.05.328 applies to this rule adoption. The proposed rule is a significant legislative rule because it establishes, alters, or revokes any qualification or standard for the issuance, suspension, or revocation of a license or permit. In this instance it is the recognition as a designated pediatric or nonpediatric trauma care facility.

Hearing Location: Department of Health, Office of Emergency Medical and Trauma Prevention, Training Room, 2725 Harrison Avenue N.W., Suite 500, Olympia, WA 98504-7853, on Wednesday, May 22, 2002, at 9:00 a.m.

Assistance for Persons with Disabilities: Contact Tami Schweppe by Wednesday, May 15, 2002, TDD (800) 833-6388, or (360) 705-6748.

Submit Written Comments to: Tami Schweppe, P.O. Box 47853, Olympia, WA 98504-7853, fax (360) 705-6706, by Wednesday, May 15, 2002.

Date of Intended Adoption: May 22, 2002.

April 12, 2002

Mary C. Selecky  
Secretary

**AMENDATORY SECTION** (Amending WSR 98-04-038, filed 1/29/98, effective 3/1/98)

**WAC 246-976-500 Designation standards for facilities providing level I trauma care service—Administration and organization.** A facility with a designated level I trauma care service shall have:

(1)(a) Organization and direction by a general surgeon with special competence in care of the injured. The service may have as codirector another general surgeon with special competence in care of the injured;

(b) Ongoing coordination of the trauma care service by a registered nurse with special competence in care of the injured;

(c) A multidisciplinary trauma committee chaired by the trauma service director with input to hospital management, including:

(i) An emergency physician;

(ii) An emergency department registered nurse;

(iii) A general surgeon with special competence in trauma care;

(iv) A neurosurgeon;

(v) An orthopaedic surgeon;

(vi) A pediatrician;

(vii) An anesthesiologist;

(viii) The physician director of critical care service;

(ix) The trauma care service nurse coordinator;

(x) Critical care registered nurse; and

(xi) The trauma rehabilitation coordinator;

(d) The multidisciplinary trauma committee shall adopt an approved method to determine activation of the trauma team, as described in WAC 246-976-870.

(e) A trauma team to provide initial evaluation, resuscitation and treatment.

(i) The team shall be organized and directed by a general surgeon with special competence in care of the injured, and who assumes responsibility for coordination of overall care

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of the trauma patient. The surgeon shall be at least a ~~((post-graduate))~~ postgraduate year four resident;

(ii) All members of the team, including the surgeon, shall be available within five minutes of notification of team activation;

(iii) The team shall include an emergency physician who is:

(A) Responsible for activating the team, using an approved method as defined in WAC 246-976-870; and

(B) Responsible for providing team leadership and care for the trauma patient until the arrival of the general surgeon in the resuscitation area;

(iv) The trauma care service shall identify all other members of the team;

(f) Specific delineation of trauma surgery privileges by the medical staff.

(2) An emergency department with written standards of care to ensure immediate and appropriate care for adult and pediatric trauma patients.

(3) A surgery department, including:

(a) General surgery;

(b) A neurosurgical service. Coverage shall be available within five minutes of notification of team activation. Coverage shall be provided by:

(i) A neurosurgeon; or

(ii) A surgeon who has been judged competent by the neurosurgical consultants on staff to initiate measures to stabilize the patient, and to initiate diagnostic procedures, with a board-certified neurosurgeon on-call and available within thirty minutes of notification of team activation.

(c) The following surgical services on-call and available within thirty minutes of request by the trauma team leader:

(i) Cardiac surgery;

(ii) Gynecologic surgery;

(iii) Hand surgery;

(iv) Microsurgery;

(v) Obstetric surgery;

(vi) Ophthalmic surgery;

(vii) Oral/maxillofacial or otorhinolaryngologic surgery;

(viii) Orthopaedic surgery;

(ix) Pediatric surgery;

(x) Plastic surgery;

(xi) Thoracic surgery;

(xii) Urologic surgery; and

(xiii) Vascular surgery.

(4) Nonsurgical specialties including:

(a) Anesthesiology, with an anesthesiologist who ~~((is))~~:

(i) Is ACLS trained, except this requirement shall not apply to a physician board-certified in anesthesiology;

(ii) ~~((PALS or approved equivalent trained;))~~ Has completed the pediatric education requirement (PER) as defined in WAC 246-976-886;

(iii) Is available within five minutes of notification of team activation;

(b) A radiologist on-call and available for patient service within twenty minutes of notification of team activation;

(c) The following services on-call and available for patient consultation or management:

(i) Cardiology;

(ii) Gastroenterology;

(iii) Hematology;

(iv) Infectious disease specialists;

(v) Internal medicine;

(vi) Nephrology;

(vii) Neurology;

(viii) Pathology;

(ix) Pediatrics; and

(x) Pulmonology.

(5) Written policy and procedures for access to ancillary services, including:

(a) Chemical dependency services;

(b) Child and adult protection services;

(c) Clergy or pastoral care;

(d) Nutritionist services;

(e) Occupational therapy services;

(f) Pharmacy services, with a pharmacist in-house;

(g) Physical therapy services;

(h) Rehabilitation services;

(i) Social services;

(j) Psychological services; and

(k) Speech therapy services.

(6) A pediatric trauma policy that:

(a) Provides for initial stabilization and resuscitation of pediatric trauma patients, including emergency department and surgical interventions; and

(b) If the facility is not designated as a pediatric trauma care service, identifies and establishes its scope of pediatric trauma care, including but not limited to:

(i) Criteria for admission of pediatric patients;

(ii) Written transfer guidelines and agreements for pediatric trauma patients requiring critical care services.

(7) A written policy and procedures to divert patients to other designated trauma care services. The policy shall be based on criteria which reflect the service's ability to resuscitate and stabilize each patient at a particular time.

(8) A trauma registry as required in WAC 246-976-430.

(9) A quality assurance program in accordance with WAC 246-976-880; and cooperate with regional trauma care quality assurance programs throughout the state established pursuant to WAC 246-976-910.

(10) Interfacility transfer guidelines and agreements consistent with WAC 246-976-890.

**AMENDATORY SECTION** (Amending WSR 98-04-038, filed 1/29/98, effective 3/1/98)

**WAC 246-976-510 Designation standards for facilities providing level I trauma care service—Basic resources and capabilities.** A facility with a designated level I trauma care service shall have:

(1) An emergency department with:

(a) A physician director who:

(i)(A) Is board-certified in emergency medicine, surgery or other relevant specialty; or

(B) Has documented experience as director of an emergency department which has been previously recognized as a level I trauma center either by a regional entity or as verified by the Committee on Trauma of the American College of Surgeons;

(ii) Is ATLS and ACLS trained, except this requirement shall not apply to a physician board-certified in emergency medicine; and

(iii) ~~((Is PALS or approved equivalent trained))~~ Has completed the pediatric education requirement (PER) as defined in WAC 246-976-886, except that this requirement shall not apply to a physician board-certified in pediatric emergency medicine.

(b) Physicians who:

(i) Are board-certified in emergency medicine, or board-certified in a specialty and practicing emergency medicine as their primary practice with special competence in care of trauma patients; (this requirement may be met by a surgical resident post graduate year two who is ATLS, and ACLS trained, has completed the PER as defined in WAC 246-976-886, and ~~((PALS or approved equivalent trained,))~~ is working under the direct supervision of the attending emergency physician, until the arrival of the surgeon to assume leadership of the trauma team);

(ii) Are available within five minutes of patient's arrival in the emergency department;

(iii) Are ATLS and ACLS trained, except this requirement shall not apply to a physician board-certified in emergency medicine;

(iv) ~~((Are PALS or approved equivalent trained))~~ Have completed the PER as defined in WAC 246-976-886, except this requirement shall not apply to a physician board-certified in pediatric emergency medicine; and

(v) Are designated as members of the trauma team;

(c) Registered nurses who:

(i) Are ACLS trained;

(ii) ~~((Are PALS or approved equivalent trained,))~~ Have completed the PER as defined in WAC 246-976-886;

(iii) Have successfully completed a trauma life support course as defined in WAC 246-976-885; and

(iv) Are in the emergency department and available within five minutes of patient's arrival in the emergency department;

(d) An area designated for adult and pediatric resuscitation, with equipment for resuscitation and life support of pediatric and adult trauma patients, including equipment described in WAC 246-976-620;

(e) Routine radiological capabilities by a technician available within five minutes of notification of team activation.

(2) A surgery department including:

(a) An attending general surgeon available within five minutes of notification of team activation, except as provided in (b) of this subsection. The attending surgeon shall:

(i) Provide trauma team leadership upon arrival in the resuscitation area;

(ii) Be board-certified;

(iii) Have trauma surgery privileges as delineated by the medical staff;

(b) A ~~((post-graduate))~~ postgraduate year four or above surgical resident may initiate evaluation and treatment upon the patient's arrival in the emergency department until the arrival of the attending surgeon. In this case the attending surgeon shall be available within twenty minutes of notification of team activation.

(c) All general surgeons and surgical residents who are responsible for care and treatment of trauma patients shall ~~((be trained in))~~:

(i) Be trained in ATLS and ACLS, except this requirement shall not apply to a physician board-certified in surgery; and

(ii) ~~((PALS or approved equivalent,))~~ Have completed the PER as defined in WAC 246-976-886.

(3) An operating room available within five minutes of notification of team activation, with:

(a) A registered nurse or designee of the operating room staff who is available within five minutes of notification of team activation to open the operating room, and to coordinate responsibilities to ensure the operating room is ready for surgery upon arrival of the patient, the surgeon, and the anesthesiologist;

(b) A written policy providing for mobilization of additional surgical teams for trauma patients; and

(c) Instruments and equipment appropriate for pediatric and adult surgery, including equipment described in WAC 246-976-620.

(4) A post anesthetic recovery unit with:

(a) Essential personnel, including at least one registered nurse available twenty-four hours a day;

(b) Nurses ACLS trained;

(c) Nurses ~~((PALS or approved equivalent trained,))~~ who have completed the PER as defined in WAC 246-976-886; and

(d) Appropriate monitoring and resuscitation equipment.

(5) A critical care service with:

(a) A medical director of the surgical critical care unit who is:

(i) Board-certified in surgery with special competence in critical care;

(ii) ATLS and ACLS trained, except this requirement shall not apply to a physician board-certified in surgery;

(iii) Responsible for coordinating with the attending staff for the care of trauma patients, including:

(A) Development and implementation of policies;

(B) Coordination of medical care;

(C) Determination of patient isolation;

(D) Authority for patient placement decisions;

(E) Equipment;

(F) Coordination of staff education;

(G) Coordination of statistics;

(H) Identification of criteria for reviewing quality of care on all critical care unit trauma patients, in conjunction with the trauma service medical director;

(b) A physician with special competence in critical care available in the critical care unit within five minutes of notification;

(c) A physician directed code team;

(d) Critical care unit registered nurses with special competence in trauma care, who:

(i) Are ACLS trained; and

(ii) Have successfully completed a trauma life support course as defined in WAC 246-976-885;

(e) If the facility is not designated as a pediatric trauma care service, have a written transfer agreement and guidelines for pediatric trauma patients;

- (f) Equipment as described in WAC 246-976-620.
- (6) Respiratory therapy available within five minutes of notification.
- (7) A clinical laboratory technologist available within five minutes of notification;
- (8) Clinical laboratory services, including:
- (a) Standard analysis of blood, urine, and other body fluids;
  - (b) Coagulation studies;
  - (c) Blood gases and pH determination;
  - (d) Serum and urine osmolality;
  - (e) Microbiology;
  - (f) Serum alcohol and toxicology determination;
  - (g) Drug screening; and
  - (h) Microtechnique.
- (9) Blood and blood-component services, including:
- (a) Blood and blood components available from in-house or through community services, to meet patient needs;
  - (b) Noncrossmatched blood available on patient arrival in the emergency department;
  - (c) Blood typing and cross-matching;
  - (d) Policies and procedures for massive transfusion;
  - (e) Autotransfusion; and
  - (f) Blood storage capability.
- (10) Radiological services, including:
- (a) A technician available within five minutes of notification, able to perform the following:
    - (i) Computerized tomography; and
    - (ii) Routine radiological capabilities;
  - (b) A technician on-call and available within twenty minutes of notification, able to perform the following:
    - (i) Angiography of all types;
    - (ii) Sonography; and
    - (iii) Nuclear scanning.
- (11) Acute dialysis capability, or written transfer agreements.
- (12)(a) A physician-directed burn unit staffed by nursing personnel trained in burn care; and is equipped to care for extensively burned patients; or
- (b) Written transfer guidelines in accordance with the guidelines of the American Burn Association, and transfer agreements for burn care.
- (13) The ability to manage acute head and/or spinal cord injuries. Early transfer to an appropriate designated trauma rehabilitation service shall be considered.
- (14) A trauma rehabilitation coordinator to facilitate the trauma patient's access to rehabilitation services.
- (15)(a) A designated trauma rehabilitation service; or
- (b) Written agreements to transfer patients to a designated trauma rehabilitation service when medically feasible.
- (16) A heli-stop, landing zone, or airport located close enough to permit the facility to receive or transfer patients by fixed-wing or rotary-wing aircraft.

**AMENDATORY SECTION** (Amending WSR 98-04-038, filed 1/29/98, effective 3/1/98)

**WAC 246-976-550 Designation standards for facilities providing level II trauma care service—Administra-**

**tion and organization.** A facility with a designated level II trauma care service shall have:

(1)(a) Organization and direction by a general surgeon with special competence in care of the injured. The service may have as codirector another physician with special competence in care of the injured;

(b) Ongoing coordination of the trauma care service by a registered nurse with special competence in care of the injured;

(c) A multidisciplinary trauma committee chaired by the trauma service director, with input to hospital management, including:

(i) An emergency physician;

(ii) An emergency department registered nurse;

(iii) A general surgeon with special competence in trauma care;

(iv) A neurosurgeon;

(v) An orthopaedic surgeon;

(vi) A pediatrician;

(vii) An anesthesiologist;

(viii) The physician director of the critical care service;

(ix) The trauma care service nurse coordinator;

(x) A critical care registered nurse; and

(xi) The trauma rehabilitation coordinator;

(d) The multidisciplinary trauma committee shall adopt an approved method to determine activation of the trauma team, as described in WAC 246-976-870;

(e) A trauma team to provide initial evaluation, resuscitation and treatment.

(i) The team shall be organized and directed by a general surgeon with special competence in care of the injured, and who assumes responsibility for coordination of overall care of the trauma patient;

(ii) All members of the team, except the surgeon and anesthesiologist, shall be available within five minutes of notification of team activation;

(iii) The team shall include:

(A) An emergency physician who is:

(I) Responsible for activating the team, using an approved method as defined in WAC 246-976-870; and

(II) Responsible for providing team leadership and care for the trauma patient until the arrival of the general surgeon in the resuscitation area;

(B) A general surgeon on-call and available within twenty minutes of notification of team activation, who shall assume responsibility for patient care upon arrival in the resuscitation area;

(iv) The trauma care service shall identify all other members of the team;

(f) Specific delineation of trauma surgery privileges by the medical staff.

(2) An emergency department with written standards of care to ensure immediate and appropriate care for adult and pediatric trauma patients.

(3) A surgery department, including:

(a) General surgery;

(b) A neurosurgical service. Coverage shall be available within five minutes of notification of team activation. In-house coverage shall be provided by:

(i) A neurosurgeon; or  
 (ii) A surgeon or other physician who has been judged competent by the neurosurgical consultants on staff to initiate measures to stabilize the patient, and to initiate diagnostic procedures; with a surgeon with neurosurgical privileges on-call and available within thirty minutes of notification of team activation;

(c) The following surgical services on-call and available within thirty minutes of request by the trauma team leader:

- (i) Gynecologic surgery;
- (ii) Hand surgery;
- (iii) Obstetric surgery;
- (iv) Ophthalmic surgery;
- (v) Oral/maxillofacial or otorhinolaryngologic surgery;
- (vi) Orthopaedic surgery;
- (vii) Plastic surgery;
- (viii) Thoracic surgery;
- (ix) Urologic surgery; and
- (x) Vascular surgery.

(4) Nonsurgical specialties, including:

(a) Anesthesiology, with an anesthesiologist who ((is):

(i) Is ACLS trained, except this requirement shall not apply to a physician board-certified in anesthesiology;

(ii) ~~((PALS or approved equivalent trained; and))~~ Has completed the pediatric education requirement (PER) as defined in WAC 246-976-886; and

(iii) Is on-call and available within twenty minutes of notification of team activation;

(b) A radiologist on-call and available for patient service within twenty minutes of notification of team activation; and

(c) The following services on-call and available for patient consultation or management:

- (i) Cardiology;
- (ii) Gastroenterology;
- (iii) Hematology;
- (iv) Infectious disease specialists;
- (v) Internal medicine;
- (vi) Nephrology;
- (vii) Neurology;
- (viii) Pathology;
- (ix) Pediatrics; and
- (x) Pulmonology.

(5) Written policy and procedures for access to ancillary services, including:

- (a) Chemical dependency services;
- (b) Child and adult protection services;
- (c) Clergy or pastoral care;
- (d) Nutritionist services;
- (e) Occupational therapy services;
- (f) Pharmacy;
- (g) Physical therapy services;
- (h) Rehabilitation services;
- (i) Social services; and
- (j) Speech therapy services.

(6) A pediatric trauma policy that:

(a) Provides for initial stabilization and resuscitation of pediatric trauma patients, including emergency department and surgical interventions; and

(b) If the facility is not designated as a pediatric trauma care service, identifies and establishes its scope of pediatric trauma care, including but not limited to:

(i) Criteria for admission of pediatric patients;

(ii) Written transfer guidelines and agreements for pediatric trauma patients requiring critical care services.

(7) A written policy and procedures to divert patients to other designated trauma care services. The policy shall be based on criteria which reflect the service's ability to resuscitate and stabilize each patient at a particular time.

(8) A trauma registry as required in WAC 246-976-430.

(9) A quality assurance program in accordance with WAC 246-976-880; and cooperate with regional trauma care quality assurance programs throughout the state established pursuant to WAC 246-976-910.

(10) Interfacility transfer guidelines and agreements consistent with WAC 246-976-890.

AMENDATORY SECTION (Amending WSR 98-19-107, filed 9/23/98, effective 10/24/98)

**WAC 246-976-560 Designation standards for facilities providing level II trauma care service—Basic resources and capabilities.** A facility with a designated level II trauma care service shall have:

(1) An emergency department, with:

(a) A physician director who ((is):

(i) Is board-certified in emergency medicine or other relevant specialty;

(ii) Is ATLS and ACLS trained, except this requirement shall not apply to a physician board-certified in emergency medicine; and

(iii) ~~((PALS or approved equivalent trained))~~ Has completed the pediatric education requirement (PER) as defined in WAC 246-976-886, except that this requirement shall not apply to a physician board-certified in pediatric emergency medicine.

(b) Physicians who:

(i) Are board-certified in emergency medicine, or board-certified in a specialty and practicing emergency medicine as their primary practice with special competence in care of trauma patients;

(ii) Are available within five minutes of patient's arrival in the emergency department;

(iii) Are ATLS and ACLS trained, except this requirement shall not apply to a physician board-certified in emergency medicine;

(iv) ~~((Are PALS or approved equivalent trained))~~ Have completed the PER as defined in WAC 246-976-886, except this requirement shall not apply to a physician board-certified in pediatric emergency medicine; and

(v) Are designated as members of the trauma team;

(c) Registered nurses who:

(i) Are ACLS trained;

(ii) ~~((Are PALS or approved equivalent trained;))~~ Have completed the PER as defined in WAC 246-976-886;

(iii) Have successfully completed a trauma life support course as defined in WAC 246-976-885; and

(iv) Are in the emergency department and available within five minutes of patient's arrival in the emergency department;

(d) An area designated for adult and pediatric resuscitation, with equipment for resuscitation and life support of pediatric and adult trauma patients, including equipment as described in WAC 246-976-620;

(e) Routine radiological capabilities by a technician available within five minutes of notification of team activation.

(2) A surgery department, including:

(a) An attending general surgeon on-call and available within twenty minutes of notification of team activation. The attending surgeon shall:

(i) Provide trauma team leadership upon arrival in the resuscitation area;

(ii) Be board-certified;

(iii) Have trauma surgery privileges as delineated by the medical staff; or

(b) A ~~((post-graduate))~~ postgraduate year four or above surgical resident may initiate evaluation and treatment upon the patient's arrival in the emergency department until the arrival of the attending surgeon. The attending surgeon shall be available within twenty minutes upon notification of team activation. The resident shall have ATLS training and ((PALS or approved equivalent training)) have completed the PER as defined in WAC 246-976-886;

(c) All general surgeons who are responsible for care and treatment of trauma patients shall ~~((be trained in))~~:

(i) Be trained in ATLS and ACLS, except this requirement shall not apply to a physician board-certified in surgery; and

(ii) ~~((PALS or approved equivalent.))~~ Have completed the PER as defined in WAC 246-976-886.

(3) An operating room available within five minutes of notification of team activation, with:

(a) A registered nurse or designee of the operating room staff who is available within five minutes of notification of team activation to open the operating room, and to coordinate responsibilities to ensure the operating room is ready for surgery upon arrival of the patient, the surgeon, and the anesthesiologist;

(b) Other essential personnel on-call and available within twenty minutes of notification of team activation;

(c) A written policy providing for mobilization of additional surgical teams for trauma patients; and

(d) Instruments and equipment appropriate for pediatric and adult surgery, including equipment as described in WAC 246-976-620.

(4) A post anesthetic recovery unit with:

(a) Essential personnel, including at least one registered nurse, on-call and available twenty-four hours a day;

(b) Nurses ACLS trained;

(c) Nurses ~~((PALS or approved equivalent trained; and))~~ who have completed the PER as defined in WAC 246-976-886; and

(d) Appropriate monitoring and resuscitation equipment.

(5) A critical care service, with:

(a) A medical director who is:

(i) Board-certified in surgery, internal medicine, or anesthesiology, with special competence in critical care; and

(ii) Responsible for coordinating with the attending staff for the care of trauma patients, including:

(A) Development and implementation of policies;

(B) Coordination of medical care;

(C) Determination of patient isolation;

(D) Authority for patient placement decisions;

(E) Equipment;

(F) Coordination of staff education;

(G) Coordination of statistics;

(H) Identification of criteria for reviewing quality of care on all critical care unit trauma patients, in conjunction with the trauma service medical director;

(b) A physician available in the critical care unit within five minutes of notification;

(c) A physician directed code team;

(d) Critical care unit registered nurses with special competence in trauma care, who:

(i) Are ACLS trained;

(ii) Have successfully completed a trauma life support course as defined in WAC 246-976-885;

(e) If the facility is not designated as a pediatric trauma care service, have a written transfer agreement and guidelines for pediatric trauma patients;

(f) Equipment as described in WAC 246-976-620.

(6) Respiratory therapy available within five minutes of notification.

(7) A clinical laboratory technologist available within five minutes of notification.

(8) Clinical laboratory services, including:

(a) Standard analysis of blood, urine, and other body fluids;

(b) Coagulation studies;

(c) Blood gases and pH determination;

(d) Serum and urine osmolality;

(e) Microbiology;

(f) Serum alcohol and toxicology determination;

(g) Drug screening; and

(h) Microtechnique.

(9) Blood and blood-component services, including:

(a) Blood and blood components available from in-house or through community services, to meet patient needs;

(b) Noncrossmatched blood available on patient arrival in emergency department;

(c) Blood typing and cross-matching;

(d) Policies and procedures for massive transfusion;

(e) Autotransfusion; and

(f) Blood storage capability.

(10) Radiological services, including:

(a) A technician available within five minutes of notification, able to perform routine radiological procedures;

(b) A technician on-call and available within twenty minutes of notification, able to perform the following:

(i) Computerized tomography;

(ii) Angiography of all types; and

(iii) Sonography.

(11) Acute dialysis capability, or written transfer agreements.

(12)(a) A physician-directed burn unit staffed by nursing personnel trained in burn care; and equipped to care for extensively burned patients; or

(b) Written transfer guidelines in accordance with the guidelines of the American Burn Association, and transfer agreements for burn care.

(13)(a) The ability to manage acute head and/or spinal cord injuries or;

(b) Have written transfer guidelines and agreements for head and spinal cord injuries.

(c) Early transfer to an appropriate designated trauma rehabilitation service shall be considered.

(14) A trauma rehabilitation coordinator to facilitate the trauma patient's access to rehabilitation services.

(15)(a) A designated trauma rehabilitation service; or

(b) Written agreements to transfer patients to a designated trauma rehabilitation service when medically feasible.

(16) A heli-stop, landing zone, or airport located close enough to permit the facility to receive or transfer patients by fixed-wing or rotary-wing aircraft.

**AMENDATORY SECTION** (Amending WSR 98-04-038, filed 1/29/98, effective 3/1/98)

**WAC 246-976-600 Designation standards for facilities providing level III trauma care service—Administration and organization.** A facility with a designated level III trauma care service shall have:

(1)(a) Organization and direction by a general surgeon or other physician with special competence in care of the injured. The service may have as codirector another physician with special competence in care of the injured;

(b) Ongoing coordination of the trauma care service by a registered nurse with special competence in care of the injured;

(c) A multidisciplinary trauma committee chaired by the trauma service director, with input to hospital management, including:

(i) An emergency physician;

(ii) An emergency department registered nurse;

(iii) A general surgeon with special competence in trauma care;

(iv) An orthopaedic surgeon;

(v) A pediatrician;

(vi) An anesthesiologist;

(vii) The physician director of the critical care service;

(viii) The trauma care service nurse coordinator;

(ix) A critical care registered nurse; and

(x) The trauma rehabilitation coordinator.

(d) The multidisciplinary trauma committee shall adopt an approved method to determine activation of the trauma team, as described in WAC 246-976-870.

(e) A trauma team to provide initial evaluation, resuscitation and treatment.

(i) The team shall be organized and directed by a general surgeon with special competence in care of the injured, and who assumes responsibility for coordination of overall care of the trauma patient;

(ii) All members of the team, except the surgeon and anesthesiologist or CRNA (if a member of the team), shall be available within five minutes of notification of team activation;

(iii) The team shall include:

(A) An emergency physician who is:

(I) Responsible for activating the trauma team, using an approved method as defined in WAC 246-976-870; and

(II) Responsible for providing team leadership and care for the trauma patient until the arrival of the general surgeon in the resuscitation area;

(B) A general surgeon on-call and available within thirty minutes of notification of team activation, who shall assume responsibility for patient care upon arrival in the resuscitation area;

(iv) The trauma care service shall identify all other members of the team.

(f) Specific delineation of trauma surgery privileges by the medical staff.

(2) An emergency department with written standards of care to ensure immediate and appropriate care for adult and pediatric trauma patients.

(3) A surgery department, including:

(a) General surgery;

(b)(i) Written transfer guidelines and agreements for head and spinal cord injuries; or

(ii) Neurosurgery, with a neurosurgeon on-call and available within thirty minutes of notification of team activation.

(c)(i) Have written transfer guidelines and procedures for patients requiring orthopaedic surgery; or

(ii) Orthopaedic surgery, with an orthopaedic surgeon on-call and available within thirty-minutes of request by the trauma team leader.

(4) Nonsurgical specialties, including:

(a) Anesthesiology, with an anesthesiologist or certified registered nurse anesthetist who ~~(is)~~:

(i) Is ACLS trained, except this requirement shall not apply to a physician board-certified in anesthesiology;

(ii) ~~((PALS or approved equivalent trained;))~~ Has completed the pediatric education requirement (PER) as defined in WAC 246-976-886;

(iii) Is on-call and available within thirty minutes of notification of team activation;

(b) A radiologist on-call and available for patient service within thirty minutes of notification of team activation.

(c) The following services on-call and available for patient consultation or management:

(i) Internal medicine; and

(ii) General pediatrics, with board-certified pediatricians available for pediatric patient consultation or management.

(5) Written policy and procedures for access to ancillary services, including:

(a) Chemical dependency services;

(b) Child and adult protection services;

(c) Clergy or pastoral care;

(d) Nutritionist services;

(e) Occupational therapy services;

(f) Pharmacy services;

(g) Physical therapy services;

(h) Rehabilitation services;

(i) Social services.

(6) A pediatric trauma policy that:

(a) Provides for initial stabilization and resuscitation of pediatric trauma patients including emergency department and surgical interventions; and

(b) If the facility is not designated as a pediatric trauma care service, identifies and establishes its scope of pediatric trauma care, including but not limited to:

(i) Criteria for admission of pediatric patients;

(ii) Written transfer guidelines and agreements for pediatric trauma patients requiring critical care services.

(7) A written policy and procedure to divert patients to other designated trauma care services. The policy shall be based on criteria which reflect the service's ability to resuscitate and stabilize each patient at a particular time.

(8) A trauma registry as required in WAC 246-976-430.

(9) A quality assurance program in accordance with WAC 246-976-880; and cooperate with regional trauma care quality assurance programs throughout the state established pursuant to WAC 246-976-910.

(10) Interfacility transfer guidelines and agreements consistent with WAC 246-976-890.

**AMENDATORY SECTION** (Amending WSR 98-19-107, filed 9/23/98, effective 10/24/98)

**WAC 246-976-610 Designation standards for facilities providing level III trauma care service—Basic resources and capabilities.** A facility with a designated level III trauma care service shall have:

(1) An emergency department with:

(a) A physician director who ~~((is))~~:

(i) Is board-certified in emergency medicine, or other relevant specialty;

(ii) Is ATLS and ACLS trained, except this requirement shall not apply to a physician board-certified in emergency medicine;

(iii) ~~((PALS or approved equivalent training))~~ Has completed the pediatric education requirement (PER) as defined in WAC 246-976-886, except this requirement shall not apply to a physician board-certified in pediatric emergency medicine.

(b) Physicians who:

(i) Have special competence in the resuscitation and care of trauma patients;

(ii) Are available within five minutes of patient's arrival in the emergency department;

(iii) Are ATLS and ACLS trained, except this requirement shall not apply to a physician board-certified in emergency medicine;

(iv) ~~((Are PALS or approved equivalent trained))~~ Have completed the PER as defined in WAC 246-976-886, except this requirement shall not apply to a physician board-certified in pediatric emergency medicine; and

(v) Are designated as members of the trauma team;

(c) Registered nurses who:

(i) Are ACLS trained;

(ii) ~~((Are PALS or approved equivalent trained))~~ Have completed the PER as defined in WAC 246-976-886;

(iii) Have successfully completed a trauma life support course as defined in WAC 246-976-885; and

(iv) Are in the emergency department and available within five minutes of patient's arrival in the emergency department;

(d) An area designated for adult and pediatric resuscitation, with equipment for resuscitation and life support of pediatric and adult trauma patients, including equipment as described in WAC 246-976-620.

(e) Routine radiological capabilities by a technician available within twenty minutes of notification of team activation.

(2) A surgery department, including an attending general surgeon who:

(a) Is on-call and available within thirty minutes of notification of team activation;

(b) Has general surgery privileges;

(c) Has ATLS and ACLS training, except this requirement shall not apply to a physician board-certified in surgery; and

(d) ~~((Has PALS or approved equivalent training;))~~ Has completed the PER as defined in WAC 246-976-886.

(3) An operating room available within five minutes of notification of team activation, with:

(a) A registered nurse or designee of the operating room staff who is available within five minutes of notification of team activation to open the operating room, and to coordinate responsibilities to ensure the operating room is ready for surgery upon arrival of the patient, the surgeon, and the anesthesiologist;

(b) Other essential personnel on-call and available within thirty minutes of notification of team activation;

(c) A written policy providing for mobilization of additional surgical teams for trauma patients; and

(d) Instruments and equipment appropriate for pediatric and adult surgery, including equipment as described in WAC 246-976-620.

(4) A post anesthetic recovery unit with:

(a) Essential personnel on-call and available twenty-four hours a day;

(b) Nurses ACLS trained;

(c) Nurses ~~((PALS or approved equivalent trained; and))~~ who have completed the PER as defined in WAC 246-976-886; and

(d) Appropriate monitoring and resuscitation equipment.

(5) A critical care service, with:

(a) A medical director who is:

(i) Board-certified in surgery, internal medicine, or anesthesiology, with special competence in critical care;

(ii) Responsible for coordinating with the attending staff for the care of trauma patients, including:

(A) Development and implementation of policies;

(B) Coordination of medical care;

(C) Determination of patient isolation;

(D) Authority for patient placement decisions;

(E) Equipment;

(F) Coordination of staff education;

(G) Coordination of statistics;

(H) Identification of criteria for reviewing quality of care on all critical care unit trauma patients, in conjunction with the trauma service medical director;

(b) A physician-directed code team;

(c) Critical care unit registered nurses with special competence in trauma care, who:

(i) Are ACLS trained; and

(ii) Have successfully completed a trauma life support course as defined in WAC 246-976-885;

(d) If the facility is not designated as a pediatric trauma care service, have a written transfer agreement and guidelines for pediatric trauma patients requiring critical care services;

(e) Equipment as described in WAC 246-976-620.

(6) Respiratory therapy on-call and available within thirty minutes of notification.

(7) A clinical laboratory technologist available within twenty minutes of notification.

(8) Clinical laboratory services, including:

(a) Standard analysis of blood, urine, and other body fluids;

(b) Coagulation studies;

(c) Blood gases and pH determination;

(d) Microbiology;

(e) Serum alcohol and toxicology determination; and

(f) Microtechnique.

(9) Blood and blood-component services, including:

(a) Blood and blood components available from in-house or through community services, to meet patient needs;

(b) Noncrossmatched blood available on patient arrival in emergency department;

(c) Blood typing and cross-matching;

(d) Policies and procedures for massive transfusion;

(e) Autotransfusion; and

(f) Blood storage capability.

(10) Radiological services with a technician on-call and available within twenty minutes of notification, able to perform:

(a) Routine radiological procedures; and

(b) Computerized tomography.

(11) Acute dialysis capability, or written transfer agreements.

(12) Ability to resuscitate and stabilize burn patients, and have written transfer guidelines in accordance with the guidelines of the American Burn Association, and transfer agreements for burn care.

(13) Ability to resuscitate and stabilize head and spinal cord injuries, and have:

(a) Written transfer guidelines and agreements for patients with head or spinal cord injuries; or

(b) Neurosurgery, with a neurosurgeon on-call and available within thirty minutes of request by the trauma team leader.

(c) Early transfer to an appropriate designated trauma rehabilitation service shall be considered.

(14) A trauma rehabilitation coordinator to facilitate the trauma patient's access to rehabilitation services.

(15)(a) A designated trauma rehabilitation service; or

(b) Written agreements to transfer patients to a designated trauma rehabilitation service when medically feasible.

(16)(a) A heli-stop, landing zone, or airport located close enough to permit the facility to receive or transport patients by fixed-wing or rotary-wing aircraft; or

(b) A written policy and procedures addressing the receipt of patients by air, and transfer of patients to other designated trauma services by ground or air.

AMENDATORY SECTION (Amending WSR 98-19-107, filed 9/23/98, effective 10/24/98)

**WAC 246-976-650 Designation standards for facilities providing level IV trauma care services—Basic resources and capabilities.** A facility with a designated level IV trauma care service shall have:

(1) An emergency department with:

(a) A physician with special competence in resuscitation, care and treatment of trauma patients, who ((is)):

(i) Is on-call and available within twenty minutes of notification;

(ii) Is responsible for activating trauma-response personnel;

(iii) Is ATLS and ACLS trained, except this requirement shall not apply to a physician board-certified in emergency medicine; and

(iv) ((~~PALS or approved equivalent trained~~)) Has completed the pediatric education requirement (PER) as defined in WAC 246-976-886, except this requirement shall not apply to a physician board-certified in emergency medicine or pediatric emergency medicine;

(b) A registered nurse in-house and available within five minutes of notification, who:

(i) Is ACLS trained;

(ii) Has successfully completed a trauma life support course as defined in WAC 246-976-885; and

(iii) ((~~Is PALS or approved equivalent trained~~)) Has completed the PER as defined in WAC 246-976-886;

(c) Basic emergency services including:

(i) Assessment of the patient's condition;

(ii) Determination of the nature and urgency of the patient's medical need, including the timing and place of care; and

(iii) Diagnosis and treatment of any life threatening condition, including procedures to minimize aggravation of the patient's condition during transport to another designated trauma care service;

(d) Equipment available for resuscitation and life support of adult and pediatric trauma patients, including:

(i) Airway control and ventilation equipment including:

(A) Airways, neonatal to adult;

(B) Laryngoscope, including curved and straight blades, sizes 0-4;

(C) Endotracheal tubes sizes 2.5 to 8.0, with stylets;

(D) Bag-valve-mask resuscitator sizes neonatal, child and adult;

(E) Sources of oxygen;

(F) Pulse oximeter with infant, child and adult probes; and

(G) Suction devices;

(ii) Cardiac monitoring devices, including:

- (A) Electrocardiograph;
- (B) Cardiac monitor;
- (C) Defibrillator with pediatric paddles;
- (iii) Standard intravenous fluids and administering devices, including:
- (A) Intravenous catheters, size 24g to 14g;
- (B) Intraosseous needles;
- (C) Infusion control device;
- (iv) Gastric lavage equipment;
- (v) Drugs and supplies necessary for adult and pediatric emergency care;
- (vi) Medication chart, tape, or other system to assure ready access to information on proper dose-per-kilogram for resuscitation drugs and equipment sizes for pediatric patients;
- (vii) Immobilization devices, including:
- (A) Cervical injury immobilization devices, adult and pediatric sizes;
- (B) Long-bone stabilization device; and
- (C) Backboard;
- (viii) Ability to provide thermal control equipment for:
- (A) Patient warming and cooling;
- (B) Blood warming and cooling;
- (ix) Other equipment:
- (A) Sterile surgical sets for procedures standard for emergency department;
- (B) Two-way radio linked with EMS/TC vehicles;
- (e) Routine radiological capabilities by a technician available within twenty minutes of notification of activation of trauma response personnel.
- (2) If the service's scope of trauma care defined under WAC 246-976-640(2) includes surgery and/or critical care capabilities, it shall have:
- (a) Staff, including:
- (i) A physician on-call and available within thirty minutes of notification of activation of trauma response personnel, who:
- (A) Has specific delineation of surgical privileges by the medical staff for resuscitation, stabilization and treatment of major trauma patients;
- (B) ~~((Is PALS or approved equivalent trained;~~
- ~~(C)))~~ Is ATLS and ACLS trained, except this requirement shall not apply to a physician board-certified in surgery; and
- ~~((D)))~~ (C) Is responsible for coordinating care and transfer of trauma patients;
- (ii) Anesthesiology, with an anesthesiologist or certified registered nurse anesthetist, who:
- (A) Has ACLS training, except this requirement shall not apply to a physician board-certified in anesthesiology; and
- (B) ~~((Has PALS or approved equivalent training; and~~
- ~~(C)))~~ Is on-call and available within thirty minutes of notification of activation of trauma response personnel;
- (b) An operating room with a registered nurse or designee of the operating room staff who is available within five minutes of notification of activation of trauma response personnel, to open the operating room, and to coordinate responsibilities to ensure the operating room is ready for surgery upon arrival of the patient, the surgeon, and the anesthesiologist;

- (c) Other essential personnel on-call and available within thirty minutes of notification;
- (d) The operating room shall have available:
- (i) Ability to provide thermal control equipment for:
- (A) Patient warming;
- (B) Blood and fluid warming;
- (ii) Radiological capabilities;
- (iii) Ability to provide endoscopes appropriate to trauma resuscitation; and
- (iv) Monitoring equipment;
- (e) Post anesthetic recovery services, with:
- (i) Essential personnel on-call and available twenty-four hours every day;
- (ii) Nurses ACLS trained;
- (iii) Appropriate monitoring and resuscitation equipment;
- (3)(a) A critical care unit which meets requirements for a designated level III trauma service as described in WAC 246-976-610; or
- (b) Written transfer guidelines and agreements with designated trauma care services for patients requiring critical care;
- (4) Clinical laboratory services available, for:
- (a) Standard analysis of blood, urine, and other body fluids;
- (b) Blood gases and pH determination;
- (5) Blood and blood-component services, including:
- (a) Blood and blood components available in-house or through community services, to meet patient needs in a timely fashion;
- (b) Policies and procedures for massive transfusions; and
- (c) Blood storage capability;
- (6) Acute dialysis capabilities, or have written transfer guidelines and agreements for dialysis service;
- (7) Ability to resuscitate and stabilize burn patients; and have written transfer guidelines in accordance with the guidelines of the American Burn Association, and agreements for burn care;
- (8) Ability to resuscitate and stabilize acute head and/or spinal cord injuries; and
- (a) Written transfer guidelines and agreements for patients with head or spinal cord injuries; or
- (b) Have neurosurgery, with a neurosurgeon on-call and available within thirty minutes of request by the emergency department physician; or
- (c) Early transfer to an appropriate designated trauma rehabilitation facility shall be considered;
- (9) A qualified person assigned to coordinate trauma rehabilitation activities and referrals;
- (10) A written plan addressing receipt and transfer of patients by fixed-wing and rotary-wing aircraft.

AMENDATORY SECTION (Amending WSR 98-19-107, filed 9/23/98, effective 10/24/98)

**WAC 246-976-720 Designation standards for facilities providing level I pediatric trauma care service—Administration and organization.** A facility with a designated level I pediatric trauma care service shall have:

(1)(a) Organization and direction by a general surgeon with special competence in care of the injured child. The service may have as codirector another physician or general surgeon with special competence in care of the injured child;

(b) Ongoing coordination of the trauma care service by a registered nurse with special competence in care of the injured child;

(c) A multidisciplinary trauma committee chaired by the trauma service director, with input to hospital management, including:

- (i) A pediatric emergency physician;
- (ii) An emergency department registered nurse;
- (iii) A pediatric surgeon or general surgeon with special competence in pediatric trauma care;
- (iv) A neurosurgeon;
- (v) An orthopaedic surgeon;
- (vi) An anesthesiologist;
- (vii) The physician director of pediatric critical care service;
- (viii) A pediatrician with special competence in critical care;
- (ix) The pediatric trauma care service nurse coordinator;
- (x) A pediatric critical care registered nurse;
- (xi) A pediatric intensivist; and
- (xii) The trauma rehabilitation coordinator;

(d) The multidisciplinary trauma committee shall adopt an approved method to determine activation of the trauma team, as described in WAC 246-976-870;

(e) A trauma team to provide initial evaluation, resuscitation and treatment.

(i) The team shall be organized and directed by a pediatric surgeon or general surgeon with special competence in care of the injured child, and who assumes responsibility for coordination of overall care of the pediatric trauma patient. The surgeon shall be at least a PGY4.

(ii) All members of the team, including the surgeon, shall be available within five minutes of notification of team activation.

(iii) The team shall include an emergency physician with special competence in pediatric care, who is:

(A) Responsible for activating the trauma team, using an approved method as defined in WAC 246-976-870; and

(B) Responsible for providing team leadership and care for the pediatric trauma patient until the arrival of the general surgeon with special competence in pediatric care in the resuscitation area.

(iv) The trauma care service shall identify all other members of the team.

(v) The team shall work in conjunction with a pediatric intensivist or pediatric emergency physician.

(f) Specific delineation of pediatric trauma surgery privileges by the medical staff.

(2) An emergency department with written standards of care to ensure immediate and appropriate care for pediatric trauma patients.

(3) A surgery department, including:

(a) General surgery with special competence in care of the pediatric trauma patient;

(b) A neurosurgical service. Coverage shall be available within five minutes of notification of team activation, provided by:

(i) A neurosurgeon; or

(ii) A surgeon who has been judged competent by the neurosurgical consultants on staff to initiate measures to stabilize the pediatric patient, and to initiate diagnostic procedures, with a board-certified neurosurgeon on call and available within thirty minutes of notification of team activation.

(c) The following surgical services on-call and available within thirty minutes of request by the trauma team leader:

- (i) Cardiac surgery;
- (ii) Gynecologic surgery;
- (iii) Hand surgery;
- (iv) Microsurgery;
- (v) Obstetric surgery;
- (vi) Ophthalmic surgery;
- (vii) Oral/maxillofacial or otorhinolaryngologic surgery;
- (viii) Orthopaedic surgery;
- (ix) Pediatric surgery;
- (x) Plastic surgery;
- (xi) Thoracic surgery;
- (xii) Urologic surgery; and
- (xiii) Vascular surgery.

(4) Nonsurgical specialties with special competence in pediatric care, including:

(a) Anesthesiology, with an anesthesiologist who ((is):

(i) Is ACLS trained, except this requirement shall not apply to a physician board-certified in anesthesiology;

(ii) ~~((PALS or approved equivalent trained; and))~~ Has completed the pediatric education requirement (PER) as defined in WAC 246-976-887; and

(iii) Available within five minutes of team activation;

(b) A radiologist on-call and available for patient service within twenty minutes of notification of team activation;

(c) The following services on-call and available for pediatric patient consultation or management:

- (i) Cardiology;
- (ii) Gastroenterology;
- (iii) General pediatrics;
- (iv) Hematology;
- (v) Infectious disease specialists;
- (vi) Nephrology;
- (vii) Pediatric neurology;
- (viii) Pathology;
- (ix) Pediatric critical care;
- (x) Pulmonology; and
- (xi) Psychiatry;

(5) Written policy and procedures for access to ancillary services specific for pediatric patients, including:

- (a) Chemical dependency services;
- (b) Child and adult protection services;
- (c) Clergy or pastoral care;
- (d) Nutritionist services;
- (e) Occupational therapy services;
- (f) Pediatric therapeutic recreation;
- (g) Pharmacy, with a pharmacist in-house;
- (h) Physical therapy services;
- (i) Psychological services;
- (j) Rehabilitation services;

- (k) Social services;
- (l) Speech therapy services;
- (6) A written policy and procedures to divert patients to other designated trauma care services. The policy shall be based on criteria which reflect the service's ability to resuscitate and stabilize each patient at a particular time.
- (7) A trauma registry as required in WAC 246-976-430;
- (8) A quality assurance program in accordance with WAC 246-976-881, and cooperate with regional trauma care quality assurance programs throughout the state established pursuant to WAC 246-976-910;
- (9) Interfacility transfer guidelines and agreements consistent with WAC 246-976-890.

**AMENDATORY SECTION** (Amending WSR 98-19-107, filed 9/23/98, effective 10/24/98)

**WAC 246-976-730 Designation standards for facilities providing level I pediatric trauma care services—Resources and capabilities.** A facility with a designated level I pediatric trauma care service shall have:

- (1) An emergency department with:
- (a) A physician director who:
- (i) Is board-certified in emergency medicine, pediatric emergency medicine, surgery or other relevant specialty; or
- (ii) Has documented experience as director of an emergency department which has been previously recognized as a level I trauma center either by a regional entity or as verified by the Committee on Trauma of the American College of Surgeons;
- (iii) Is ATLS and ACLS trained, except this requirement shall not apply to a physician board-certified in emergency medicine or in surgery; and
- (iv) ~~((Is PALS or approved equivalent trained))~~ Has completed the pediatric education requirement (PER) as defined in WAC 246-976-887, except this requirement shall not apply to a physician board-certified in pediatric emergency medicine;
- (b) Emergency physicians who:
- (i) Are board-certified in emergency medicine, or pediatric emergency medicine, or in a specialty practicing emergency medicine as their primary practice with special competence in care of pediatric trauma patients; (this requirement may be met by a surgical resident post graduate year two who is ATLS(±) and ACLS trained, ~~((and PALS or approved equivalent trained.))~~ has completed the PER as defined in WAC 246-976-887, and is working under the direct supervision of the attending emergency department physician, until the arrival of the surgeon to assume leadership of the trauma team);
- (ii) Are available within five minutes of the patient's arrival in the emergency department;
- (iii) Are ATLS and ACLS trained, except this requirement shall not apply to a physician board-certified in emergency medicine;
- (iv) ~~((Are PALS or approved equivalent trained))~~ Have completed the PER as defined in WAC 246-976-887, except this requirement shall not apply to a physician board-certified in pediatric emergency medicine; and

- (v) Are designated members of the trauma team;
- (c) Registered nurses who:
- (i) ~~((Are PALS or approved equivalent trained.))~~ Have completed the PER as defined in WAC 246-976-887;
- (ii) Have successfully completed a trauma life support course as defined in WAC 246-976-885;
- (iii) Are in the emergency department and available within five minutes of patient's arrival in the emergency department;
- (d) An area designated for pediatric resuscitation, with equipment for resuscitation and life support of pediatric patients, including equipment as described in WAC 246-976-620;
- (e) Routine radiological capabilities by a technician available within five minutes of notification of team activation;
- (2) A surgery department including:
- (a) An attending pediatric surgeon or general surgeon with special competence in pediatric care who is available within five minutes of notification of team activation, except as provided in (b) of this subsection. The attending surgeon shall:
- (i) Provide trauma team leadership upon arrival in the resuscitation area;
- (ii) Be board-certified;
- (iii) Have trauma surgery privileges as delineated by the medical staff;
- (b) A ~~((post-graduate))~~ postgraduate year four or above surgical resident may initiate evaluation and treatment upon the patient's arrival in the emergency department until the arrival of the attending surgeon. In this case, the attending surgeon shall be available within twenty minutes of notification of team activation.
- (c) All general surgeons and surgical residents who are responsible for care and treatment of trauma patients shall ~~((be trained in))~~:
- (i) Be trained in ATLS and ACLS, except this requirement shall not apply to a physician board-certified in surgery;
- (ii) ~~((PALS or approved equivalent.))~~ Have completed the PER as defined in WAC 246-976-887;
- (3) An operating room available within five minutes of notification of team activation, with:
- (a) A registered nurse or designee of the operating room staff who is available within five minutes of team activation to open the operating room, and to coordinate responsibilities to ensure the operating room is ready for surgery upon arrival of the patient, the surgeon, and the anesthesiologist;
- (b) A written policy providing for mobilization of additional surgical teams for pediatric trauma patients;
- (c) Instruments and equipment appropriate for pediatric surgery, including equipment as described in WAC 246-976-620;
- (4) A post-anesthetic recovery unit with:
- (a) Essential personnel, including at least one registered nurse available twenty-four hours a day;
- (b) Nurses ACLS trained;
- (c) Nurses ~~((PALS or approved equivalent trained))~~ who have completed the PER as defined in WAC 246-976-887;
- (d) Appropriate monitoring and resuscitation equipment.
- (5) A pediatric critical care service, with:

- (a) A pediatric critical care unit, including patient isolation capacity;
- (b) A medical director or codirector who is board-certified in pediatrics, with sub-board certification in critical care, with responsibility for coordinating with the attending staff for the care of pediatric trauma patients, including:
  - (i) Development and implementation of policies;
  - (ii) Coordination of medical care;
  - (iii) Determination of patient isolation;
  - (iv) Authority for patient placement decisions;
  - (v) Equipment;
  - (vi) Coordination of staff education;
  - (vii) Coordination of statistics; and
  - (viii) Identification of criteria for reviewing quality of care on all pediatric critical care unit trauma patients in conjunction with the trauma service medical director;
- (c) A physician with special competence in pediatric critical care available within five minutes of notification;
- (d) A physician-directed code team;
- (e) Pediatric critical care nursing with registered nurses who have:
  - (i) Special competence in pediatric trauma care; and
  - (ii) ~~((Successfully completed PALS or approved equivalent training;))~~ Completed the PER as defined in WAC 246-976-887;
- (f) Equipment as described in WAC 246-976-620 and 246-976-825;
- (6) Respiratory therapy available within five minutes of notification;
- (7) A clinical laboratory technologist available within five minutes of notification;
- (8) Clinical laboratory services, including:
  - (a) Standard analyses of blood, urine, and other body fluids;
  - (b) Coagulation studies;
  - (c) Blood gases and pH determination;
  - (d) Serum and urine osmolality;
  - (e) Microbiology;
  - (f) Serum alcohol and toxicology determination;
  - (g) Drug screening; and
  - (h) Microtechnique.
- (9) Blood and blood-component services, including:
  - (a) Blood and blood components available from in-house or through community services, to meet patient needs;
  - (b) Noncrossmatched blood available on patient arrival in the emergency department;
  - (c) Blood typing and cross-matching;
  - (d) Policies and procedures for massive transfusion;
  - (e) Autotransfusions; and
  - (f) Blood storage capability;
- (10) A radiological service, including:
  - (a) A technician available within five minutes of notification, able to perform the following:
    - (i) Routine radiological procedures; and
    - (ii) Computerized tomography;
  - (b) A technician on-call and available within twenty minutes of notification, able to perform the following:
    - (i) Angiography of all types;
    - (ii) Sonography;
    - (iii) Nuclear scanning;

- (11) Acute dialysis capability, or written transfer agreements.
- (12)(a) A physician-directed burn unit staffed by nursing personnel trained in burn care, and equipped to care for extensively burned pediatric patients; or
  - (b) Written transfer guidelines and agreements for burn care, in accordance with the guidelines of the American Burn Association.
- (13) The ability to manage acute head and/or spinal cord injuries. Early transfer to an appropriate pediatric trauma rehabilitation service shall be considered.
- (14) A trauma rehabilitation coordinator to facilitate the trauma patient's access to pediatric rehabilitation services.
- (15)(a) A designated pediatric trauma rehabilitation service; or
  - (b) Written agreements to transfer patients to designated pediatric trauma rehabilitation services when medically feasible.
- (16) Heli-stop, landing zone or airport located close enough to permit the facility to receive or transfer patients by fixed-wing or rotary-wing aircraft.

**AMENDATORY SECTION** (Amending WSR 98-19-107, filed 9/23/98, effective 10/24/98)

**WAC 246-976-770 Designation standards for facilities providing level II pediatric trauma care service—Administration and organization.** A facility with a designated level II pediatric trauma care service shall have:

- (1)(a) Organization and direction by a general surgeon with special competence in care of the injured child. The service may have as codirector another physician with special competence in care of the injured child;
- (b) Ongoing coordination of the trauma care service by a registered nurse with special competence in care of the injured child;
- (c) A multidisciplinary trauma committee chaired by the trauma service director, with input to hospital management, including:
  - (i) An emergency physician with special competence in pediatric care;
  - (ii) An emergency department registered nurse;
  - (iii) A pediatric surgeon or general surgeon with special competence in pediatric trauma care;
  - (iv) A neurosurgeon;
  - (v) An orthopaedic surgeon;
  - (vi) An anesthesiologist;
  - (vii) The physician director of pediatric critical care service;
  - (viii) A pediatrician with special competence in critical care;
  - (ix) The pediatric trauma care service nurse coordinator;
  - (x) A pediatric critical care registered nurse;
  - (xi) Pediatric intensivist; and
  - (xii) The trauma rehabilitation coordinator;
- (d) The multidisciplinary trauma committee shall adopt an approved method to determine activation of the trauma team, as described in WAC 246-976-870;

(e) A trauma team to provide initial evaluation, resuscitation and treatment.

(i) The team shall be organized and directed by a pediatric surgeon or general surgeon with special competence in care of the injured child, and who assumes responsibility for coordination of overall care of the pediatric trauma patient.

(ii) The team shall work in conjunction with a pediatric intensivist or pediatric emergency physician.

(iii) All members of the team, except the surgeon and the anesthesiologist, shall be available within five minutes of notification of team activation.

(iv) The team shall include:

(A) An emergency physician with special competence in pediatric care, who is:

(I) Responsible for activating the trauma team, using an approved method as defined in WAC 246-976-870; and

(II) Responsible for providing team leadership and care for the pediatric trauma patient until the arrival of the general surgeon in the resuscitation area.

(B) A pediatric surgeon, or general surgeon with special competence in pediatric trauma surgery, on-call and available within twenty minutes of notification of team activation, who shall assume responsibility for patient care upon arrival in the resuscitation area;

(v) The trauma care service shall identify all other members of the team.

(f) Specific delineation of pediatric trauma surgery privileges by the medical staff.

(2) An emergency department with written standards of care to ensure immediate and appropriate care for pediatric trauma patients.

(3) A surgery department, including:

(a) General surgery, with special competence in care of the pediatric trauma patient;

(b) A neurosurgical service. Coverage shall be available within five minutes of notification of team activation. In-house coverage shall be provided by:

(i) A neurosurgeon; or

(ii) A surgeon or other physician who has been judged competent by the neurosurgical consultants on staff to initiate measures to stabilize the patient, and to initiate diagnostic procedures, with a neurosurgeon on-call and available within thirty minutes of notification of team activation;

(c) The following surgical services on-call and available within thirty minutes of request by the trauma team leader:

(i) Gynecologic surgery;

(ii) Hand surgery;

(iii) Obstetric surgery;

(iv) Ophthalmic surgery;

(v) Oral/maxillofacial or otorhinolaryngologic surgery;

(vi) Orthopaedic surgery;

(vii) Pediatric surgery;

(viii) Plastic surgery;

(ix) Thoracic surgery;

(x) Urologic surgery; and

(xi) Vascular surgery.

(4) Nonsurgical specialties with special competence in pediatric care, including:

(a) Anesthesiology, with an anesthesiologist who ((is)):

(i) Is ACLS trained, except this requirement shall not apply to a physician board-certified in anesthesiology;

(ii) ~~((PALS or approved equivalent trained; and))~~ Has completed the pediatric education requirement (PER) as defined in WAC 246-976-887; and

(iii) Is on-call and available within twenty minutes of notification of team activation;

(b) A radiologist on-call and available for patient service within twenty minutes of notification of team activation;

(c) The following services on-call and available for pediatric patient consultation or management:

(i) Cardiology;

(ii) Gastroenterology;

(iii) General pediatrics;

(iv) Hematology;

(v) Infectious disease specialists;

(vi) Nephrology;

(vii) Neurology;

(viii) Pathology;

(ix) Pediatric critical care; and

(x) Pulmonology;

(5) Written policy and procedures for access to ancillary services specific for pediatric patients, including:

(a) Chemical dependency services;

(b) Child and adult protection services;

(c) Clergy or pastoral care;

(d) Nutritionist services;

(e) Occupational therapy services;

(f) Pediatric therapeutic recreation;

(g) Pharmacy;

(h) Physical therapy services;

(i) Rehabilitation services;

(j) Social services; and

(k) Speech therapy services.

(6) A written policy and procedures to divert patients to other designated trauma care services. The policy shall be based on criteria which reflect the service's ability to resuscitate and stabilize each patient at a particular time.

(7) A trauma registry as required in WAC 246-976-430.

(8) A quality assurance program in accordance with WAC 246-976-881; and cooperate with regional trauma care quality assurance programs throughout the state established pursuant to WAC 246-976-910.

(9) Interfacility transfer guidelines and agreements consistent with WAC 246-976-890.

AMENDATORY SECTION (Amending WSR 98-19-107, filed 9/23/98, effective 10/24/98)

**WAC 246-976-780 Designation standards for facilities providing level II pediatric trauma care service—Basic resources and capabilities.** A facility with a designated level II pediatric trauma care service shall have:

(1) An emergency department, with:

(a) A physician director who ((is)):

(i) Is board-certified in emergency medicine or pediatric emergency medicine;

(ii) Is ATLS trained, except this requirement shall not apply to a physician board-certified in emergency medicine; and

(iii) ~~((PALS or approved equivalent trained))~~ Has completed the pediatric education requirement (PER) as defined in WAC 246-976-887, except this requirement shall not apply to a physician board-certified in pediatric emergency medicine.

(b) Physicians who:

(i) Are board-certified in emergency medicine, or pediatric emergency medicine, or board-certified in a specialty practicing emergency medicine as their primary practice with special competence in the care of pediatric trauma patients;

(ii) Are available within five minutes of patient's arrival in the emergency department;

(iii) Are ATLS and ACLS trained, except this requirement shall not apply to a physician board-certified in emergency medicine;

(iv) ~~((Are PALS or approved equivalent trained))~~ Have completed the PER as defined in WAC 246-976-887, except this requirement shall not apply to a physician board-certified in pediatric emergency medicine; and

(v) Are designated as members of the trauma team;

(c) Registered nurses who:

(i) ~~((Are PALS or approved equivalent trained;))~~ Have completed the PER as defined in WAC 246-976-887;

(ii) Have successfully completed a trauma life support course as defined in WAC 246-976-885;

(iii) Are in the emergency department and available within five minutes of patient's arrival in the emergency department;

(d) An area designated for pediatric resuscitation, with equipment for resuscitation and life support of pediatric patients, including equipment as described in WAC 246-976-620;

(e) Routine radiological capabilities by a technician available within five minutes of notification of team activation;

(2) A surgery department, including:

(a) An attending pediatric surgeon, or general surgeon with special competence in pediatric care, who is on-call and available within twenty minutes of notification of team activation. The attending surgeon shall:

(i) Provide trauma team leadership upon arrival in the resuscitation area;

(ii) Be board-certified;

(iii) Have trauma surgery privileges as delineated by the medical staff;

(b) All general surgeons who are responsible for care and treatment of trauma patients shall ~~((be trained in))~~:

(i) Be trained in ATLS, except this requirement shall not apply to a physician board-certified in surgery;

(ii) ~~((PALS or approved equivalent;))~~ Have completed the PER as defined in WAC 246-976-887.

(3) An operating room available within five minutes of notification of team activation, with:

(a) A registered nurse or designee of the operating room staff who is available within five minutes of notification of team activation to open the operating room, and to coordinate responsibilities to ensure the operating room is ready for sur-

gery upon arrival of the patient, the surgeon, and the anesthesiologist;

(b) Other essential personnel on-call and available within twenty minutes of notification of team activation;

(c) A written policy providing for mobilization of additional surgical teams for pediatric trauma patients;

(d) Instruments and equipment appropriate for pediatric surgery, including equipment as described in WAC 246-976-620;

(4) A post-anesthetic recovery unit, with:

(a) Essential personnel, including at least one registered nurse on-call and available twenty-four hours a day; and

(b) Nurses ACLS trained;

(c) Nurses ~~((PALS or approved equivalent trained))~~ who have completed the PER as defined in WAC 246-976-887;

(d) Appropriate monitoring and resuscitation equipment.

(5) A pediatric critical care service, with:

(a) A pediatric critical care unit, including patient isolation capacity;

(b) A medical director or codirector who is board-certified in pediatrics with sub-board certification in critical care, with responsibility for coordinating with the attending staff for the care of pediatric trauma patients, including:

(i) Development and implementation of policies;

(ii) Coordination of medical care;

(iii) Determination of patient isolation;

(iv) Authority for patient placement decisions;

(v) Equipment;

(vi) Coordination of staff education;

(vii) Coordination of statistics; and

(viii) Identification of criteria for reviewing quality of care on all pediatric critical care unit trauma patients, in conjunction with the trauma service medical director;

(c) A physician with special competence in pediatric critical care available within five minutes of notification;

(d) A physician-directed code team;

(e) Pediatric critical care nursing, with registered nurses who have:

(i) Special competence in pediatric trauma care; and

(ii) ~~((Successfully completed PALS or approved equivalent training;))~~ Completed the PER as defined in WAC 246-976-887;

(f) Equipment as described in WAC 246-976-620 and 246-976-825.

(6) Respiratory therapy available within five minutes of notification;

(7) A clinical laboratory technologist available within five minutes of notification;

(8) Clinical laboratory services, including:

(a) Standard analyses of blood, urine, and other body fluids;

(b) Coagulation studies;

(c) Blood gases and pH determination;

(d) Serum and urine osmolality;

(e) Microbiology;

(f) Serum alcohol and toxicology determination;

(g) Drug screening; and

(h) Microtechnique;

(9) Blood and blood-component services, including:

- (a) Blood and blood components available from in-house or through community services, to meet patient needs;
- (b) Noncrossmatched blood available on patient arrival in the emergency department;
- (c) Blood typing and cross-matching;
- (d) Policies and procedures for massive transfusion;
- (e) Autotransfusions; and
- (f) Blood storage capability;
- (10) Radiological services, including:
- (a) A technician available within five minutes of notification, able to perform routine radiologic procedures;
- (b) A technician on-call and available within twenty minutes of notification, able to perform the following:
- (i) Angiography of all types;
- (ii) Computerized tomography;
- (iii) Sonography;
- (11) Acute dialysis capability, or written transfer agreements.
- (12)(a) A physician-directed burn unit staffed by nursing personnel trained in burn care; and equipped to care for extensively burned pediatric patients; or
- (b) Written transfer guidelines and transfer agreements for burn care, in accordance with the guidelines of the American Burn Association.
- (13)(a) The ability to manage acute head and/or spinal cord injuries; or
- (b) Written transfer guidelines and agreements for head and spinal cord injuries.
- (c) Early transfer to an appropriate designated trauma rehabilitation service shall be considered;
- (14) A trauma rehabilitation coordinator to facilitate the trauma patient's access to pediatric rehabilitation services;
- (15)(a) A designated pediatric trauma rehabilitation service; or
- (b) Written agreements to transfer patients to a designated pediatric trauma rehabilitation service when medically feasible.
- (16) A heli-stop, landing zone or airport located close enough to permit the facility to receive or transfer patients by fixed-wing or rotary-wing aircraft.

**AMENDATORY SECTION** (Amending WSR 98-19-107, filed 9/23/98, effective 10/24/98)

**WAC 246-976-810 Designation standards for facilities providing level III pediatric trauma care service—Administration and organization.** A facility with a designated level III pediatric trauma care service shall have:

- (1)(a) Organization and direction by a general surgeon or other physician with special competence in care of the injured child. The service may have as codirector another physician with special competence in care of the injured child;
- (b) Ongoing coordination of the trauma care service by a registered nurse with special competence in care of the injured child;
- (c) A multidisciplinary trauma committee chaired by the trauma service director, with input to hospital management, including:

- (i) An emergency physician with special competence in pediatric trauma care;
- (ii) An emergency department registered nurse;
- (iii) A general surgeon with special competence in pediatric trauma care;
- (iv) An orthopaedic surgeon;
- (v) An anesthesiologist;
- (vi) The pediatric trauma care service nurse coordinator;
- (vii) A pediatric critical care registered nurse;
- (viii) A pediatrician with special competence in critical care; and
- (ix) The trauma rehabilitation coordinator;
- (d) The multidisciplinary trauma committee shall adopt an approved method to determine activation of the trauma team, as described in WAC 246-976-870;
- (e) A trauma team to provide initial evaluation, resuscitation and treatment.
- (i) The team shall be organized and directed by a general surgeon with special competence in care of the injured child; and who assumes responsibility for coordination of overall care of the pediatric trauma patient;
- (ii) All members of the team, except the surgeon and the anesthesiologist or CRNA (if a member of the team), shall be available within five minutes of notification of team activation;
- (iii) The team shall include:
- (A) An emergency physician with special competence in pediatric trauma care, who is:
- (I) Responsible for activating the trauma team, using an approved method as defined in WAC 246-976-870; and
- (II) Responsible for providing team leadership and care for the pediatric trauma patient until the arrival of the general surgeon in the resuscitation area;
- (B) A pediatric surgeon, or general surgeon with special competence in pediatric trauma surgery, on-call and available within thirty minutes of notification of team activation, who shall assume responsibility for patient care upon arrival in the resuscitation area;
- (iv) The trauma care service shall identify all other members of the team.
- (f) Specific delineation of pediatric trauma surgery privileges by the medical staff.
- (2) An emergency department with written standards of care to ensure immediate and appropriate care for pediatric trauma patients.
- (3) A surgery department, including:
- (a) General surgery, with special competence in care of the pediatric trauma patient;
- (b)(i) Written transfer guidelines and agreements for head and spinal cord injuries; or
- (ii) Neurosurgery, with a neurosurgeon on-call and available within thirty minutes of notification of team activation;
- (c)(i) Written transfer guidelines and procedures for patients requiring orthopaedic surgery; or
- (ii) Orthopaedic surgery, with an orthopaedic surgeon on-call and available within thirty minutes of request by the trauma team leader;
- (4) Nonsurgical specialties, including:
- (a) Anesthesiology, with an anesthesiologist or certified registered nurse anesthetist, who ((is)):

(i) Is ACLS trained, except this requirement shall not apply to a physician board-certified in anesthesiology;

(ii) ~~((PALS or approved equivalent trained, and))~~ Has completed the pediatric education requirement (PER) as defined in WAC 246-976-887; and

(iii) On-call and available within thirty minutes of notification of team activation;

(b) A radiologist on-call and available for patient service within thirty minutes of notification of team activation;

(c) General pediatrics, with board-certified pediatricians on-call and available for pediatric patient consultation or management;

(5) Written policy and procedures for access to ancillary services specific for pediatric patients, including:

- (a) Chemical dependency services;
- (b) Child and adult protection services;
- (c) Clergy or pastoral care;
- (d) Nutritionist services;
- (e) Pediatric therapeutic recreation;
- (f) Pharmacy;
- (g) Physical therapy services;
- (h) Rehabilitation services;
- (i) Social services;

(6) A written policy and procedures to divert patients to other designated trauma care services. The policy shall be based on criteria which reflect the service's ability to resuscitate and stabilize each patient at a particular time;

(7) A trauma registry as required by WAC 246-976-430;

(8) A quality assurance program in accordance with WAC 246-976-881; and cooperate with regional trauma care quality assurance programs throughout the state established pursuant to WAC 246-976-910;

(9) Interfacility transfer guidelines and agreements consistent with WAC 246-976-890.

**AMENDATORY SECTION** (Amending WSR 98-19-107, filed 9/23/98, effective 10/24/98)

**WAC 246-976-820 Designation standards for facilities providing level III pediatric trauma care service—Basic resources and capabilities.** A facility with a designated level III pediatric trauma care service shall have:

(1) An emergency department with:

(a) A physician director who ~~((is))~~:

(i) Is board-certified in emergency medicine or pediatric emergency medicine;

(ii) Is ATLS and ACLS trained, except this requirement shall not apply to a physician board-certified in emergency medicine; and

(iii) ~~((PALS or approved equivalent trained))~~ Has completed the pediatric education requirement (PER) as defined in WAC 246-976-887, except this requirement shall not apply to a physician board-certified in pediatric emergency medicine;

(b) Physicians who:

(i) Have special competence in the resuscitation and care of pediatric trauma patients;

(ii) Are available within five minutes of patient's arrival in the emergency department;

(iii) Are ATLS and ACLS trained, except this requirement shall not apply to a physician board-certified in emergency medicine;

(iv) ~~((Are PALS or approved equivalent trained))~~ Have completed the PER as defined in WAC 246-976-887, except this requirement shall not apply to a physician board-certified in pediatric emergency medicine; and

(v) Are designated as members of the trauma team;

(c) Registered nurses who:

(i) ~~((Are PALS or approved equivalent trained;))~~ Have completed the PER as defined in WAC 246-976-887;

(ii) Have successfully completed a trauma life support course as defined in WAC 246-976-885;

(iii) Are in the emergency department and available within five minutes of patient's arrival in the emergency department;

(d) An area designated for pediatric resuscitation, with equipment for resuscitation and life support of pediatric patients, including equipment as described in WAC 246-976-620;

(e) Routine radiological capabilities, by a technician available within twenty minutes of notification of team activation.

(2) A surgery department, including an attending surgeon who is:

On-call and available within thirty minutes of notification of team activation; and

(a) Has general surgery privileges, with special competence in pediatric care;

(b) ~~((Has PALS or approved equivalent training;))~~ Has completed the PER as defined in WAC 246-976-887;

(c) Has ATLS, except this requirement shall not apply to a physician board-certified in surgery.

(3) An operating room available within five minutes of notification of team activation, with:

(a) A registered nurse or designee of the operating room staff who is available within five minutes of notification of team activation to open the operating room, and to coordinate responsibilities to ensure the operating room is ready for surgery upon arrival of the patient, the surgeon, and the anesthesiologist;

(b) Other essential personnel on-call and available within thirty minutes of notification of team activation;

(c) A written policy providing for mobilization of additional surgical teams for pediatric trauma patients.

(d) Instruments and equipment appropriate for pediatric surgery, including equipment as described in WAC 246-976-620;

(4) A post-anesthetic recovery unit with:

(a) Essential personnel on-call and available twenty-four hours a day;

(b) Nurses ACLS trained;

(c) Nurses ~~((PALS or approved equivalent trained))~~ who have completed the PER as defined in WAC 246-976-887;

(d) Appropriate monitoring and resuscitation equipment;

(5) Availability of pediatric critical care, with:

(a) A written transfer agreement and guidelines for pediatric trauma patients requiring critical care services; or

(b) A pediatric critical care unit in accordance with standards as delineated for level II pediatric trauma service in

WAC 246-976-780(5), except the medical director or codirector shall be board-certified in pediatrics or another relevant specialty with special competence in pediatric critical care;

(c) A physician with special competence in pediatric critical care, available within five minutes of notification;

(d) A physician-directed code team;

(e) Pediatric critical care nursing, with registered nurses who have:

(i) Special competence in pediatric trauma care; and

(ii) Completed ((PALS or approved equivalent training)) the PER as defined in WAC 246-976-887;

(f) Equipment as described in WAC 246-976-620 and WAC 246-976-825.

(6) Respiratory therapy on-call and available within five minutes of notification;

(7) A clinical laboratory technologist available within twenty minutes of notification;

(8) Clinical laboratory services, including:

(a) Standard analyses of blood, urine, and other body fluids;

(b) Coagulation studies;

(c) Blood gases and pH determination;

(d) Microbiology;

(e) Serum alcohol and toxicology determination; and

(f) Microtechnique.

(9) Blood and blood-component services, including:

(a) Blood and blood components available from in-house or through community services, to meet patient needs;

(b) Noncrossmatched blood available on patient arrival in the emergency department;

(c) Blood typing and cross-matching;

(d) Policies and procedures for massive transfusion;

(e) Autotransfusions; and

(f) Blood storage capability;

(10) Radiological services, including a technician on-call and available within twenty minutes of notification, able to perform:

(a) Routine radiological studies;

(b) Computerized tomography;

(11) Acute dialysis capability, or written transfer agreements;

(12) Written transfer guidelines in accordance with the guidelines of the American Burn Association, and transfer agreements for burn care;

(13)(a) Written transfer guidelines and agreements for patients with head or spinal cord injuries; or

(b) Have neurosurgery, with a neurosurgeon on-call and available within thirty minutes of request by the trauma team leader.

(c) Early transfer to an appropriate designated trauma rehabilitation service shall be considered;

(14) A trauma rehabilitation coordinator to facilitate the pediatric trauma patient's access to pediatric rehabilitation services;

(15)(a) A designated pediatric trauma rehabilitation service; or

(b) Written agreements to transfer patients to a designated pediatric trauma rehabilitation service when medically feasible.

(16)(a) A heli-stop, landing zone, or airport located close enough to permit the facility to receive or transfer patients by fixed-wing or rotary-wing aircraft; or

(b) Have a written policy and procedures addressing the receipt of patients by air, and transfer of patients to other designated trauma services by ground or air.

#### NEW SECTION

**WAC 246-976-886 Pediatric education requirements (PER) for nonpediatric designated facilities.** (1) In designated levels I, II, III, and IV general trauma care services emergency physicians and emergency RNs who are involved in the resuscitation and stabilization of pediatric trauma patients shall have PER, as provided in subsection (3) of this section, appropriate to their scope of trauma care.

(2) In designated levels I, II, and III general trauma care services general surgeons, anesthesiologists, CRNAs and PACU RNs who are involved in the resuscitation and stabilization of pediatric trauma patients shall have PER, as provided in subsection (3) of this section, appropriate to their scope of trauma care.

(3) PER can be met by the following methods:

(a) One-time completion of pediatric advanced life support (PALS) or a substantially equivalent training course;

(b) Current certification in ATLS; or

(c) Completion of a least five contact hours of pediatric trauma education during each designation period. PER contact hours will:

(i) Include the following topics:

(A) Initial stabilization and transfer of pediatric trauma;

(B) Assessment and management of pediatric airway and breathing;

(C) Assessment and management of pediatric shock, including vascular access;

(D) Assessment and management of pediatric head injuries;

(E) Assessment and management of pediatric blunt abdominal trauma;

(ii) Be accomplished through one or more of the following methods:

(A) Review and discussion of individual pediatric trauma cases within the trauma QA/QI program;

(B) Staff meetings;

(C) Classes, formal or informal;

(D) Web-based learning; or

(E) Other methods of learning which appropriately communicate the required topics listed in this section.

#### NEW SECTION

**WAC 246-976-887 Pediatric education requirements (PER) for pediatric designated facilities.** (1) In designated levels I, II, III pediatric trauma care services emergency physicians, emergency RNs, general surgeons, pediatric intensivists, anesthesiologists, CRNAs, ICU RNs and PACU RNs who are involved in the resuscitation, stabilization and inpatient care of pediatric trauma patients shall have PER, as provided in subsection (2) of this section, appropriate to their scope of trauma care.

- (2) PER can be met by the following methods:
- (a) One-time completion of pediatric advance life support (PALS) or a substantially equivalent training course;
  - (b) Current certification in ATLS; or
  - (c) Completion of at least seven contact hours of pediatric trauma education during each designation period. PER contact hours will:
    - (i) Include the following topics:
      - (A) Initial stabilization and transfer of pediatric trauma;
      - (B) Assessment and management of pediatric airway and breathing;
      - (C) Assessment and management of pediatric shock, including vascular access;
      - (D) Assessment and management of pediatric head injuries;
      - (E) Assessment and management of pediatric blunt abdominal trauma;
      - (F) Pediatric sedation and analgesia;
      - (G) Complications of pediatric multiple system trauma;
    - (ii) Be accomplished through one or more of the following methods:
      - (A) Review and discussion of individual pediatric trauma cases within the trauma QA/QI program;
      - (B) Staff meetings;
      - (C) Classes, formal or informal;
      - (D) Web-based learning; or
      - (E) Other methods of learning which appropriately communicate the required topics listed in this section.

**WSR 02-09-055**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**RETIREMENT SYSTEMS**

[Filed April 15, 2002, 7:57 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 01-23-077.

Title of Rule: WAC 415-04-017 What is not covered by this chapter?, 415-08-015 Appeal of denial for pay out of accumulated deferred compensation deferrals, 415-08-420 Presentation of evidence—Burden of proof, 415-111-450 How does a court-ordered division of property affect my Plan 3 account?, and 415-501-495 Domestic relations orders; and repealing WAC 415-108-040 Appeals—Disability cases.

Purpose: WAC 415-04-017 is being amended to provide more information to the public. WAC 415-08-015 is being amended to correct a statutory reference and to make the title more clear. WAC 415-08-420 is being amended to correct a typographical error. WAC 415-108-040 is being repealed because it duplicates the essence of RCW 41.40.068 and is also covered by chapter 415-08 WAC, Appeals. WAC 415-111-450 and 415-501-495 are being amended to eliminate court order requirements prohibited by a court rule, GR 22 (GR 22 can be found online at <http://www.courts.wa.gov/rules/>, under Rules of General Application).

Statutory Authority for Adoption: RCW 41.50.050(5).

Statute Being Implemented: RCW 41.50.060, 41.50.770, 41.50.780, chapter 42, Laws of 2001.

Summary: The Department of Retirement Systems is making some housekeeping and other changes to these WACs, including one repeal.

Reasons Supporting Proposal: See Purpose above.

Name of Agency Personnel Responsible for Drafting: Merry A. Kogut, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7291.

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: Each of these WACs need minor corrections, and one needs to be repealed because it is out of date and duplicative. In addition, the department is changing the title of WAC 415-08-015 to make it more clear and understandable. Please see Purpose above for more information.

Proposal Changes the Following Existing Rules: WAC 415-04-017 is being amended to provide more information to the public. WAC 415-08-015 is being amended to correct a statutory reference and to make the title more clear. WAC 415-108-040 is being repealed because it duplicates the essence of RCW 41.40.068 and is also covered by chapter 415-08 WAC, Appeals. WAC 415-111-450 and 415-501-495 are being amended to eliminate court order requirements prohibited by a court rule, GR 22 (GR 22 can be found online at <http://www.courts.wa.gov/rules/>, under Rules of General Application).

No small business economic impact statement has been prepared under chapter 19.85 RCW. These amendments have no effect on businesses.

RCW 34.05.328 does not apply to this rule adoption. The Department of Retirement Systems is not one of the named departments in RCW 34.05.328.

Hearing Location: Department of Retirement Systems, 6835 Capitol Boulevard, Conference Room 115, Tumwater, WA, on May 21, 2002, at 9:00 a.m.

Assistance for Persons with Disabilities: Contact the rules coordinator by seven days before the hearing, if possible, phone (360) 664-7291, TTY (360) 586-5450, e-mail [merryk@drs.wa.gov](mailto:merryk@drs.wa.gov).

Submit Written Comments to: Identify WAC Numbers, Merry A. Kogut, Rules Coordinator, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, e-mail [Merryk@drs.wa.gov](mailto:Merryk@drs.wa.gov), fax (360) 753-3166, by 5:00 p.m. on May 21, 2002.

Date of Intended Adoption: No sooner than May 22, 2002.

April 12, 2002  
 Merry A. Kogut  
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 01-18-018, filed 8/24/01, effective 9/24/01)

**WAC 415-04-017 What is not covered by this chapter?** You may not use the petition process to request review

of administrative decisions that address the following matters, including, but not limited to:

(1) Overpayments if the procedures in RCW 41.50.135 or 41.50.138 apply.

(2) Deferred compensation plan payments because of an unforeseeable emergency (see WAC 415-08-015).

(3) Law enforcement officers' and fire fighters' (LEOFF) Plan 1 appeals of disability board decisions that the LEOFF administrator reviews. For more information about LEOFF Plan 1 disability board appeals, please refer to RCW 41.26.140 (reexaminations of disability beneficiaries), RCW 41.26.200 (right to appeal), WAC 415-104-035 (jurisdiction), WAC 415-104-045 (who can appeal, and deadline), WAC 415-104-050 (how DRS will handle the appeal), and WAC 415-104-060 (records reviewed on appeals).

AMENDATORY SECTION (Amending WSR 96-16-020, filed 7/29/96, effective 7/29/96)

**WAC 415-08-015** (~~Appeal of denial for pay out of accumulated deferred compensation deferrals.~~) **Appealing a denied request for an in-service deferred compensation withdrawal.** WAC ((415-524-010)) 415-501-510 and Section 457 of the Internal Revenue Code authorize ((pay outs)) distributions from the deferred compensation plan due to an unforeseeable emergency. If your application for a pay out is denied, you are entitled to have that decision reviewed.

(1) **Filing deadline.** You must apply for review in writing within sixty days of the date you receive the denial.

(2) **Contents of review application.** Your application must contain the items listed in WAC 415-08-023.

(3) **Type of proceeding.** Within twenty days of receipt of your application, the department will notify you in writing that it will conduct either:

(a) A brief adjudicative proceeding under RCW 34.05.482 through 34.05.494; or

(b) A full adjudicative proceeding under this chapter.

(4) **Brief adjudicative proceeding.**

(a) The director's designee will serve as presiding officer. The presiding officer will:

(i) Review the agency's view of the matter, as expressed in the documentation denying your request for a withdrawal;

(ii) Review the materials you have previously submitted, as well as any additional material you wish to submit;

(iii) Give each party an opportunity to be informed of the other's view of the matter;

(iv) Make a decision on the request; and

(v) Within ten days, give the parties a brief written statement of the reasons for the decision and information about any internal review available.

(b) If the presiding officer makes an unfavorable determination in your case, you may request an administrative review provided you do so within twenty-one days after you are served with the presiding officer's written determination. If you seek administrative review, the reviewing officer will be a different person than the presiding officer.

(c) If you do not seek administrative review, you may seek judicial review within thirty days after you are served with the written determination (see RCW 34.05.542).

(5) **Full adjudicative proceeding.** If the department conducts a full adjudicative proceeding, that proceeding will be governed by the Administrative Procedure Act((;)) (chapter 34.05 RCW), and rules adopted thereunder; and chapters 10-08 and 415-08 WAC. The department will be represented in the proceeding by an assistant attorney general.

AMENDATORY SECTION (Amending WSR 96-11-036, filed 5/7/96, effective 6/7/96)

**WAC 415-08-420 Presentation of evidence—Burden of proof.** (1) The presiding officer shall determine the proper order of presentation of evidence.

(2) The person appealing or requesting a hearing((s)) shall have the burden of proof in the matter.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 415-108-040 Appeals—Disability cases.

AMENDATORY SECTION (Amending WSR 02-03-120, filed 1/23/02, effective 3/1/02)

**WAC 415-111-450 How does a court-ordered division of property affect my Plan 3 account?** (1) The department will honor orders that provide for a property division of your retirement benefit only if the order:

(a) Is entered by a court of competent jurisdiction;

(b) Is filed with the department within ninety days of the order's entry by the court;

(c) Establishes the right of a separated or former spouse to a portion of your retirement benefit;

(d) Provides the name((,-address;)) and date of birth((,-and-Social-Security-number)) of the separated or former spouse; and

(e) Incorporates the following statutory language in RCW 41.50.670(2) in which the first paragraph pertains to your defined benefit account and the second paragraph pertains to your defined contribution account (emphasis added):

If . . . . . (the obligor) receives **periodic retirement payments** as defined in RCW 41.50.500, the department of retirement systems shall pay to . . . . . (the obligee) . . . . . dollars from such payments or . . . . . percent of such payments. If the obligor's debt is expressed as a percentage of his or her periodic retirement payment and the obligee does not have a survivorship interest in the obligor's benefit, the amount received by the obligee shall be the percentage of the periodic retirement payment that the obligor would have received had he or she selected a standard allowance.

If . . . . . (the obligor) requests or has requested a **withdrawal of accumulated contributions** as defined in RCW 41.50.500, or becomes eligible for a lump sum death benefit, the department of retirement systems shall pay to . . . . . (the obligee) . . . . . dollars plus interest at the rate paid by the department of retirement systems on member

contributions. Such interest to accrue from the date of this order's entry with the court of record.

(2) You must provide the address and Social Security number of both you and your separated or former spouse to the department before the department will honor a domestic relations order (DRO). This information can be submitted in a cover letter, in another document, or by other means arranged with the department.

(3) **Periodic retirement payments under RCW 41.50.670(2) (paragraph 1).** If the property division order requires the department to pay a portion of your "periodic retirement payments" to your separated or former spouse, the department will pay the required portion ~~((if any))~~ out of your periodic defined benefit payments.

(a) If you die before periodic retirement payments begin, the department's obligation to pay a portion of your periodic payments to your separated or former spouse ceases.

(b) If your separated or former spouse dies before your periodic retirement payments begin, the department will pay you the full amount of your periodic retirement allowance.

~~((3))~~ (4) **Distribution (withdrawal) of accumulated contributions or lump sum death benefit under RCW 41.50.670(2) (paragraph 2).** If the property division order requires the department to pay a portion of a distribution of "accumulated contributions" or a portion of a "lump sum death benefit" to your spouse or former spouse, the department will pay the required portion (if any) out of your defined contribution member account, subject to the provisions in this rule.

~~((4))~~ (5) **Provisions for management of accounts:**

(a) When the property division order is filed with the department, the department will create a separate account and transfer the amount specified in the order from your defined contribution member account into the new account.

(b) Your separated or former spouse assumes the responsibility to manage the separate account, consistent with the requirements in subsection ~~((6))~~ (7) of this section, but may not contribute to the account.

(c) You retain the responsibility to manage the funds remaining in your defined contribution account, and may continue to contribute to the account.

(d) If your separated or former spouse dies before you request a distribution, the money in the separate account will be transferred back into your defined contribution account.

~~((5))~~ (6) **Distribution provisions.**

(a) When you request a distribution from your defined contribution account:

(i) The money in your defined contribution account will be disbursed to you pursuant to your distribution choice.

(ii) Your separated or former spouse (if living) must begin distribution(s) from the separate account pursuant to the distribution options in WAC 415-111-310. (However, if your separated or former spouse has died prior to your request for distribution, the money in the separate account will have been transferred back into your defined contribution account under subsection ~~((4))~~ (5)(d).)

(iii) If you die before the money in your defined contribution account is fully disbursed, the balance of the account will be paid to your designated beneficiary(ies).

(iv) If your separated or former spouse dies before the money in the separate account is fully disbursed, the balance of the separate account will be paid to the beneficiary(ies) designated by your separated or former spouse for the separate account.

(b) If you die before receiving a distribution from your defined contribution account:

(i) Your beneficiary(ies) must apply for the lump sum death benefit from your defined contribution account; and

(ii) The money in your defined contribution account must be paid to at least one of your designated beneficiary(ies); then

(iii) Your separated or former spouse (if living) must begin distribution(s) from the separate account pursuant to the distribution options in WAC 415-111-310. (However, if your separated or former spouse has predeceased you, the money in the separate account will have been transferred back into your defined contribution account under subsection ~~((4))~~ (5)(d).)

~~((6))~~ (7) **In managing the separate account pursuant to subsection (4)(b) of this section, your separated or former spouse may:**

(a) Transfer money between investment programs (state-managed or self-directed); and

(b) Transfer money among the investment options in the self-directed program (SELF).

~~((7))~~ (8) If you and your former spouse filed a property division order with the department while you were a member of Plan 2 and you later transfer to Plan 3, at the time of your transfer, the department will create a separate account. The department will comply with the property division order as provided in this rule.

**AMENDATORY SECTION** (Amending WSR 02-01-121, filed 12/19/01, effective 1/1/02)

**WAC 415-501-495 Domestic relations orders.** (1) The department will honor certain domestic relations orders (DRO) entered by a court of competent jurisdiction.

(2) The department will honor a DRO only if it:

(a) Establishes a right of a spouse or former spouse to a portion of a participant's deferred compensation account pursuant to a division of property;

(b) Clearly states either the dollar amount or a percentage of the account ~~((on a specific date))~~ to be transferred to the account of the spouse or former spouse from the participant's account; and

(c) Provides the name ~~((, address,))~~ and date of birth ~~((, and Social Security number))~~ of the participant and the spouse or former spouse.

(3) You must provide the address and Social Security number of both you and your separated or former spouse to the department before the department will honor a DRO. This information can be submitted in a cover letter, in another document, or by other means arranged with the department.

(4) To implement a DRO, the department will establish a separate account for the spouse or former spouse in the amount specified in subsection (2)(b) of this section. The amount will initially be invested in the savings pool. Thereaf-

ter, the spouse or former spouse may provide investment instructions under WAC 415-501-450.

((4)) (5) The participant's spouse or former spouse may choose a method of distribution, including a direct rollover.

((5)) (6) If a DRO filed with the department prior to January 1, 2002, provides that distribution to the former spouse is not available until the participant separates from service, the department will comply with the express terms of the order unless it is subsequently amended.

**PROPOSED**

**WSR 02-09-056**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**RETIREMENT SYSTEMS**

[Filed April 15, 2002, 8:58 a.m.]

**Original Notice.**

Preproposal statement of inquiry was filed as WSR 02-05-037.

Title of Rule: WAC 415-108-980 Will I receive a transfer payment when I transfer to Plan 3?

Purpose: In the 2002 legislative session, the legislature changed the qualifying month for PERS Plan 3 "Phase 1" employees to June 2002, and changed the qualifying month for PERS Plan 3 "Phase 2" employees to either June 2002 or February 2003. (See SB 6376, amending RCW 41.40.795, codified in chapter 159, Laws of 2002.) This WAC is being amended to reflect that legislative change. During the review, we also identified a few housekeeping changes; we are also making these changes.

Statutory Authority for Adoption: RCW 41.50.050(5).

Statute Being Implemented: RCW 41.40.795 as amended (effective June 13, 2002).

Summary: See Purpose above.

Reasons Supporting Proposal: See Purpose above.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Merry A. Kogut, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7291.

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: In the 2002 legislative session, the legislature changed the qualifying month for PERS Plan 3 "Phase 1" employees to June 2002, and changed the qualifying month for PERS Plan 3 "Phase 2" employees to either June 2002 or February 2003. (See SB 6376, amending RCW 41.40.795, codified in chapter 159, Laws of 2002.) This WAC is being amended to reflect that legislative change. During the review, we also identified a few housekeeping changes; we are also making these changes.

Proposal Changes the Following Existing Rules: [No information supplied by agency.]

No small business economic impact statement has been prepared under chapter 19.85 RCW. These amendments have no affect on businesses.

RCW 34.05.328 does not apply to this rule adoption. The Department of Retirement Systems is not one of the named departments in RCW 34.05.328.

Hearing Location: Department of Retirement Systems, 6835 Capitol Boulevard, Room 115, Tumwater, WA, on May 21, 2002, at 9:00 a.m.

Assistance for Persons with Disabilities: Contact the rules coordinator or Amy Finney by seven days before the hearing, if possible, phone (360) 664-7291, TTY (360) 586-5450, e-mail merryk@drs.wa.gov.

Submit Written Comments to: Identify WAC Numbers, Merry A. Kogut, Rules Coordinator, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, e-mail Merryk@drs.wa.gov, fax (360) 753-3166, by 5:00 p.m. on May 21, 2002.

Date of Intended Adoption: No sooner than May 22, 2002.

April 15, 2002

Merry A. Kogut  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 02-03-120, filed 1/23/02, effective 3/1/02)

**WAC 415-108-980 Will I receive a transfer payment when I transfer to Plan 3? (1) PERS Plan 3 will be implemented on March 1, 2002.** If you transfer from PERS Plan 2 to PERS Plan 3 during (~~your transfer period, and establish any service credit in~~) the Phase 1 transfer period and establish service credit in June 2002, or transfer during the Phase 2 transfer period and establish service credit in either June 2002 or February 2003, you will receive a transfer payment to be added to your member account on or after June 1, 2003, once the department receives the transfer information from your employer. The transfer period and payment amount you will receive is based upon your employer type and your account balance as of March 1, 2002.

(a) You will receive a payment of one hundred and ten percent of your **transfer basis** if you are employed in an eligible position by a Phase 1 employer and you transfer to Plan 3 during the Phase 1 transfer period. State agencies and institutes of higher education are Phase 1 employers.

(b) You will receive a payment of one hundred and eleven percent of your **transfer basis** if you are employed in an eligible position by a Phase 2 employer and you transfer to Plan 3 during the Phase 2 transfer period. All other employers are Phase 2 employers.

(2) Your **transfer basis** is your total accumulated contributions (and interest) on March 1, 2002, less fifty percent of any contributions you made under RCW 41.50.165(2).

(3) If you request to transfer but die before payment is made, the transfer payment will be paid immediately to your defined contribution account. These moneys will be distributed when payment is made from your account to your estate, or the person or persons, trust or organization you nominated by the most recent written beneficiary designation filed with the department.

**Examples:****Phase 1 Employer (110%) (state agencies and institutes of higher education)**

- Al works for a Phase 1 employer and makes \$2,000 a month.
- On March 1, 2002, Al's defined benefit (DB) account balance is \$10,000.
- On June 1, 2002, Al transfers to PERS Plan 3 and chooses contribution rate option A (5%).
- On June 1, 2002, the department transfers approximately \$10,185 to Al's new defined contribution (DC) account. The transfer amount is the sum of:
  - ◆ Al's \$10,000 account balance on March 1, 2002;
  - ◆ Approximately \$50 in contributions between March 1st and June 1st; and
  - ◆ Approximately \$135 in interest in Plan 2 at 5.5% annually, compounded quarterly.
- Al continues working for his Phase 1 employer through June 2003, including the month of ~~(February)~~ June 2002.
- In June 2003, after he receives his transfer payment, Al will have approximately **\$22,385** in his DC account. Here is how:
  - ◆ In June 2002, when Al transferred to Plan 3, he started with approximately \$10,185 in his DC account.
  - ◆ He then made twelve monthly contributions of \$100 (5% of a \$2,000 salary, June 2002 through May 2003) for a total of \$1,200.
  - ◆ In June 2003, he receives a transfer payment of \$11,000 (110% of \$10,000, his account balance on March 1, ~~(2001)~~ 2002).
  - ◆ The total is approximate because it will depend on earnings or losses on the investments of the original amount transferred the previous year, and the contributions made to date.

**Phase 2 Employer (111%) (local government)**

- Peggy works for a Phase 2 employer and makes \$2,000 a month.
- On March 1, 2002, Peggy's defined benefit (DB) account balance is \$10,000.
- On November 1, 2002, Peggy transfers to PERS Plan 3 and chooses contribution rate option A (5%).
- On November 1, 2002, the department transfers approximately \$10,560 to Peggy's new defined contribution (DC) account. The transfer amount is the sum of:
  - ◆ Peggy's \$10,000 account balance on March 1, 2002;
  - ◆ Approximately \$140 in contributions between March 1st and November 1st;
  - ◆ Approximately \$420 in interest in Plan 2 at 5.50% annually, compounded quarterly.
- Peggy continues working for her Phase 2 employer through June 2003, including the month of February 2003.\*
  - \* A Phase 2 employee can establish service credit in either June 2002 or February 2003.
- In June 2003, after she receives her transfer payment, Peggy will have approximately **\$22,360** in her DC account. Here is how:

- ◆ In November 2002, when Peggy transferred to Plan 3, she started with approximately \$10,560 in her DC account.
- ◆ She then made monthly contributions of \$100 (5% of a \$2,000 salary) for a total of \$700.
- ◆ In June 2003, she receives a transfer payment of \$11,100 (111% of \$10,000, her account balance on March 1, ~~(2001)~~ 2002).
- ◆ The total is approximate because it will depend on earnings or losses on the investments of the original amount transferred the previous year, and the contributions made to date.

**(4) Terms defined:**

Phase 1 employer: WAC 415-108-425.

Phase 2 employer: WAC 415-108-425.

Phase 1 transfer period: WAC ~~((415-108-420))~~ 415-108-425.Phase 2 transfer period: WAC ~~((415-108-420))~~ 415-108-425.

Service: RCW 41.40.010 (9)(b).

Transfer basis: RCW 41.40.795 (1)(b).

Transfer period: RCW 41.40.795 (1)(a).

**WSR 02-09-057****PROPOSED RULES****DEPARTMENT OF LICENSING**

[Filed April 15, 2002, 11:17 a.m.]

**Original Notice.**

Preproposal statement of inquiry was filed as WSR 02-04-059.

Title of Rule: Motor vehicle dealers and manufacturers, WAC 308-66-110 Definitions and 308-66-120 Dealer's license application.

Purpose: Add the definition of "used vehicle" and "bona fide retail purchaser/lessee" to the definition section and further define dealer certification requirements for dealer license applications and renewals due to the implementation of RCW 46.70.041 (1)(l) and 46.70.079 effective July 1, 2002.

Statutory Authority for Adoption: RCW 46.70.160.

Summary: Amending WAC 308-66-110 to add the definition of used vehicle and requiring a notarized affidavit to document exemptions to such definition. Amending WAC 308-66-120 defining who is required to take dealer certification and the length for which a certification is valid.

Reasons Supporting Proposal: Both amendments needed to support current trends in vehicle dealer business.

Name of Agency Personnel Responsible for Drafting and Implementation: Charles Coach, 2000 West 4th, Olympia, (360) 664-6453; and Enforcement: Mykel Gable, 2000 West 4th, Olympia, (360) 664-6451.

Name of Proponent: Washington State Auto Dealers Association and Washington State Independent Auto Dealers Association, private.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Amendment to WAC 308-66-110 defines "used vehicle" and "bona fide retail purchaser/lessee" enabling vehicle dealers to determine whether a vehicle is used or new for retail/wholesale purposes.

Amendment to WAC 308-66-120 further defines who is required to furnish the department a certification of completion in the dealer education program to apply for an original vehicle dealer license and vehicle dealer renewal and the length a certification is valid.

Proposal does not change existing rules. Several sections are changed in light of the review for necessity, effectiveness, clarity, intent, coordination with other agencies, cost benefits and fairness.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposal does not impose additional duties on the vehicle dealer industry.

RCW 34.05.328 does not apply to this rule adoption.

Hearing Location: Department of Licensing, Dealer Services, Large Conference Room, 2000 West 4th, Olympia, WA 98502, on May 21, 2002, at 1:30 p.m.

Assistance for Persons with Disabilities: Contact Linda Mason by May 19, 2002, TDD (360) 664-8885, or (360) 664-6455.

Submit Written Comments to: Charles Coach, Dealer Services, Department of Licensing, P.O. Box 9039, Olympia, WA 98507-9039, fax (360) 586-6703, by May 19, 2002.

Date of Intended Adoption: May 31, 2002.

April 14, 2002

Fred Stephens

Director

**AMENDATORY SECTION** (Amending WSR 98-20-039, filed 9/30/98, effective 10/31/98)

**WAC 308-66-110 Definitions.** For the purpose of administering chapter 46.70 RCW, the following terms shall be construed in the following manner:

(1) "Offering" the sale of a vehicle shall include the distribution by any means of a list, with or without prices, of vehicles for sale.

(2) "Soliciting" the sale of a vehicle shall include an offer to effect the purchase or sale of a vehicle on behalf of another person.

(3) "Normal business hours" or "reasonable times" shall include, but not be limited to, the hours from 10:00 a.m. through 4:00 p.m. for five days each week. All hours during which the place of business is open for the purpose of bartering, trading or selling vehicles are normal business hours or reasonable times as long as the dealer is open for business at regular intervals. Whenever a dealer closes his place of business during normal business hours, a sign must be posted on the main door of the business stating the time that he will next be open for business or where he may be contacted.

(4) An "employee" of a dealer is a person on the payroll who appears on the record of the dealer as an employee for whom social security, withholding tax, and all deductions required by law have been made.

(5) A "broker" shall mean any person, partnership, corporation, or association acting independently, who for a commission, fee or any other form of compensation arranges or engages in the wholesale or retail purchase, sale or lease with option to purchase, of a vehicle.

(6) An "employee identification card" is a card that may be issued by a licensed dealer to an employee, identifying such employee as being in the employ of such dealer. The department will prescribe the form of the card.

(7) A "demonstration permit" is a permit issued by a dealer to a prospective customer entitling the prospective customer to operate a particular vehicle for demonstration purposes.

(8) Current service agreement - The agreement between a vehicle manufacturer or vehicle distributor and a seller, stipulating that the seller will provide warranty adjustments for the owners of said manufacturer's or distributor's new vehicles which qualify for adjustments under the said manufacturer's or distributor's warranty.

(9) New vehicle warranty - The warranty extended by a manufacturer or distributor to the first retail purchaser.

(10) "Closing" shall mean the process of completion of sale transaction.

(11) "Completion of sale" in the case of a consigned vehicle shall mean purchaser has possession of vehicle, all liens against vehicle are paid, seller has sale proceeds, and warranty of title to vehicle has been accomplished.

(12) "Listing" shall mean a contract between a seller of a used mobile/manufactured home and a listing dealer for the dealer to locate a willing purchaser of that listed used mobile/manufactured home.

(13) "Seller," as it relates to listing dealers, shall mean a person who lists a used mobile/manufactured home with a listing dealer.

(14) "Purchaser," as it relates to listing dealers, shall mean a person who agrees to buy a used mobile/manufactured home listed through a listing dealer.

(15) "Consignment" shall mean an arrangement whereby a vehicle dealer accepts delivery or entrustment of a vehicle and agrees to sell the vehicle on behalf of another.

(16) "Consignee" shall mean a vehicle dealer who accepts delivery or to whom a vehicle is entrusted for the purpose of sale on behalf of another.

(17) "Consignor" shall mean a person who delivers or entrusts a vehicle to a dealer for the purpose of sale.

(18) "Remanufactured" shall mean to remake or reprocess into a finished product by a large scale industrial process.

(19) "Guaranteed title" as it relates to a consigned vehicle shall mean a guarantee by the consignor to convey title to the consignee upon sale of the vehicle. The consignment agreement between the consignor and consignee shall comply with the provisions of WAC 308-66-155.

(20) "Used vehicle" in keeping with RCW 46.04.660, and for purposes of the requirement for a service agreement in RCW 46.70.101 (1)(a)(vii), a vehicle will be considered used if it meets the following requirements:

(a) It has been titled or registered to a bona fide retail purchaser/lessee for a period of 90 days or more; and

(b) The vehicle has been operated (driven) to the extent that its odometer registers 3,000 miles or more.

However, the requirements of (a) and (b) of this subsection will not apply if a bona fide retail purchaser/lessee sells, trades, or otherwise disposes of the vehicle prior to its having met those requirements. To document such an exemption, the subsequent wholesaling and retailing dealer must keep, as a dealer business record, a notarized affidavit from either the first bona fide retail purchaser/lessee, or in the case of an imported vehicle, a notarized affidavit from the importer of the vehicle. That affidavit will be prescribed by the department and must confirm that the first retail purchaser/lessee was a bona fide retail purchaser/lessee.

(21) A "bona fide retail purchaser/lessee" is one who purchases or leases a vehicle for the purpose of using it, rather than for the purposes of resale or lease.

**AMENDATORY SECTION** (Amending WSR 98-20-039, filed 9/30/98, effective 10/31/98)

**WAC 308-66-120 Dealer's license application.** (1) Each application shall contain in addition to the information required by RCW 46.70.041:

(a) The names and residential addresses of all owners of ten percent or more of the assets of the firm;

(b) The name and address of the principal place of business of the firm;

(c) The names and addresses of each and every sub-agency of the firm, if any;

(d) A current balance sheet of assets and liabilities which shall have been prepared within ninety days of its submission;

(e) A statement of whether or not the applicant or any partner, member, officer, director, owner of ten percent or more of the assets of the firm, was the holder of a license issued pursuant to chapter 46.70 RCW which was revoked for cause and never reissued by the department, or which license was suspended for cause and the terms of the suspension have not been fulfilled;

(f) A detailed list of all dealerships previously operated by each person named on the application and with which each person presently or was formerly connected or employed.

(2) An applicant shall appear for a personal interview if requested by the department.

(3) The department may require a credit report for each party named on each application for a dealer's license.

(4) An applicant shall provide as evidence of leasehold or ownership interest of business location either:

(a) A copy of the rental or lease agreement between the applicant and landowner showing the business location by commonly known address, or

(b) A copy of the county assessor's record showing ownership of the business location, the applicant's name and the commonly known address.

(5) The bank reference for verifying financial condition consisting of:

(a) The name of applicant's bank, a person to contact at that bank concerning applicant's financial condition, or

(b) A letter of credit current within last 90 days, or

(c) A flooring agreement, if with a financial institution, or

(d) A line of credit with a financial institution.

(6) The department may require an applicant for a vehicle dealer license to provide evidence that the business location conforms to all zoning and land use ordinances.

(7) A corporation applicant shall provide the corporation number and corporation name issued by the secretary of state's office authorizing the company to do business within this state.

(8) The name and address on the license application and all required supporting documents must be the same. The sign at the certified location must identify the doing business as name (dba), if any, and that name shall appear on all documents as the applicant's name. The business telephone listing must also reflect the business name or the doing business as name.

(9) A certification of completion in the dealer education program:

(a) At least one principal of each company applying for an original vehicle dealer license must receive certification in the dealer education program required by RCW 46.70.041 (1)(l).

(b) The department encourages as many principals of each company as possible to obtain such certification.

(c) For annual dealer license renewals, either a company principal or a managing employee may complete the continuing education program. The continuing education certificate will indicate that the dealership has fulfilled the requirement.

(d) Certifications for either original or renewal applications will be valid for twelve months.

## WSR 02-09-059

### PROPOSED RULES

### DEPARTMENT OF AGRICULTURE

[Filed April 15, 2002, 2:20 p.m.]

#### Original Notice.

Preproposal statement of inquiry was filed as WSR 02-05-083.

Title of Rule: WAC 16-301-025 Special requirements for labeling of vegetable and flower seed as prepared for use in the home, 16-301-050 Restricted noxious weeds, 16-302-091 What is the program for early sampling of ryegrass, 16-302-125 Who may condition seed in Washington state, 16-302-250 Definitions, 16-302-260 Field tolerances and [no further information supplied by agency].

Purpose: To make housekeeping corrections and changes clarifying the rules and make them easier to read without changing their intent. Also, noxious weeds need to be added to the list in WAC 16-301-045 Prohibited noxious weed seeds. These weeds were inadvertently deleted from the list when the section was amended in December of 2000.

Statutory Authority for Adoption: Chapter 34.05 RCW and RCW 15.49.370(3).

Statute Being Implemented: RCW 15.49.370(3).

Summary: The proposed amendments simply make housekeeping corrections and clarifying changes in the rule

sections listed above. None of the proposed changes change the effect of the rule.

**Reasons Supporting Proposal:** The proposed amendments increase the accuracy and clarity of the listed rule sections.

**Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement:** Graydon Robinson, Program Manager, Yakima, (509) 225-2636.

**Name of Proponent:** Washington State Department of Agriculture, governmental.

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

**Explanation of Rule, its Purpose, and Anticipated Effects:** Housekeeping changes to the following rules: WAC 16-301-025 Special requirements for labeling of vegetable and flower seed as prepared for use in the home, 16-301-050 Restricted noxious weeds, 16-302-091 What is the program for early sampling of ryegrass, 16-302-125 Who may condition seed in Washington state, 16-302-250 Definitions, 16-302-260 Field tolerances and requirements for bean seed certification, 16-302-330 Field isolation requirements for grass seed, 16-302-385 Grass seed standards for certification, 16-302-390 Inspection and final grass seed certification fees—Options, 16-302-410 Standards for sod quality seed, 16-302-435 Sudangrass lot standards for certification, 16-302-490 Seed standards for rapeseed certification, 16-302-545 Seed standards for white clover and trefoil seed certification, 16-302-685 Small grain standards for seed certification, and 16-303-250 Miscellaneous charges for seed certification.

In addition, noxious weeds need to be added to WAC 16-301-045 Prohibited noxious weed seeds, which were inadvertently deleted from the list when the section was amended in December of 2000.

Proposal does not change existing rules.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendments have no fiscal impact upon the businesses regulated by these rules. The proposed amendments are housekeeping in nature.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. The Washington State Department of Agriculture is not a listed agency in RCW 34.05.328 (5)(a)(i).

**Hearing Location:** Washington State Department of Agriculture, 21 North First Avenue, Conference Room 238A, Yakima, WA 98902, on May 22, 2002, at 1:00 p.m.

**Assistance for Persons with Disabilities:** Contact Laurie Crose by May 20, 2002, TDD (360) 902-1996, or (360) 902-1976.

**Submit Written Comments to:** George Huffman, Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, fax (360) 902-2085, by May 22, 2002.

**Date of Intended Adoption:** May 30, 2002.

April 11, 2002

Robert W. Gore  
Assistant Director

**AMENDATORY SECTION** (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

**WAC 16-301-025 Special requirements for labeling of vegetable and flower seed as prepared for use in the home.** In addition to the information required on the label in WAC 16-301-015, the following requirements also apply to vegetable and flower seed as prepared for use in home:

(1) **Vegetable seeds in packets or preplanted devices** - labeling for vegetable seeds in packets as prepared for use in home gardens or household plantings or vegetable seeds in preplanted containers, mats, tapes, or other planting devices must include the following information:

(a) The year in which the seed was packed for sale as "packed for planting in..." or the percentage germination and the calendar month and the year the test was completed to determine that percentage;

(b) Label for seeds which germinate less than the standard established (~~under the provisions of chapter 15.49 RCW~~) in WAC 16-301-090 must include the following:

(i) Percentage of germination, exclusive of hard seed;

(ii) Percentage of hard seed, if present;

(iii) The words "below standard" in not less than eight-point type;

(c) For seeds placed in a germination medium, mat, tape, or other device in such a way as to make it difficult to determine the quality of seed without removing the seed from the medium, mat, tape or device, a statement to indicate the minimum number of seeds in the container.

(2) **Vegetable seeds in containers** - the labeling requirements for vegetable seeds in containers, other than packets prepared for use in home gardens or household plantings and other than preplanted containers, mats, tapes, or other planting devices, is considered met if the seed is weighed from a properly labeled container of more than one pound in the presence of the purchaser.

(3) **Flower seeds in packets or preplanted devices** - labeling for flower seeds in packets prepared for use in home gardens or household plantings or flower seeds in preplanted containers, mats, tapes, or other planting devices must include the following information:

(a) For all kinds of flower seeds:

(i) The name of the kind and variety or a statement of the kind and performance characteristics as prescribed in chapter 15.49 RCW and rules adopted thereunder;

(ii) The calendar month and year the seed was tested or the year for which the seed was packaged;

(b) Labels for seeds of those kinds for which standard testing procedures are prescribed and which germinate less than the germination standard established under the provisions of chapter 15.49 RCW must include the following:

(i) The percentage of germination exclusive of hard seeds;

(ii) The words "below standard" in not less than eight-point type.

PROPOSED

**AMENDATORY SECTION** (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

**WAC 16-301-045 Prohibited noxious weed seeds.**

Prohibited noxious weed seeds are the seeds of weeds which when established are highly destructive, competitive and/or difficult to control by cultural or chemical practices. Seed is deemed mislabeled if the seed consists of or contains any of the prohibited noxious weed seeds listed below. For the purpose of seed certification, see WAC 16-302-100 for the list of prohibited noxious weeds.

ENGLISH OR COMMON NAME	BOTANICAL OR SCIENTIFIC NAME
Austrian fieldcress	<i>Rorippa austriaca</i> (Crantz) Bess.
Field bindweed	<i>Convolvulus arvensis</i> L.
Hedge bindweed	<i>Convolvulus sepium</i> L.
Bladder campion (only in timothy- <i>Phleum pratense</i> )	<i>Silene cucubalus</i>
Camelthorn	<i>Alhagi camelorum</i> Fisch.
Canada thistle	<i>Cirsium arvense</i> (L.) Scop.
Hairy whitetop	<i>Cardaria pubescens</i> (C.A. Mey.)
Hoary cress	<i>Cardaria draba</i> (L.) Desv.
Jointed goatgrass (only in small grain)	<i>Aegilops cylindrica</i>
Knapweed complex (including bighead, Vochin, black, <u>brown</u> , diffuse, meadow, Russian, spotted knapweeds Purple starthistle)	<i>Centaurea macrocephala</i> , <i>Centaurea nigrescens</i> , <i>Centaurea nigra</i> , <u><i>Centaurea jacea</i></u> , <i>Centaurea diffusa</i> , <i>Centaurea jacea x nigra</i> , <i>Centaurea repens</i> , <i>Centaurea maculosa</i> , <i>Centaurea calcitrapa</i>
Leafy spurge	<i>Euphorbia esula</i> L.
<u>Lepyrodielis</u>	<u><i>Lepyrodielis holosteoides</i></u>
Perennial pepperweed	<i>Lepidium latifolium</i> L.
Perennial sowthistle	<i>Sonchus arvensis</i> L.
Quackgrass	<i>Elytrigia repens</i>
Serrated tussock	<i>Nassella trichotoma</i>
<u>Silverleaf nightshade</u>	<u><i>Solanum elaeagnifolium</i></u>
Sorghum perennial such as, but not limited to, johnsongrass, sorghum almum, and	<i>Sorghum</i> spp.

**ENGLISH OR  
COMMON NAME**

perennial sweet  
sudangrass  
Tansy ragwort  
Velvetleaf  
White cockle

(only in timothy-  
*Phleum pratense*)

Yellow-flowering skeleton  
weed  
Yellow starthistle

**BOTANICAL OR  
SCIENTIFIC NAME**

*Senecio jacobaea* L.  
*Abutilon theophrasti*  
(~~*Lycchnis alba*~~) *Silene lati-*  
*floia*

*Chondrilla juncea* L.

*Centaurea solstitialis* L.

**AMENDATORY SECTION** (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

**WAC 16-301-050 Restricted noxious weed seeds.**

Restricted (secondary) noxious weed seeds are the seeds of weeds which are objectionable in fields, lawns, and gardens of this state, but which can be controlled by cultural or chemical practices. Seed is deemed mislabeled if it consists of or contains any of the restricted noxious weed seeds listed below in excess of the number declared on the label. For the purpose of seed certification, see WAC 16-302-105 for the list of objectionable weeds.

ENGLISH OR COMMON NAME	BOTANICAL OR SCIENTIFIC NAME
Blackgrass	<i>Alopecurus myosuroides</i>
Blue lettuce	<i>Lactuca tatarica</i> subsp. <i>pul-</i> <i>chella</i>
Docks and Sorrel	<i>Rumex</i> spp.
Dodder	<i>Cuscuta</i> spp.
Dyers woad	<i>Isatis tinctoria</i>
Field pennycress (fanweed)	<i>Thlaspi arvense</i>
Field sandbur	<i>Cenchrus incertus</i>
Gromwell (only in small grain)	<i>Buglossoides arvensis</i>
Halogeton	<i>Halogeton glomeratus</i> C.A. Mey.
Medusahead	<i>Taeniatherum</i> ( <del><i>capa-medusa</i> subsp.</del> <del><i>caputmedusae</i></del> ) <u><i>caput-</i></u> <u><i>medusae</i></u>
Plantains	<i>Plantago</i> spp.
Poverty weed	<i>Iva axillaris</i> Pursh.
Puncturevine	<i>Tribulus terrestris</i> L.
St. Johnswort	<i>Hypericum perforatum</i> L.
Dalmation toadflax	<i>Linaria dalmatica</i> (L.) Mill.

Yellow toadflax	<i>Linaria vulgaris</i> Hill.
Western ragweed	<i>Ambrosia psilostachya</i> DC.
Wild mustard	<i>Sinapis arvensis</i> subsp. <i>arvensis</i>
Wild oat	<i>Avena fatua</i> L.

**AMENDATORY SECTION** (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

**WAC 16-302-091 What is the program for early sampling of ryegrass?** The procedure for participating in the program for early sampling of ryegrass is as follows:

(1) Any company participating in this program must submit a report to the seed program listing the grower, acreage, variety, and field number of each field to be enrolled. This report must be filed by June 15th of each year. For fields that are in their second year of production or beyond, all lab numbers of tests from the previous year must also be provided.

(2) The seed company is responsible for having their field personnel sample each field in the ~~((window))~~ windrow. The sample must be obtained from well-distributed points throughout the field. It is recommended that samples be thrashed and cleaned prior to testing. An additional fee will be charged for samples that are not cleaned. Samples must be forwarded to the seed program with the following information: The crop and variety, field number, grower, the name of the seed company, and a request for germination and fluorescence test. The sample must also indicate that it is being submitted under the early sampling program for ryegrass.

(3) At the time of conditioning the seed, a composite sample must be submitted to the seed program for purity testing. The sample information must indicate the seed is from a field under the early sampling program for ryegrass. In addition to providing complete certification information, the lab number on which the fluorescence test was conducted must also be provided. The seed program may run a fluorescence test on the composite sample to verify the results from the early sample.

(4) Certification tags will be issued upon completion of all required testing meeting the minimum certification standards for ryegrass. A tagging request must be filed with the seed program.

(5) Failure to comply with the requirements of this section will result in the disqualification of the seed company from the early sampling program for the year.

**AMENDATORY SECTION** (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

**WAC 16-302-125 Who may condition seed in Washington state?** (1) Under the authority of RCW 15.49.350, a seed conditioning facility must be inspected and approved by the department prior to conditioning seed in Washington state. Upon approval by the department, a seed conditioning permit is issued and the facility is placed on a list of approved seed conditioning plants. A copy of the list can be obtained by contacting the department seed program.

(2) A person desiring to condition seed must make application to the department for a permit on a form provided by the department.

(3) To obtain department approval for a seed-conditioning permit, the department conducts an inspection. A facility must show evidence that:

(a) Seed for certification is handled in a manner which prevents mixture of lots of seed;

(b) The seed conditioning facility is maintained and cleaned. Equipment must be easily accessible for cleaning and inspection, and must be cleaned between lots;

(c) Each lot of seed is identified with a lot number;

(d) Screenings are disposed of in accordance with chapter 15.49 RCW; and

(e) Seed is sampled in accordance with WAC 16-301-095 ~~((and))~~, 16-302-090 and 16-302-091.

(4) A seed conditioning facility must be approved by the department prior to handling seed for certification in bulk.

#### **NEW SECTION**

**WAC 16-302-142 Standards for verification of turf seed ingredients.** The general rules for seed certification are basic and together with the following specific requirements constitute the rules for certification identity of mixtures of different kinds of turf certified seed:

(1) A blend data sheet, including proof of certification, verifying the origin and the certifying agency along with the analysis and pounds of each lot must be submitted to the certifying agency for approval.

(2) Each lot of certified seed shall:

(a) Meet standards acceptable to the certifying agency.

(b) Be sampled under supervision of the certifying agency prior to mixing. The sample shall be obtained in accordance with official sampling procedures. The sample shall be identified with:

(i) The verification of certification, origin, and certifying agency;

(ii) The kind/variety;

(iii) The analysis and size of lot.

(3) The certifying agency reserves the right to:

(a) Refuse permission to use individual lots;

(b) Approve the equipment to be used and procedure to follow in mixing;

(c) Approve the containers and labeling to be used; and

(d) Sample the final mixture.

(4) The certifying agency will identify each container with an official certification label verifying that the individual lots used were certified seed lots.

(5) For a mixture to be labeled sod quality each component shall meet sod quality standards in WAC 16-302-410.

(6) Fees for turf seed mixing shall be the same as the current blend fee. Refer to chapter 16-303 WAC for appropriate fees.

**AMENDATORY SECTION** (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

**WAC 16-302-250 Definitions.** For the purposes of WAC 16-302-245 through 16-302-270, the following defini-

tions shall apply in addition to the definitions found in chapter 16-301 WAC:

"Adzuki bean" means *Vigna angularis*.

"Dominant I-gene cultivar" means a cultivar that has resistance to all known strains of bean common mosaic virus (B.C.M.V.) due to the presence of the dominant I-gene. Dominant I-gene cultivars will not show mosaic mottle symptoms or transmit the virus through seed when inoculated with any strain of B.C.M.V.

"Diseases" means those viral, fungal, and bacterial diseases of beans enumerated in WAC ((16-494-013)) 16-301-380 and any new variations or strains of these identified in the future.

"Recessive I-gene cultivar" means a cultivar that may be susceptible to some strains of bean common mosaic virus and may show mosaic mottle symptoms.

"Seed-borne viral diseases" includes bean common mosaic virus, adzuki common mosaic virus, and other similar viral diseases causing mosaic mottle and other symptoms similar to those of bean common mosaic virus.

**AMENDATORY SECTION** (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

**WAC 16-302-260 Field tolerances and requirements for bean seed certification.** (1) Field tolerances and requirements for the production of a bean seed crop are as follows:

	Field Producing(=)		
	Foundation	Registered	Certified
Other varieties or off-type plants	none found	0.1%	0.2%
Other crops*	none found	0.1%	0.1%
Total seed-borne diseases**	none found	none found	none found

\* Except as noted in subsection (6) of this section.  
 \*\* Except as noted in subsection (7) of this section.

(2) Snap and kidney beans must be isolated by 1320 feet from known bacterial blight.

(3) The following requirements apply to bean seed certification:

(a) Pintos, red mexicans, pinks, great northern, small whites, navy beans, and black turtle beans may be grown for an unlimited number of generations under rill or sprinkler irrigation.

(b) Kidney beans, cranberry types, Taylor horticultural types, and Borlotto types may be grown for an unlimited number of generations under rill irrigation or for one generation under rill irrigation and, subsequently, for two generations under sprinkler irrigation. The fourth and unlimited subsequent generations may be grown and inspected with the same alternation of irrigation types.

(4) Bean fields must be rogued of weeds, off-type plants, volunteer plants, and plants showing symptoms of seed-borne diseases. Excessive nightshade shall be a cause for rejection.

(5) For a bean field to be eligible for certification it must be clean and have boundaries that are clearly defined and a

minimum of 36" which is adequate to prevent mechanical contamination.

(6) Excessive weeds, poor stands, lack of vigor, or any other condition which is apt to make inspection inaccurate may be cause for rejection of a bean field.

(7) Bean fields, including those planted with a dominant I-gene cultivar, are allowed the following levels of bean seed-borne virus diseases in the field: For foundation class, none found; for registered class 0.5%, ((-5%)) and for certified class 1.0%.

**AMENDATORY SECTION** (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

**WAC 16-302-330 Field isolation requirements for grass seed certification.** (1) The field isolation requirements for grass seed are as follows:

(a) A seed field eligible for the production of foundation, registered or certified seed must be isolated from any other variety or strain of the same species in accordance with the requirements in the following table:

Symbol for Type of Reproduction	Minimum Isolation Distance Required for Fields Producing:		
	Foundation	Registered	Certified
Strains at least 80%			
Apomictic A	60 feet	30 feet	15 feet clean fallow
Highly Self-Fertile Species—S	60 feet	30 feet	15 feet clean fallow
All cross-pollinated Species—C	900 feet	300 feet	165 feet

(b) A seed field that is eligible for the production of foundation or registered seed must be isolated from different classes of the same variety of cross-pollinated (C) species in accordance with the requirements in the following table:

Class Seed Planted	Class Seed Produced	Distance Required From Nearest Field Producing:	
Breeder	Foundation	Registered	150 feet
Breeder	Foundation	Certified	225 feet
Foundation	Registered	Certified	75 feet

(c) Isolation is not required in fields producing certified class seed when the isolation zone is less than ten percent of the entire field being certified if there is a clear (ten feet) line of demarcation between adjacent varieties. The isolation zone is the area calculated by the length of the common border with other varieties by average width of the certified field falling within the one hundred sixty-five feet isolation distance requirement.

(d) A field eligible for the production of foundation, registered or certified seed must be isolated from classes of the same variety of apomictic (A) and self-fertile (S) species in accordance with the following requirements:

(i) A field producing foundation or registered seed must be a minimum of fifteen feet from a field planted with a different class of the same variety.

PROPOSED

(ii) A field producing certified seed must be a minimum of five feet from a field planted with a different class of the same variety.

(e) If it is not possible to provide minimum isolation distances for fields producing foundation, registered or certified seed exceeding five acres in area, border removal is permitted. Border removal requires removal of the portion of the field being certified that is adjacent to a contamination source. The following requirements apply if the grower uses border removal:

(i) The minimum distances required for border removal are as follows:

**Minimum Isolation Distance Required for Fields Producing:**

Border to be removed from the field being certified	Foundation	Registered	Certified
0 feet	900 ft.	300 ft.	165 ft.
15 feet	450 ft.	150 ft.	75 ft.

(ii) The grower must apply for seed certification of the entire field and clearly stake off the border removal portion before inspection of the field by the certifying agency.

(f) The border removal portion of the field may be harvested for uncertified seed under the following conditions:

(i) The entire field must pass all certification requirements except for isolation at time of inspection. The field report will show rejection due to lack of isolation.

(ii) The grower must harvest and deliver to a department approved conditioning plant the seed from the certified portion of the field separately from the seed from the isolation strip. After the seed is weighed and ~~((totted))~~ logged in, the weight of the seed from the isolation strip is to be reported to the seed program. At this time the seed program records will indicate the field has passed certification.

**AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)**

**WAC 16-302-385 Grass seed standards for certification. The seed standards for grass shall be as follows:**

CROP AND TYPE OF REPRODUCTION AS PER WAC 16-302-330	SEED STANDARDS													
	MINIMUM % GERM (d)(n)		MINIMUM % PURE		MAXIMUM % INERT		MAXIMUM % WEEDS (b)		MAXIMUM % OTHER CROPS		MAXIMUM SEEDS OF OTHER CROP GRASS SPECIES			
	FNDT. REG.	FNDT. CERT.	FNDT. REG.	FNDT. CERT.	FNDT. REG.	FNDT. CERT.	FNDT. REG.	FNDT. CERT.	FNDT. REG.	CERT. (a)	FNDT. SEEDS/LB.	REG. SEEDS/LB.	CERT. %	
<b>BLUEGRASS</b>														
Big	(A)	70	70	90	90	10	10	.05	.3	.1	.5	45 /lb.	454 /lb.	.25
Canby	(A)	70	70	90	90	10	10	.05	.3	.1	.5	45 /lb.	454 /lb.	.25
Kentucky	(A)	80	80	97	97	3	3	.05	.3	.1	.5	45 /lb.	454 /lb.	.25
Canada, Upland	(A)	80	80	96	92	4	8	.05	.3	.1	.5	45 /lb.	907 /lb.	.25
<b>BROMEGRASS</b>														
Smooth & Meadow	(C)	80	85	95	95	5	5	.05	.3 (c)	.1	.5	9 /lb.	91 /lb.	.25
Mountain & Sweet	(C)	85	85	95	95	5	5	.3	.3 (c)	.1	1.0	9 /lb.	91 /lb.	.25
<b>DEERTONGUE</b>														
	(C)	50	50	97	95	3	5	.50	.5 (c)	1.0	1.0	1%		
<b>FESCUE</b>														
Tall & Meadow	(C)	80	85	95	97	5	3	.03	.3 (c)	.1	.5	18 /lb.	91 /lb.	.25
Hard & Sheep (m)	(C)	80	85	95	97	5	3	.03	.3 (c)	.1	.5	9 /lb.	45 /lb.	.25
Chewings Red, Idaho and other Fescue	(C)	80	90	95	97	5	3	.03	.3 (c)	.1	.5	9 /lb.	45 /lb.	.25
<b>ORCHARDGRASS</b>														
	(C)	80	85	85	90	15	10	.03	.3 (c)	.1	.5	27 /lb.	91 /lb.	.25
			80 for	penlate	& lator									
<b>RYEGRASS</b>														
Pennfine	(C)	80	90 (l)	96 (k)	97 (k)	4	3	.1	.3 (c)	.1	.5	9 /lb.	45 /lb.	.25
		80	85	96 (k)	97 (k)	4	3	.1	.3 (c)	.1	.5	9 /lb.	45 /lb.	.25
<b>TIMOTHY</b>														
		80	85	97	97	3	3	.1	.3	.1	.5	9 /lb.	45 /lb.	.25
<b>WHEATGRASS (n)</b>														
Beardless	(C)	80	85	90	90	10	10	.1	.3 (c)	.1 (e)	.5 (e)	9 /lb.	45 /lb.	.25
Bluebunch	(C)	80	85	90	90	10	10	.1	.3 (c)	.1 (e)	.5 (e)	9 /lb.	45 /lb.	.25
<del>((Intermediate))</del>	(C)	80	85	95	95	5	5	.1	.3 (c)	.1 (e)	.5 (e)	9 /lb.	45 /lb.	.25
Intermediate, Tall	(C)	80	85	95	95	5	5	.1	.3 (c)	.1 (e)	.5 (e)	9 /lb.	45 /lb.	.25
Pubescent														
Western, R/S														
Streambank,	(C)	80	85	90	90	10	10	.1	.3 (c)	.1 (e)	.5 (e)	9 /lb.	45 /lb.	.25
Thickspike	(S)	80	85	90	95	10	5	.1	.3 (c)	.1 (e)	.5 (e)	9 /lb.	45 /lb.	.25
Slender	(C)	80	85	90	95	10	5	.1	.3 (c)	.1 (e)	.5 (e)	9 /lb.	45 /lb.	.25
Crested & Siberian														
<b>INDIAN</b>														
<b>RICEGRASS</b>														
	(C)	80(j)	80 (j)	95	90	5	10	.3	.5	.5	1.0	9 /lb.	45 /lb.	.25
<b>PUCCINELLIA (n)</b>														
distans	(C)	80	80	90	95	5	5	.3	.5	.5	1.0	45 /lb.	454 /lb.	.25

PROPOSED

CROP AND TYPE OF REPRODUCTION AS PER WAC 16-302-330	MINIMUM % GERM (d)(n)		MINIMUM % PURE		MAXIMUM % INERT		MAXIMUM % WEEDS (b)		MAXIMUM % OTHER CROPS		MAXIMUM SEEDS OF OTHER CROP GRASS SPECIES			
	FNDDT.		FNDDT.		FNDDT.		FNDDT.		FNDDT. (i)		FNDDT.	REG.	CERT.	
	REG.	CERT.	REG.	CERT.	REG.	CERT.	REG.	CERT.	REG. (i)	CERT. (a)				
WILDRYE (n)	(C)	80	80	90	90	10	10	.1	.3 (c)	.1	.5	9 /lb.	45 /lb.	.25
BENTGRASS	(C)	85	85	98	98	2	2	.3	.4 (f) (g)	.2	.6 (h)			
REDTOP	(C)	80	80	92	92	8	8	.3	.5 (f)	.5	.2			
Ann.														
CANARYGRASS	(C)	85	85	99	99	1	1	.1	.3	1/lb.	3/lb.			
GREEN (n)	(C)	80	80	80	80	20	20	.1	.3(c)	.1	.5			
NEEDLEGRASS														
SWITCHGRASS	(C)	60	60	90	90	10	10	.5	1.5	.1	.25			

The following (a) - (n) are notes to the above table.

- (a) Not to exceed .25% other grass species for blue tag seed.
- (b) Grass seed must not contain more than 45/lb. for registered seed 91/lb. for certified seed, singly or collectively, of objectionable weed seeds. (See (f) of this subsection for certified bentgrass and redtop exemption.) Grass seed shall be free of the seed of prohibited noxious weeds.
- (c) A tolerance of 0.5% may be allowed for samples containing weedy bromus spp provided the total of all other weed seeds does not exceed 0.3%.
- (d) A standard tetrazolium (two hundred seed) test may be used in lieu of germination test. NOTE: State and federal seed laws require seed be labeled on a germination test.
- (e) A tolerance of 0.8% may be allowed in registered and certified wheatgrass containing small grain seed provided the total of all other crop seed does not exceed 0.1% for registered class and 0.5% for certified class.
- (f) Certified seed must not contain over 907 seeds per pound, singly or collectively, of the following weeds: Plantago spp., Big Mouse-ear Chickweed, Yarrow, Spotted Cat's Ear, and Dandelion.
- (g) A maximum of .50% weed seed may be allowed in certified bentgrass containing silver hairgrass provided the total of all other weed seed does not exceed .40%.
- (h) 1.50% other fine bentgrasses and .50% redtop may be allowed in certified bentgrass containing a minimum of 98.00% total bentgrass.
- (i) A crop exam is required for all registered and foundation class grass seeds.
- (j) Or 70% by Tz test.
- (k) Maximum other ryegrass allowed as determined by fluorescence test: Foundation 0.1%, registered 1%, certified 2% for annual and 3% for perennial containing a minimum of 97% total ryegrass. Acceptable fluorescence levels for specific varieties available upon request.
- (l) 85% minimum germination allowed on ryegrass varieties as designated by the breeder or variety owner. See list maintained by the seed program.
- (m) An ammonia test is required on hard and sheep fescue to determine presence of other Fescue sp. Other fine-leaved fescue found in the ammonia test will be included with other crop not other grass species.
- (n) Total viability as allowed in WAC 16-302-170 can be substituted for germination percentage.

(a) **Option A** - certification is based on pounds of seed sampled, and billed at completion of required laboratory tests, the fees are as listed in WAC 16-303-330 (5)(a):

(b) **Option B** - certification is based on dealers requesting sampling and tagging privileges. Seed dealers must sign a memorandum of agreement with the department that expires on June 30 of each year. The memorandum may be terminated by the director if the dealer violates certification standards or requirements of memorandum. Payment of fees is the responsibility of the conditioner under this program. Upon termination or nonrenewal of the memorandum of agreement, the dealer is responsible for Option A fees on all certified seed not tagged at termination date. A dealer choosing this program must handle all certified grasses in his warehouse under this program for the entire crop year.

Fees are ((as established in chapter 16-303 WAC)) listed in WAC 16-303-330 (5)(b).

**AMENDATORY SECTION** (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

**WAC 16-302-410 Standards for sod quality seed.** (1)

Except for ryegrass sod quality seed, seed standards for sod quality grass seed are as follows:

Variety	Minimum Purity	Minimum Germination	Maximum* Other Crop	Maximum** Weed
Kentucky Bluegrass	97%	80%	0.1%	.02%
Red Fescue	98%	90%	0.1%	.02%
Chewings Fescue	98%	90%	0.1%	.02%
Tall Fescue	98%	85%	0.1%	.02%

\* Must be free of ryegrass, orchardgrass, timothy, Agrostis sp., black medic, Poa trivialis, brome, reed canarygrass, tall fescue, clover, and meadow foxtail. Maximum allowable Canada bluegrass .02%. When the base sample is one of these kinds, the species will not be considered a contaminant (i.e., tall fescue in tall fescue).

\*\* Must be free of Big, Canby and Sandberg bluegrass, dock, chickweed, crabgrass, plantain, short-awn foxtail, annual bluegrass, velvetgrass, rattail fescue and noxious weed seeds as listed under WAC 16-302-100 and 16-302-105.

(2) Seed standards for sod quality ryegrass seed are as follows:

Variety	Minimum Purity	Germination****	Other Crop*	Maximum((****))Weed***
Ryegrass**	98%	90%	0.10%	.02%

**AMENDATORY SECTION** (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

**WAC 16-302-390 Inspection and final grass seed certification fees—Options.** Inspection and final grass seed certification fees are based on the following options:

PROPOSED

- \* Must be free of black medic, orchardgrass, timothy, *Agrostis* sp., *Poa trivialis*, brome, reed canarygrass, tall fescue, clover and meadow foxtail. Maximum allowable Canada bluegrass 0.02%.
- \*\* Maximum fluorescence levels as determined by breeder or variety owner.
- \*\*\* Must be free of Big, Canby and Sandberg bluegrass, rattail fescue, dock, chickweed, crabgrass, plantain, annual bluegrass, velvetgrass, short-awn foxtail, and noxious weed seeds as listed under WAC 16-302-100 and 16-302-105. An additional 0.07% of weedy *Bromus* spp. will be allowed.
- \*\*\*\* 85% minimum germination allowed on ryegrass varieties as designated by the breeder or variety owner. See list maintained by the seed program.

\*((#)) Inert matter must not contain more than 0.5% of material other than seed fragments of the variety under consideration.

**AMENDATORY SECTION** (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

**WAC 16-302-490 Seed standards for rapeseed certification.** Seed standards for the production of rapeseed are as follows:

Purity	Foundation	Registered	Certified
Pure seed (Min.)	99.00%	99.00%	99.00%
Other crop and/or varieties (Max.)	9/lb	9/lb	18/lb
Inert matter (Max.)	1.00%	1.00%	1.00%
Weed seed (Max.)	91/lb	91/lb	181/lb
Prohibited noxious weeds (1)	None found	None found	None found
Objectionable weeds (2) (Max.)	5/lb	9/lb	18/lb
Chemical analysis (3)			
Germination (Min.)	85.00%	85.00%	85.00%

- Note:
- (1) None found means none found during normal inspection procedures. None found is not a guarantee that the lot is free of noxious weed seeds.
  - (2) Objectionable weed seeds are defined as restricted noxious listed in WAC ((16-301-125)) 16-301-050 plus: *Brassica nigra*, *Sinapis arvensis*, *Brassica juncea*, and *Raphanus raphanistrum*.
  - (3) Erucic acid content shall be less than 2% and glucosinolate content shall not be greater than thirty micromoles unless other tolerances are described by the plant breeder for each variety.
  - (4) Erucic acid and glucosinolate analysis must be conducted on clean seed.
  - (5) Erucic acid and glucosinolate analysis must be conducted ((is)) at a WSDA approved laboratory.

**AMENDATORY SECTION** (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

**WAC 16-302-685 Small grains standards for seed certification.** (1) Land, isolation, and field standards for small grains (barley, oat, rye, triticale, and wheat) seed certification are:

Purity	Foundation	Class Registered	Certified
Pure seed (min.)	98.0%	98.0%	98.0%
Inert material (max.)	2.0%*((#))	2.0%*((#))	2.0%*((#))
Other crop (max.)	0.01%	0.03%	0.08%
Weed seed (max.)	0.10%	0.10%	0.10%
Prohibited or restricted noxious weed seeds	none found	none found	none found
Germination (min.)	85.0%	85.0%	85.0%

CLASS	FIELD STANDARDS				
	LAND STANDARDS MINIMUM YEARS	ISOLATION STANDARDS MINIMUM FEET	OFF-TYPE MAXIMUM HEAD RATIO	OTHER CROP MAXIMUM HEAD RATIO	WILD OAT MAXIMUM PLANTS/ACRE
Foundation	2*	((3**)) 90 same genus** 3 different genus	None found	None found***	None found
Registered	1*	3**	1/148,000	1/148,000***	5
Certified	1*	3**	1/49,000	1/49,000***	5

- \* Waived if the previous crop is grown from an equal or higher certified class of seed of the same variety.
- \*\* Refers to distance from other small grain fields. Foundation class fields must be isolated ninety feet from fields of the same genus. In addition, each rye field for certification must be isolated by three feet from fields producing a certified class of the same variety,

and by six hundred sixty feet from other rye fields. Each triticale field for certification must be isolated by three feet from fields producing a certified class of the same variety, and by three hundred feet from other triticale, rye and wheat fields for foundation and registered class, and three feet for certified class, unless otherwise stated by plant breeder.

\*\*\* Refers to other small grains, except that no rye or triticale is permitted in barley, oat, or wheat; no vetch is permitted.

(2) Small grains - seed standards:

Class	Foundation	Registered	Certified
Pure seed (min.)	98%	98%	98%
Inert (max.)	2%	2%	2%
off-type(*) (max.)	None found	2/lb	4/lb
Other small grain(*) (max.)	None found	1/lb	2/lb
Other crop(**) (max.)	None found	0.03%	0.05%
Weed seed (max.)	0.01%	0.01%	0.03%
Objectionable weed seed(***) (max.)	None found	None found	1/lb
Wild oat (max.)	None found	None found	None found (****)
Viability(*****) (min.)	85%	85%	85%

- (\*) The combination of other small grain and off-type must not exceed 2/lb for registered class, and 4/lb for certified class. The tolerance for rye or triticale, is none found in barley, oat, or wheat. The tolerance for rye is none found in triticale. The tolerance for triticale is none found in rye.
- (\*\*) Excluding off-type and other small grain. No vetch is allowed in small grain seed
- (\*\*\*) Excluding wild oat.
- (\*\*\*\*) 1/lb for certified class oat.
- (\*\*\*\*\*) A certification certificate is issued upon receipt of either an official AOSA tetrazolium or germination test which meets minimum Washington viability standards. NOTE: State and federal seed laws require seed be labeled based on a germination test.

Note: For all classes the purity analysis is based on 100 grams examined. For registered and certified classes, noxious weed, vetch, off-type, and other small grain(;) determinations are based on 500 grams examined. For foundation class, noxious weed, vetch, off-type, and other small grain determinations are based on 1000 grams examined.

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 16-302-440 Standards for verification of turf seed ingredients.

**WSR 02-09-060  
PROPOSED RULES  
DEPARTMENT OF AGRICULTURE**

[Filed April 15, 2002, 2:22 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 02-03-127.

Title of Rule: WAC 16-303-200 Seed program testing fees, 16-303-210 Fees or special seed tests, 16-303-230 Official seed sampling for similar service, 16-303-250 Miscellaneous charges for seed services, 16-303-300 Phyto-sanitary certification of seed—Fees, 16-303-310 Organization for economic cooperation and development scheme for varietal

certification (OCED) fees, [no further information supplied by agency].

Purpose: This proposal is intended to assure that fees charged for seed program services are sufficient to recover operating costs. Seed certification fees, laboratory analysis fees and miscellaneous fees for alfalfa, grass, vegetable and other minor seed crops would be increased by the fiscal growth rate factor for fiscal year 2002 (2.79%).

Statutory Authority for Adoption: Chapter 34.05 RCW and RCW 15.49.370(3) and 15.49.310.

Statute Being Implemented: RCW 15.49.370(3).

Summary: The Washington State Department of Agriculture proposes increasing seed program fees in the WAC sections identified above by the OFM 2002 fiscal growth rate factor of 2.79%.

Reasons Supporting Proposal: The proposed fee increases are necessary to help offset inflationary increases in the cost of operating the seed program.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Graydon Robinson, Program Manager, Yakima, (509) 225-2636.

Name of Proponent: Washington State Department of Agriculture, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: WAC 16-303-200 Seed program testing fees, 16-303-210 Fees for special seed tests, 16-303-230 Official seed sampling or similar service, 16-303-250 Miscellaneous charges for seed services, 16-303-300 Phyto-sanitary certification of seed—Fees, 16-303-310 Organization for economic cooperation and development scheme for varietal certification (OCED) fees, 16-303-317 Annual and rough bluegrass quarantine fees, 16-303-320 Certification fees for seed certified by the department except grasses, and 16-303-330 Certification fees for grass seed.

This proposal is intended to assure that fees charged for seed program services are sufficient to recover operating costs. Seed certification fees, laboratory analysis fees and miscellaneous fees for alfalfa, grass, vegetable and other minor seed crops would be increased by the fiscal growth rate factor for fiscal year 2002 (2.79%).

Proposal Changes the Following Existing Rules: The proposal increases the fees in WAC 16-303-200, 16-303-210, 16-303-230, 16-303-250, 16-303-300, 16-303-310, 16-303-317, 16-303-320 and 16-303-330 by the allowable fiscal growth factor for fiscal year 2002 (2.79%).

No small business economic impact statement has been prepared under chapter 19.85 RCW. The Washington State Department of Agriculture concludes that the proposed increases in current fees, based upon the Office of Financial Management fiscal growth rate factor, does not impose a "more than minor cost" on the seed industry and, therefore a small business economic impact statement is not required according to RCW 19.85.030 (1)(a).

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. The Washington State Department of Agriculture is not a listed agency in RCW 34.05.328 (5)(a)(i).

Hearing Location: Washington State Department of Agriculture, 21 North First Avenue, Conference Room 238A, Yakima, WA 98902, on May 22, 2002, at 1:00 p.m.

Assistance for Persons with Disabilities: Contact Laurie Crose by May 20, 2002, TDD (360) 902-1996, or (360) 902-1976.

Submit Written Comments to: George Huffman, Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, fax (360) 902-2085, by May 22, 2002.

Date of Intended Adoption: May 30, 2002.

April 11, 2002

Robert W. Gore  
Assistant Director

**AMENDATORY SECTION** (Amending WSR 01-01-015, filed 12/6/00, effective 1/6/01)

**WAC 16-303-200 Seed program testing fees.** Seed testing fees are as follows:

**(1) FIELD CROPS:**

	((MINIMUM-SAMPLE SIZE	PURITY	GERMINATION	FZ
alfalfa	4 oz	14.00	12.00	22.00
alkaligrass	4 oz	18.00	11.00	22.00
barley	1.25 lb	14.00	12.00	22.00
beets, sugar	1.25 lb	19.00	21.00	22.00
bentgrass	2 oz	32.00	17.00	22.00
bermudagrass	4 oz	18.00	11.00	22.00
black medic	4 oz	14.00	12.00	22.00
bluegrass	4 oz	22.00	15.00	22.00
brassica sp.	6 oz	34.00	17.00	22.00
brome-mountain	6 oz	23.00	12.00	22.00
brome-smooth, meadow	6 oz	23.00	12.00	22.00
buckwheat	1.25 lb	14.00	12.00	22.00
canarygrass	8 oz	18.00	11.00	22.00
clover	4 oz	14.00	12.00	22.00
fescue	4 oz	22.00	12.00	22.00
flax-lewis	4 oz	14.00	12.00	22.00
foxtail	4 oz	14.00	11.00	22.00
garbanzo bean	1.25 lb	13.00	12.00	N/A
indian-ricegrass	6 oz	18.00	11.00	22.00
junegrass	6 oz	18.00	11.00	22.00
lentil	1.25 lb	14.00	12.00	N/A
little-bluestem	4 oz	21.00/hr	11.00	22.00
lupine	1.25 lb	14.00	12.00	N/A
milkvetch	1.25 lb	14.00	12.00	22.00
millet	1.25 lb	14.00	12.00	N/A
needle-&-thread	6 oz	18.00	11.00	22.00
needlegrass, green	6 oz	18.00	11.00	22.00
oatgrass	6 oz	18.00	11.00	N/A
oats	1.25 lb	14.00	12.00	22.00
orchardgrass	4 oz	25.00	13.00	22.00
peas	1.25 lb	13.00	12.00	N/A
prairie-sandreed	6 oz	18.00	11.00	22.00
primrose	4 oz	14.00	12.00	N/A
redtop	2 oz	32.00	17.00	22.00

	((MINIMUM-SAMPLE SIZE	PURITY	GERMINATION	FZ
rice	1.25 lb	14.00	12.00	N/A
rye	1.25 lb	14.00	12.00	22.00
ryegrass, perennal	4 oz	22.00	11.00	22.00
ryegrass, annual	4 oz	22.00	11.00	22.00
safflower	1.25 lb	14.00	12.00	N/A
sainfoin	1.25 lb	14.00	12.00	N/A
sand-dropseed	4 oz	18.00	11.00	22.00
sand-lovegrass	4 oz	18.00	11.00	22.00
sideoats-grama	4 oz	21.00/hr	11.00	22.00
small-burnett	8 oz	14.00	12.00	N/A
sorghum	1.25 lb	14.00	12.00	N/A
sudangrass	8 oz	14.00	12.00	22.00
sunflower	1.25 lb	14.00	12.00	N/A
swiss-chard	1.25 lb	34.00	18.00	N/A
switchgrass	4 oz	18.00	11.00	22.00
timothy	4 oz	18.00	11.00	22.00
trefoil	4 oz	14.00	12.00	N/A
triticale	1.25 lb	14.00	12.00	22.00
vetch	1.25 lb	18.00	12.00	22.00
wheat	1.25 lb	14.00	12.00	22.00
wheatgrass, beardless slender				
thickspike	6 oz	38.00	15.00	22.00
wheatgrass, bluebunch	6 oz	38.00	15.00	22.00
wheatgrass, crested	4 oz	26.00	15.00	22.00
wheatgrass, tall intermediate				
pubescent	6 oz	38.00	15.00	22.00
wheatgrass, western	6 oz	38.00	15.00	22.00
wildrye	6 oz	18.00	11.00	22.00
zoysia	4 oz	18.00	11.00	22.00))

	MINIMUM SAMPLE SIZE	PURITY	GERMINATION	FZ
alfalfa	4 oz	14.39	12.33	22.61
alkaligrass	4 oz	18.50	11.30	22.61
barley	1.25 lb	14.39	12.33	22.61
beets, sugar	1.25 lb	19.53	21.58	22.61
bentgrass	2 oz	32.89	17.47	22.61
bermudagrass	4 oz	18.50	11.30	22.61
black medic	4 oz	14.39	12.33	22.61
bluegrass	4 oz	22.61	15.41	22.61
brassica sp.	6 oz	34.94	17.47	22.61
brome-mountain	6 oz	23.64	12.33	22.61
brome-smooth, meadow	6 oz	23.64	12.33	22.61
buckwheat	1.25 lb	14.39	12.33	22.61
canarygrass	8 oz	18.50	11.30	22.61
clover	4 oz	14.39	12.33	22.61
fescue	4 oz	22.61	12.33	22.61

PROPOSED

PROPOSED

	MINIMUM SAM-			
	PLE SIZE	PURITY	GERMINATION	TZ
flax-lewis	4 oz	14.39	12.33	22.61
foxtail	4 oz	14.39	11.30	22.61
garbanzo bean	1.25 lb	13.36	12.33	N/A
indian ricegrass	6 oz	18.50	11.30	22.61
junegrass	6 oz	18.50	11.30	22.61
lentil	1.25 lb	14.39	12.33	N/A
little bluestem	4 oz	21.58/hr	11.30	22.61
lupine	1.25 lb	14.39	12.33	N/A
milkvetch	1.25 lb	14.39	12.33	22.61
millet	1.25 lb	14.39	12.33	N/A
needle & thread	6 oz	18.50	11.30	22.61
needlegrass, green	6 oz	18.50	11.30	22.61
oatgrass	6 oz	18.50	11.30	N/A
oats	1.25 lb	14.39	12.33	22.61
orchardgrass	4 oz	25.69	13.36	22.61
peas	1.25 lb	13.36	12.33	N/A
prairie sandreed	6 oz	18.50	11.30	22.61
primrose	4 oz	14.39	12.33	N/A
redtop	2 oz	32.89	17.47	22.61
rice	1.25 lb	14.39	12.33	N/A
rye	1.25 lb	14.39	12.33	22.61
ryegrass, perenn-				
nial	4 oz	22.61	11.30	22.61
ryegrass, annual	4 oz	22.61	11.30	22.61
safflower	1.25 lb	14.39	12.33	N/A
sainfoin	1.25 lb	14.39	12.33	N/A
sand dropseed	4 oz	18.50	11.30	22.61
sand lovegrass	4 oz	18.50	11.30	22.61
sideoats grama	4 oz	21.58/hr	11.30	22.61
small burnett	8 oz	14.39	12.33	N/A
sorghum	1.25 lb	14.39	12.33	N/A
sudangrass	8 oz	14.39	12.33	22.61
sunflower	1.25 lb	14.39	12.33	N/A
swiss chard	1.25 lb	34.94	18.50	N/A
switchgrass	4 oz	18.50	11.30	22.61
timothy	4 oz	18.50	11.30	22.61
trefoil	4 oz	14.39	12.33	N/A
triticale	1.25 lb	14.39	12.33	22.61
vetch	1.25 lb	18.50	12.33	22.61
wheat	1.25 lb	14.39	12.33	22.61
wheatgrass,				
beardless				
slender				
thickspike	6 oz	39.06	15.41	22.61
wheatgrass,				
bluebunch	6 oz	39.06	15.41	22.61
wheatgrass,				
crested	4 oz	26.72	15.41	22.61
wheatgrass,				
tall				
intermediate				
pubescent	6 oz	39.06	15.41	22.61
wheatgrass,				
vestem	6 oz	39.06	15.41	22.61
wildrye	6 oz	18.50	11.30	22.61

	MINIMUM SAM-			
	PLE SIZE	PURITY	GERMINATION	TZ
zoysia	4 oz	18.50	11.30	22.61
(2) VEGETABLES:				
((MINIMUM				
SAMPLE SIZE				
PURITY				
GERMINATION				
TZ				
asparagus	1.25 lb	14.00	12.00	N/A
beans	1.25 lb	13.00	12.00	N/A
beets	1.25 lb	19.00	18.00	N/A
cantaloupe	1.25 lb	14.00	12.00	N/A
carrot	4 oz	14.00	12.00	38.00
celery	4 oz	14.00	12.00	N/A
chard	4 oz	14.00	21.00	21.00
corn	1.25 lb	14.00	12.00	N/A
cucumber	1.25 lb	14.00	12.00	N/A
dill	4 oz	14.00	12.00	N/A
eggplant	4 oz	14.00	12.00	N/A
endive	4 oz	14.00	12.00	N/A
leek	8 oz	14.00	12.00	N/A
lettuce	4 oz	14.00	12.00	N/A
okra	4 oz	14.00	12.00	N/A
onion	8 oz	14.00	12.00	N/A
parsley	4 oz	14.00	12.00	N/A
parsnip	4 oz	14.00	12.00	N/A
pepper	8 oz	14.00	12.00	N/A
pumpkin	1.25 lb	14.00	12.00	N/A
radish	1.00 lb	14.00	12.00	N/A
spinach,				
New-Zealand	8 oz	14.00	21.00	N/A
spinach	8 oz	14.00	21.00	N/A
squash	1.25 lb	14.00	12.00	N/A
tomato	4 oz	14.00	12.00	N/A
turnip	6 oz	14.00	12.00	22.00
watermelon	1.25 lb	14.00	12.00	N/A))
MINIMUM				
SAMPLE SIZE				
PURITY				
GERMINATION				
TZ				
asparagus	1.25 lb	14.39	12.33	N/A
beans	1.25 lb	13.36	12.33	N/A
beets	1.25 lb	19.53	18.50	N/A
cantaloupe	1.25 lb	14.39	12.33	N/A
carrot	4 oz	14.39	12.33	39.06
celery	4 oz	14.39	12.33	N/A
chard	4 oz	14.39	21.58	21.58
corn	1.25 lb	14.39	12.33	N/A
cucumber	1.25 lb	14.39	12.33	N/A
dill	4 oz	14.39	12.33	N/A
eggplant	4 oz	14.39	12.33	N/A
endive	4 oz	14.39	12.33	N/A
leek	8 oz	14.39	12.33	N/A
lettuce	4 oz	14.39	12.33	N/A
okra	4 oz	14.39	12.33	N/A
onion	8 oz	14.39	12.33	N/A
parsley	4 oz	14.39	12.33	N/A
parsnip	4 oz	14.39	12.33	N/A
pepper	8 oz	14.39	12.33	N/A

PROPOSED

	MINIMUM			
	SAMPLE SIZE	PURITY	GERMINATION	TZ
pumpkin	1.25 lb	14.39	12.33	N/A
radish	1.00 lb	14.39	12.33	N/A
spinach,				
New Zealand	8 oz	14.39	21.58	N/A
spinach	8 oz	14.39	21.58	N/A
squash	1.25 lb	14.39	12.33	N/A
tomato	4 oz	14.39	12.33	N/A
turnip	6 oz	14.39	12.33	22.61

	MINIMUM			
	SAMPLE SIZE	PURITY	GERMINATION	TZ
watermelon	1.25 lb	14.39	12.33	N/A

AMENDATORY SECTION (Amending WSR 01-01-015, filed 12/6/00, effective 1/6/01)

**WAC 16-303-210 Fees for special seed tests.** Fees for special seed tests are as follows: (Standard noxious exam size unless otherwise specified.)

Test	Fee	Other Considerations
(1) All states noxious weed examination	<del>\$(10.00)</del> 10.27	
(2) Analysis of partially cleaned, uncleaned or field run seed with excessive inert, or crop or weed seeds	<del>\$(21.00)</del> 21.58 hourly rate	
(3) Brassica seed chemical identification	<del>\$(10.00)</del> 10.27	
(4) Cold (vigor) test for wheat	<del>\$(50.00)</del> 51.39	
(5) Crop and weed exam (Required for all foundation and registered class grass seeds)	Purity fee minus <del>\$(5.00)</del> 5.13	Hourly rate will be assessed when applicable; hourly rate applies when a larger amount is requested
(6) Fescue seed fluorescence test	<del>\$(15.00)</del> 15.41	Test required on certified samples
(7) Fluorescence test (400 seed test)	<del>\$(13.00)</del> 13.36	
(8) Miscellaneous services	<del>\$(21.00)</del> 21.58 hourly rate	
(9) Pest and disease	<del>\$(17.00)</del> 17.47	
(10) Poa annua check		
Bentgrass (5 grams)	<del>\$(17.00)</del> 17.47	
Bluegrass (5 grams)	<del>\$(17.00)</del> 17.47	
Other grasses (10 grams)	<del>\$(17.00)</del> 17.47	
(11) Rules test—Canadian		
Alfalfa, clover	<del>\$(21.00)</del> 21.58	GERMINATION <del>\$(12.00)</del> 12.33
Kentucky bluegrass	<del>\$(32.00)</del> 32.89	<del>\$(15.00)</del> 15.41
Peas, lentils	<del>\$(21.00)</del> 21.58	<del>\$(12.00)</del> 12.33
Bentgrass	<del>\$(47.00)</del> 48.31	<del>\$(17.00)</del> 17.47
(12) Rules test—I.S.T.A.		
Alfalfa, clover	<del>\$(21.00)</del> 21.58	GERMINATION <del>\$(15.00)</del> 15.41
Kentucky bluegrass	<del>\$(32.00)</del> 32.89	<del>\$(15.00)</del> 15.41
Peas, lentils	<del>\$(21.00)</del> 21.58	<del>\$(15.00)</del> 15.41
(13) Samples requiring special preparation for germination, for example pelleted seeds	<del>\$(21.00)</del> 21.58	Additional Charge
(14) Seed Count	<del>\$(17.00)</del> 17.47	
(15) Sod analysis check (25 gram exam to evaluate if a lot appears to be sod quality)	<del>\$(19.00)</del> 19.53	Phone report only
(16) Sod seed analysis (A special test of turf grasses for those who need a detailed examination of seed before purchase and/or use)		
Bluegrass	<del>\$(60.00)</del> 61.67	Bluegrass test includes purity, 25 gram crop and weed exam, and 10 gram Poa annua check.
Fescue	<del>\$(42.00)</del> 43.17	Ryegrass and Fescue test include purity and 50 gram crop and weed exam.
Ryegrass	<del>\$(34.00)</del> 34.94	

PROPOSED

Test	Fee	Other Considerations
(17) Sodium Hydroxide test for presence of red and/or white wheat	<del>\$(10.00)</del> <u>10.27</u>	
(18) Soil exam or similar (A visual examination of a representative sample)	<del>\$(17.00)</del> <u>17.47</u>	Reported on seed analysis certificate
(19) Undesirable grass species examination (UGS test)	<del>\$(12.00)</del> <u>12.33</u>	
(20) Variety separation of Kentucky bluegrass If separated at time of purity analysis	<del>\$(19.00)</del> <u>19.53</u> <del>\$(9.00)</del> <u>9.25</u>	

**AMENDATORY SECTION** (Amending WSR 01-01-015, filed 12/6/00, effective 1/6/01)

**WAC 16-303-230 Official seed sampling or similar service.** (1) The fee for official seed sampling or similar service is as follows:

Crop	Fee	Minimum charge
Peas, beans, small grains or seeds of similar size	\$ 0.05 Per cwt.	<del>\$(21.00)</del> <u>21.58</u>
For all other kinds	\$ 0.15 Per cwt.	<del>\$(21.00)</del> <u>21.58</u>

(2) If a special trip is required to provide a service, the person requesting the service may be charged at the rate of ~~\$(17.00)~~ 17.47 per hour travel time plus a mileage fee set by the Washington State Office of Financial Management in addition to the specific fee for service. All standby time is charged at the rate of ~~\$(21.00)~~ 21.58 per man-hour.

**AMENDATORY SECTION** (Amending WSR 01-01-015, filed 12/6/00, effective 1/6/01)

**WAC 16-303-250 Miscellaneous charges for seed services.** (1) Fees for miscellaneous department seed services are as follows:

Service	Fee
Rush samples (including phone or FAX report if requested at time sample is submitted)	<del>\$(12.00)</del> <u>12.33</u>
Phone reports on test result, per call	<del>\$(3.50)</del> <u>3.59</u> per call
Preliminary report on germination Phone report only	<del>\$(8.00)</del> <u>8.22</u> <del>\$(1.50)</del> <u>1.54</u>
Additional mailing of report	<del>\$(2.50)</del> <u>2.56</u> each destination
<del>((Recopies))</del> Additional copies of reports	<del>\$(2.50)</del> <u>2.56</u> (minimum fee)
Revised reports	<del>\$(5.00)</del> <u>5.13</u> (minimum fee - or hourly fee when applicable)

Service	Fee
Fee for special handling service, for example Federal Express, Air Parcel or air freight	<del>\$(3.50)</del> <u>3.59</u>
Fee for facsimile transmission of documents	<del>\$(3.50)</del> <u>3.59</u> per document
Travel time - additional or special requested trips	<del>\$(17.00)</del> <u>17.47</u>
Mileage - additional or special requested trips	As established by the Washington State Office of Financial Management

(2) Test plot examinations or consultant work in seed plots, seed fields, seed conditioning plants, etc., shall be at the rate of ~~\$(21.00)~~ 21.58 per hour plus mileage and travel time at the rate of \$17.47 per hour traveled.

**AMENDATORY SECTION** (Amending WSR 01-01-015, filed 12/6/00, effective 1/6/01)

**WAC 16-303-300 Phyto-sanitary certification of seed—Fees.** (1) Fees for phyto-sanitary certification of seed are as follows:

Service	Fee	Other Considerations
Phyto-sanitary certificate	<del>\$(21.00)</del> <u>21.58</u> each	
Field inspection—All seed except wheat seed (for each required inspection)	<del>\$(5.00)</del> <u>5.13</u> per acre	<del>\$(20.00)</del> <u>20.55</u> minimum fee payable with application
Field inspection—Wheat seed only (for each required inspection)	<del>\$(2.00)</del> <u>2.05</u> per acre or fraction thereof	Payable with application
Area inspection	\$.05 per cwt.	<del>\$(20.00)</del> <u>20.55</u> minimum fee per certificate
		<del>\$(150.00)</del> <u>154.18</u> maximum fee per certificate
		Billed at time certificate is issued
Late fee— Application	<del>\$(30.00)</del> <u>30.83</u> each	

PROPOSED

Service	Fee	Other Considerations
Sampling (When Required)— Beans, peas, lentils, and cereal grains	\$ .05 per cwt.	
Other crops	\$ .15 per cwt.	
Serology test	Fee as established by the testing laboratory.	
Laboratory analysis of plant material to verify disease	An additional fee of actual cost shall be charged when necessary to examine plant material and/or seed	

Service	Fee	Other Considerations
O.E.C.D. certificate	<del>\$(10.00)</del> <u>10.27</u> each	
O.E.C.D. grow out test	<del>\$(46.00)</del> <u>47.28</u> each entry	No charge for control entry

**AMENDATORY SECTION** (Amending WSR 01-01-015, filed 12/6/00, effective 1/6/01)

**WAC 16-303-317 Annual and rough bluegrass quarantine fees.** Fees for sampling and analysis for the presence of annual or rough bluegrass are those fees established in this chapter and:

(1) Annual Bluegrass - inspection fee for nursery plantings for the presence of annual bluegrass is ~~\$(50.00)~~ 51.39 per acre or portion thereof. The tagging fee is ~~\$(0.50)~~ 0.51 cwt. with a minimum fee of ~~\$(40.00)~~ 10.27.

(2) Rough Bluegrass - inspection fee for nursery plantings is ~~\$(50.00)~~ 51.39 per acre or portion thereof.

**AMENDATORY SECTION** (Amending WSR 01-01-015, filed 12/6/00, effective 1/6/01)

**WAC 16-303-320 Certification fees for seed certified by the department except grasses.** Fees for seed certification services for seed certified by the department other than grasses are as follows. Fees apply to both new and renewal applications:

**AMENDATORY SECTION** (Amending WSR 01-01-015, filed 12/6/00, effective 1/6/01)

**WAC 16-303-310 Organization for economic cooperation and development scheme for varietal certification (O.E.C.D.) fees.** In addition to fees required by applicable Washington certification rules, the following fees shall apply to all seed tagged O.E.C.D and is payable by the person requesting O.E.C.D. certificate. The certifying agency may require fees paid in advance:

Seed	Application Fee 1/	Seedling producing or field inspection Fee 2/	Late Application Penalty Fee	Reinspection Fee (other than isolation)	Production Fee (includes sampling and tagging)	Seed shipped Out-of-State (uncleaned)
Alfalfa, Red clover, White clover and Trefoil	<del>\$(15.00)</del> <u>15.41</u> per variety per grower	<del>\$(1.75)</del> <u>1.79/acre</u>	<del>\$(30.00)</del> <u>30.83</u>	<del>\$(40.00)</del> <u>41.11</u> ea. field	<del>\$(0.50)</del> <u>0.51/cwt.</u> 5/	\$0.19/cwt.
Bean	<del>\$(15.00)</del> <u>15.41</u> per variety per grower	<del>\$(1.75)</del> <u>1.79/acre</u> 3/ (one inspection) <del>\$(3.50)</del> <u>3.59/acre</u> 4/ (two inspections)	<del>\$(30.00)</del> <u>30.83</u>	<del>\$(40.00)</del> <u>41.11</u> ea. field	<del>\$(0.50)</del> <u>0.51/cwt.</u>	\$0.19/cwt.
Corn	<del>\$(15.00)</del> <u>15.41</u> for each separate combination/or isolation	<del>\$(25.00)</del> <u>25.69</u> first acre <del>\$(40.00)</del> <u>10.27</u> ea. additional acre except hybrid corn <del>\$(3.50)</del> <u>3.59</u> ea. additional acre	—	—	—	—
Sudangrass	<del>\$(15.00)</del> <u>15.41</u> per field	<del>\$(1.75)</del> <u>1.79/acre</u>	<del>\$(30.00)</del> <u>30.83</u> per field	—	<del>\$(0.40)</del> <u>0.41/cwt.</u>	—
Rapeseed	<del>\$(15.00)</del> <u>15.41</u> per variety per grower	<del>\$(1.75)</del> <u>1.79/acre</u> (one inspection)	<del>\$(15.00)</del> <u>15.41</u> per grower	<del>\$(20.00)</del> <u>20.55</u> ea. field	<del>\$(0.50)</del> <u>0.51/cwt.</u>	—

- 1/ Refer to WAC 16-302-050 for seed certification application due dates.
- 2/ Refundable if acreage is withdrawn before inspection. Except for bean seed, required of seedling fields to be harvested for certification the year of planting. Notification of seeding field to be harvested for certification and required fees are due July 31.

- 3/ One inspection is required for Great Northern Red Mexican, pinto, pink, and small white bean.
- 4/ Includes windrow inspection which is required for certification of snap beans, kidney beans, and eligibility for shipment into Idaho.
- 5/ Sampling and production fees are billed at completion of tests. If none of the seed is tagged, ten cents

of the (~~fifty~~) fifty-one cents per cwt. production fee is refundable.

**AMENDATORY SECTION** (Amending WSR 01-01-015, filed 12/6/00, effective 1/6/01)

**WAC 16-303-330 Certification fees for grass seed.**  
 Certification fees for grass seed except Sudangrass are as follows:

- (1) Application fees:
    - (a) Seedling application fee:
 

Per variety, per field	<del>\$(15.00)</del> <u>15.41</u>
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    - (b) Late seedling penalty fee: (Per kind)
 

	<del>\$(30.00)</del> <u>30.83</u>
--	--------------------------------------
    - (c) Seedling producing application fee:
 

Per field, per grower	<del>\$(15.00)</del> <u>15.41</u>
-----------------------	--------------------------------------
- Required of seedling fields to be harvested for certification the year of planting. Notification of seedling field to be harvested for certification and required fees shall be due July 31:
- (2) Renewal applications:
    - (a) Renewal application fee:
 

Per variety, per grower	<del>\$(15.00)</del> <u>15.41</u>
-------------------------	--------------------------------------
    - (b) Late renewal penalty fee: (Per variety)
 

	<del>\$(30.00)</del> <u>30.83</u>
--	--------------------------------------

This additional fee shall be charged for renewal applications received after May 1.

    - (c) Inspection fee per field.
 

	<del>\$(30.00)</del> <u>30.83</u>
--	--------------------------------------
    - (3) Annual grasses inspection fee per acre
 

	<del>\$(1.75)</del> <u>1.79</u>
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Applications are due within sixty days after planting.
    - (4) Reinspection: Other than isolation—each field
 

	<del>\$(40.00)</del> <u>41.11</u>
--	--------------------------------------
    - (5) Inspection and final certification fees:
 

Inspection and final certification fees are based on pounds sampled and billed upon completion of required tests (Option A). Those dealers requesting sampling and tagging privileges and/or participation in Option B must sign a memorandum of agreement that shall expire on June 30 of each year. The memorandum may be terminated by the director if the conditioner violates certification standards or requirements of memorandum.

(a) Option A: When based on pounds sampled, and billed at completion of required laboratory tests, the fees are:

- (i) Final certification fee
 

	<del>\$(0.80)</del> <u>0.82</u>
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per one hundred pounds. (If no seed is tagged, twenty cents of the final certification fee is refundable upon request.)

- (ii) Seed shipped out-of-state for conditioning per one hundred pounds (unclean weight).
 

	\$ 0.30
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- (iii) Service fee for out-of-state origin (per cwt.)
 

	\$ 0.30
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(iv) Blend fee is as established by blend rule, and in addition to above fees. However, blend fee is not applicable to salvage blends.

(v) Payment of fees is the responsibility of the person signing the application. However, conditioner may assume this responsibility.

(b) Option B: When based on pounds tagged after required laboratory tests are completed, the fee is:

- (i) Final certification fee
 

	<del>\$(1.10)</del> <u>1.13</u>
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per one hundred pounds. (Minimum fee per tagging)
 

	<del>\$(10.00)</del> <u>10.27</u>
--	--------------------------------------

- (ii) Service fee for out-of-state origin
 

	<del>\$(0.65)</del> <u>0.66</u>
--	------------------------------------

per one hundred pounds.

(iii) Blend fee (in addition to fee established by blend rule) is payable upon completion of blend on total weight of blend, and is as follows:

- (A) Washington origin certified seed used in blend
 

	<del>\$(1.00)</del> <u>1.02</u>
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per one hundred pounds.

- (B) Out-of-state origin certified seed used in blend
 

	<del>\$(0.60)</del> <u>0.61</u>
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per one hundred pounds except that those fees listed in (a) and (b) above are not applicable to certified seed that is tagged and sealed, and on which final fees have been paid.

(C) A refund or credit is issued for the percent of the blend lot not tagged. (For example, if forty percent of the blend is not tagged, forty percent of the fees charged under Option B above are refundable.)

PROPOSED

(6) Payment of fees is the responsibility of the conditioner. A conditioner choosing this program must handle all certified grasses in his warehouse under this program for the entire crop year. Upon termination or non-renewal of Option B memorandum of agreement, conditioner is responsible for Option A fees on all certified seed not tagged at termination date.

(7) Fees for services such as O.E.C.D. and sod quality, etc., are in addition to the fees listed in these standards.

(8) Fees for reissue of tags are ten cents per tag with a minimum fee of ten dollars and twenty-seven cents.

(9) The seed processor is responsible for seed certification fees including sampling, testing, production and final certification fees, and may request the responsibility for additional fees.

**WSR 02-09-061**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)  
[Filed April 15, 2002, 3:40 p.m.]

Original Notice.

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

Title of Rule: WAC 388-450-0116 How does the department count my income if I cannot get assistance because I am an alien?

Purpose: This rule explains how we deem income from ineligible aliens.

Statutory Authority for Adoption: RCW 74.08.090 and 74.04.510.

Statute Being Implemented: RCW 74.08.090 and 74.04.510.

Summary: This rule is being modified to reflect the new federal regulations that require refugee cash assistance to use the same rules as temporary assistance to needy families (TANF).

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Veronica Barnes, DEAP, 1009 College Street S.E., Lacey, WA, (360) 413-3071.

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

Rule is necessary because of federal law, 45 C.F.R. 400.65, 400.66, 400.67, 400.68, 400.69.

Explanation of Rule, its Purpose, and Anticipated Effects: The department will now use the same income calculations for refugee cash assistance as it does for TANF.

Proposal Changes the Following Existing Rules: WAC 388-450-0116 now allows a 50% disregard from the earnings of the ineligible alien. The amended rule adds new conditions.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule does not have an economic impact on small businesses. It only affects DSHS clients.

RCW 34.05.328 does not apply to this rule adoption. This rule does not fit the definition of a significant legislative rule per RCW 34.05.328 (5)(b)(vii).

Hearing Location: Office Building 2 Auditorium (DSHS Headquarters) (parking on 12th off Jefferson), 1115 Washington, Olympia, WA 98504, on May 21, 2002, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Andy Fernando, DSHS Rules Coordinator, by May 17, 2002, phone (360) 664-6094, TTY (360) 664-6178, e-mail fernaax@dshs.wa.gov.

Submit Written Comments to: Identify WAC Numbers, DSHS Rules Coordinator, Rules and Policies Assistance Unit, P.O. Box 45850, Olympia, WA 98504-5850, fax (360) 664-6185, e-mail fernaax@dshs.wa.gov, by 5:00 p.m., May 21, 2002.

Date of Intended Adoption: No earlier than May 22, 2002.

April 11, 2002  
Brian H. Lindgren, Manager  
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 99-16-024, filed 7/26/99, effective 9/1/99)

**WAC 388-450-0116 ((Allocating)) How does the department count my income ((of a financially responsible person excluded from the)) if I cannot get assistance ((unit)) because ((of their)) I am an alien ((status))?** This section applies to TANF/SFA and RCA programs.

~~((When a financially responsible person, as defined in WAC 388-450-0100(3), is excluded from the assistance unit because of their alien status, as defined in WAC 388-450-0100(4)(a), that person's income, after allowing the following deductions, is countable income available to the assistance unit:~~

~~(1) The fifty percent earned income incentive for TANF/SFA assistance units or the ninety dollar work expense deduction for RCA assistance units, if the income is earned;~~

~~(2) An amount equal to the difference between the payment standards:~~

~~(a) That would include the eligible assistance unit members and those individuals excluded from the assistance unit because of their alien status; and~~

~~(b) Only the eligible assistance unit members.~~

(3)) Some people cannot get assistance because they do not meet the alien requirements described in WAC 388-424-0005. If you do not meet those requirements but you are financially responsible for someone in the assistance unit, we count some of your income as part of the assistance unit's

income. To figure out how much we count, we take the following seven steps:

(1) We start by only counting fifty percent of your earned income, as described in WAC 388-450-0030.

(2) We add all of your unearned income, as described in WAC 388-450-0025.

(3) We subtract the difference between the following payment standards:

(a) One that includes both eligible assistance unit members and those who cannot get assistance because of their alien status; and

(b) One that includes only the eligible assistance unit members.

(4) We subtract the payment standard ((amount equal to)) for the number of people who are ineligible ((persons)) for reasons other than alien status, as defined in WAC 388-450-0100 (4)(b) through (f)((;

(4) ~~An amount not to exceed the need standard, as defined in WAC 388-478-0015, for).~~

(5) We subtract any court or administratively ordered ((current or back)) child support ((paid)) you pay for legal dependents((; and

(5) ~~The)).~~

(6) We subtract any employment-related ((child care)) childcare expenses ((for which the household is liable)) you have.

(7) Then, we count whatever is left as unearned income.

**WSR 02-09-062**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)

[Filed April 15, 2002, 3:41 p.m.]

Original Notice.

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

Title of Rule: WAC 388-450-0015 What types of income are not used when figuring out my benefits? and 388-450-0055 How does money from other agencies or organizations count against my benefits?

Purpose: These rules describe how we treat certain types of income.

Statutory Authority for Adoption: RCW 74.08.090 and 74.04.510.

Statute Being Implemented: RCW 74.08.090 and 74.04.510.

Summary: These rules are being modified to reflect the new federal regulations that require us to exclude payments from the Department of State or Department of Justice Reception and Replacement Programs.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Veronica Barnes, DEAP, 1009 College Street S.E., Lacey, WA, (360) 413-3071.

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

Rule is necessary because of federal law, 45 C.F.R. 400.65, 400.66, 400.67, 400.68, 400.69.

Explanation of Rule, its Purpose, and Anticipated Effects: The department will exclude payments from the Department of State or Department of Justice Reception and Replacement Programs, such as volunteer agency (VOLAG) payments.

Proposal Changes the Following Existing Rules: WAC 388-450-0015 now includes VOLAG payments as a type of income that is excluded.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule does not have an economic impact on small businesses. It only affects the Department of Social and Health Services' clients.

RCW 34.05.328 does not apply to this rule adoption. This rule does not fit the definition of a significant legislative rule per RCW 34.05.328 (5)(b)(vii).

Hearing Location: Office Building 2 Auditorium (DSHS Headquarters) (parking on 12th off Jefferson), 1115 Washington, Olympia, WA 98504, on May 21, 2002, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Andy Fernando, DSHS Rules Coordinator, by May 17, 2002, phone (360) 664-6094, TTY (360) 664-6178, e-mail fernax@dshs.wa.gov.

Submit Written Comments to: Identify WAC Numbers, DSHS Rules Coordinator, Rules and Policies Assistance Unit, P.O. Box 45850, Olympia, WA 98504-5850, fax (360) 664-6185, e-mail fernax@dshs.wa.gov, by 5:00 p.m., May 21, 2002.

Date of Intended Adoption: No earlier than May 22, 2002.

April 11, 2002

Brian H. Lindgren, Manager  
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 01-18-006, filed 8/22/01, effective 9/22/01)

**WAC 388-450-0015 ((~~Excluded and disregarded income.~~)) What types of income are not used when figuring out my benefits?** This section applies to ((~~TANF/SFA, RCA, and GA cash programs~~)) cash assistance, medical programs for children, pregnant women and families, and food assistance programs.

(1) ((~~Excluded income is income that is not counted when determining a client's eligibility and benefit level. Types of excluded income include but are not limited to~~)) There are some types of income that we (the department) do not count when figuring out if you can get benefits and the amount you can get. Some examples of income we do not count are:

(a) Bona fide loans as defined in WAC 388-470-0025, except certain student loans as specified under WAC 388-450-0035;

(b) Federal earned income tax credit (EITC) payments;

(c) Title IV-E and state foster care maintenance payments if the foster child is not included in ((~~the~~)) your assistance unit;

(d) Energy assistance payments;  
 (e) Educational assistance as specified in WAC 388-450-0035;

(f) Native American benefits and payments as specified in WAC 388-450-0040;

(g) Income from employment and training programs as specified in WAC 388-450-0045;

(h) Money withheld from a client's benefit to repay an overpayment from the same income source. For food assistance, this exclusion does not apply when the money is withheld to recover an intentional noncompliance overpayment from a federal, state, or local means tested program such as TANF/SFA, GA, and SSI; ~~((and))~~

(i) Child support payments received by TANF/SFA recipients; and

(j) Payments issued under the Department of State or Department of Justice Reception and Replacement Programs, such as Voluntary Agency (VOLAG) payments.

~~(2) ((When determining the eligibility of a Holocaust survivor)) For ((a)) medical ((program)) programs for children, pregnant women, or families, ((the department does)) we also do not count ((the recoveries of:~~

~~(a) Insurance proceeds; and~~

~~(b) Other income.~~

~~(3) For food assistance programs, the following income types are excluded:~~

~~(a) Emergency additional requirements authorized to TANF/SFA and RCA clients under WAC 388-436-0001 and paid directly to a third party;~~

~~(b) Cash donations based on need received directly by the household if the donations are:~~

~~(i) Made by one or more private, nonprofit, charitable organizations; and~~

~~(ii) Do not exceed three hundred dollars in any federal fiscal year quarter.~~

~~(c) Infrequent or irregular income, received during a three-month period by a prospectively budgeted assistance unit, that:~~

~~(i) Cannot be reasonably anticipated as available; and~~

~~(ii) Does not exceed thirty dollars for all household members.~~

~~(4) All income that is not excluded is considered to be part of an assistance unit's gross income.~~

~~(5) For food assistance households not containing an elderly or disabled member, the assistance unit is ineligible if its gross income exceeds one hundred thirty percent of the federal poverty level as specified in WAC 388-478-0060.~~

~~(6) Disregarded income is income that is counted when determining an assistance unit's gross income but is not used when determining an assistance unit's countable income. Types of disregarded income include but are not limited to:~~

~~(a) Earned income incentives and disregards for cash assistance; and~~

~~(b) Earned income disregard and income deductions for food assistance)) any insurance proceeds or other income you have recovered as a result of being a Holocaust survivor.~~

AMENDATORY SECTION (Amending WSR 98-16-044, filed 7/31/98, effective 9/1/98)

WAC 388-450-0055 ((Assistance)) How does money from other agencies ((and)) or organizations((+)) count against my benefits? ((Unless specifically stated, this section applies to TANF/SFA, RCA, GA, medical and food assistance programs:))

~~(1) ((Funds received from other agencies and organizations are excluded when determining the amount of assistance to be paid as long as no duplication exists between the assistance provided by the other agency 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) For TANF/SFA, RCA, GA, and TANF/SFA related medical assistance, if the assistance from another agency is available to meet need, the assistance shall be disregarded up to the difference between the need standard and the payment standard)) For cash assistance and medical programs for children, pregnant women, and families:~~

(a) We do not count money given to you by other agencies or organizations if the money is given to you for reasons other than ongoing living expenses. Ongoing living expenses include the following items:

(i) Clothing;

(ii) Food;

(iii) Household supplies;

(iv) Medical supplies (nonprescription);

(v) Personal care items;

(vi) Shelter;

(vii) Transportation; and

(viii) Utilities (e.g., lights, cooking fuel, the cost of heating or heating fuel).

(b) If the money given to you is supposed to be used for ongoing living expenses, we count the amount remaining after we subtract the difference between the need standard and the payment standard as described in chapter 388-478 WAC.

(2) For food assistance:

(a) We do not count money given to you if:

(i) It is given to you by a private, nonprofit, charitable agency or organization; and

(ii) The amount of money you get is no more than three hundred dollars in any one of the following calendar quarters:

(A) January - February - March,

(B) April - May - June,

(C) July - August - September,

(D) October - November - December.

(b) We count the entire amount if the requirements in (a) of this subsection are not met.

(3) For cash assistance, food assistance, and medical programs for children, pregnant women, and families, if we do count the money you get, we treat it as unearned income under WAC 388-450-0025.

**WSR 02-09-063**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)  
[Filed April 15, 2002, 3:43 p.m.]

Supplemental Notice to WSR 01-19-019 and 02-05-068.

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

Title of Rule: WAC 388-434-0010 How do I continue to get food assistance?, 388-434-0015 How and when do I reapply for food assistance?, 388-434-0020 When does my new food assistance certification period begin?, and 388-434-0025 When do I get me food assistance benefits after I reapply?

Purpose: The department is amending WAC 388-434-0010 and adding new rules to comply with the federal regulations at 7 C.F.R. 273.14.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, and 74.08.090.

Statute Being Implemented: 7 C.F.R. 273.14.

Summary: These rules provide guidelines for food assistance recipients and the department during the recertification process. They emphasize the recipients' responsibility to reapply and complete the process within certain deadlines. The rules also clearly set forth the department's deadlines for authorizing benefits when recipients meet their deadlines. This is the second supplemental notice to rule originally proposed as WSR 01-19-019, and supplemental notice WSR 02-05-068.

Reasons Supporting Proposal: The current recertification rules are out of compliance with 7 C.F.R. 273.14. The proposed revisions should increase the accuracy of eligibility redeterminations and the timeliness of benefit issuance.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Steve Pargman, 1009 College Street S.E., Lacey, WA, (360) 413-3073.

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

Rule is necessary because of federal law, 7 C.F.R. 273.14.

Explanation of Rule, its Purpose, and Anticipated Effects: The federal food stamp program requires finite certification periods for all recipients. A household may not participate in the program beyond the end of its certification period without reapplication and a new determination of eligibility. The proposed rules define the responsibilities of recipients and the department during the recertification process. The effect of the rule should be to encourage food assistance recipients to complete this process timely so that they may receive uninterrupted benefits. Conformity to the federal food stamp program rules ensures that the department will continue to receive funding for its food assistance program. The department anticipates that it will save staff time by reducing the frequency of interviews.

Proposal Changes the Following Existing Rules:

- The current rule is inconsistent with WAC 388-406-0055 (3)(a) and 7 C.F.R. 273.10 (a)(2). Proposed WAC 388-434-0015(4) and 388-434-0025(2) provide that a

household with a migrant or seasonal farm worker may reapply without penalty within one month after the end of the certification period.

- When a household causes a delay in processing a recertification application beyond the last day of its current certification period, the department must prorate benefits from the date of compliance for the initial month of the new certification period. The new rule clarifies this requirement.
- The department must provide a notice of expiration of certification. This is currently in the department's Eligibility A-Z Manual, but not in rule.
- An individual identified as needing "necessary supplemental accommodation" as additional time to apply for recertification. The proposed rule refers to chapter 388-472 WAC.
- The department must authorize benefits within certain deadlines, depending on the previous certification period's length and the date the recipient completes the recertification process. Proposed WAC 388-434-0025 defines these deadlines, according to 7 C.F.R. 273.14(d).
- According to 7 C.F.R. 273.14 (e)(3), when a food assistance recipient reapplies after the end of the certification period through the fault of the department, the recipient's household is entitled to receive benefits without a break in eligibility. Current WAC 388-434-0010(7) does not differentiate between late applications due to the fault of the department and the fault of the recipient.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules only affect client eligibility. No businesses will be impacted.

RCW 34.05.328 does not apply to this rule adoption. The rule does not meet the definition of a significant legislative rule per RCW 34.05.328 (5)(b)(vii).

Hearing Location: Office Building 2 Auditorium (DSHS Headquarters) (parking on 12th off Jefferson), 1115 Washington, Olympia, WA 98504, on May 21, 2002, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Andy Fernando, DSHS Rules Coordinator, by May 17, 2002, phone (360) 664-6094, TTY (360) 664-6178, e-mail fernaax@dshs.wa.gov.

Submit Written Comments to: Identify WAC Numbers, DSHS Rules Coordinator, Rules and Policies Assistance Unit, P.O. Box 45850, Olympia, WA 98504-5850, fax (360) 664-6185, e-mail fernaax@dshs.wa.gov, by 5:00 p.m., May 21, 2002.

Date of Intended Adoption: No earlier than May 22, 2002.

April 11, 2002

Brian H. Lindgren, Manager  
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 01-15-011, filed 7/6/01, effective 8/1/01)

**WAC 388-434-0010 How do I continue to get (~~re-certified for~~) food assistance (~~benefits~~)?** (1) (~~To complete the recertification process you must:~~

- (a) ~~Submit an application; and~~
- (b) ~~Complete an interview; and~~
- (c) ~~Submit needed proof of your circumstances if we (the department) ask for it.~~

(2) ~~You have thirty days after your certification period ends to complete the recertification process. However, if you reapply timely and complete the recertification process before your certification period ends, your benefits continue to be deposited into your EBT (electronic benefit transfer) account on the same day of the month. To reapply timely, we must get your application no later than:~~

(a) ~~The fifteenth day of the last month of your certification period; or~~

(b) ~~The fifteenth day after you get a notice of eligibility when your certification period is two months or less.~~

(3) ~~If you reapply timely and complete the recertification process you get a notice of approval or denial:~~

(a) ~~By the end of your current certification period; or~~

(b) ~~By the thirtieth day after you got your last benefit amount in [if] you were certified for one month.~~

(4) ~~If you reapply before your certification period ends, but fail to take a required action such as completing an interview or providing proof of your eligibility, we may deny your benefits:~~

(a) ~~At that time; or~~

(b) ~~At the end of the certification period; or~~

(c) ~~At the end of thirty days.~~

(5) ~~If you take the required action before your certification period ends, we start your food assistance from the first of the month of your new certification period.~~

(6) ~~If you take the required action within thirty days after your certification period ends, we start your food assistance from:~~

(a) ~~The first of the month of your new certification period if we caused the delay; or~~

(b) ~~The first of the month of your new certification period if we rescheduled a second interview per your request and you attended the rescheduled interview; or~~

(c) ~~The date you take the required action.~~

(7) ~~If you reapply after your certification period ends, your request is treated like an initial application and will be approved or denied under WAC 388-406-0035.~~

(8) ~~See chapter 388-458 WAC for adequate notice and translation requirements.)~~ When we (the department) approve your application for food assistance, we give you a letter that tells you when your benefits begin and end (the certification period).

(2) Before your certification period ends, we send you a notice of expiration.

(3) You must reapply to continue to get food assistance.

## NEW SECTION

**WAC 388-434-0015 How and when do I reapply for food assistance?** (1) If we approved your benefits for at least three months, return a department-approved application by the fifteenth day of the last month of the certification period.

(2) If we approved your benefits for one month, or two months in the second month of the certification period, return an application within fifteen days after we send your notice of expiration.

(3) If there is a migrant or seasonal farm worker living with you, return an application by one month after the end of the certification period.

(4) Complete an interview if required (see WAC 388-452-0005 for rules about interviews).

(5) Give us the proof we need about your situation (see WAC 388-490-0005 for rules about proof and WAC 388-406-0030 for rules about requests for additional information).

(6) Finish steps one through five within thirty days after the end of your certification period or, if there is a migrant or seasonal farm worker living with you, within thirty days after you reapply.

## NEW SECTION

**WAC 388-434-0020 When does my new food assistance certification period begin?** (1) Your new certification period begins on:

(a) The first of the month following the end of your current certification period when you reapply:

(i) By the end of your current certification period, and:

(A) You finish the steps in WAC 388-434-0015 by the end of your current certification period; or

(B) You finish the steps in WAC 388-434-0015 within thirty days after the end of your current certification period and the delay was the department's fault.

(ii) Within one month after the end of your current certification period, and:

(A) You have a migrant or seasonal farm worker living with you; and

(B) You finish the steps in WAC 388-434-0015 within thirty days after you reapply.

(iii) Within thirty days after the end of your current certification period, and:

(A) You finish the steps in WAC 388-434-0015 within thirty days after the end of your current certification period; and

(B) The delay was the department's fault.

(b) The date that you finish the steps in WAC 388-434-0015 when you reapply:

(i) By the end of your current certification period, and:

(A) You finish the steps in WAC 388-434-0015 within thirty days after the end of your current certification period; and

(B) The delay was your fault.

(ii) Within one month after the end of your current certification period, and:

(A) You have a migrant or seasonal farm worker living with you; and

(B) You cause a delay in finishing the steps in WAC 388-434-0015 beyond thirty days after you reapply.

(c) The date you reapply when you reapply after the end of your current certification period and you do not have a migrant or seasonal farm worker living with you.

(2) See chapter 388-472 WAC for exceptions to the rules in subsection (1) of this section.

#### NEW SECTION

**WAC 388-434-0025 When do I get my food assistance benefits after I reapply?** (1) When you reapply by the deadline and finish the steps in WAC 388-434-0015 by the end of your current certification period, you get your benefits:

(a) Within thirty days after you got them before if we approved benefits for less than three months.

(b) By your usual date if you got benefits for three or more months.

(2) You get benefits within five working days of the date you finish steps one through five in WAC 388-434-0015 when:

(a) You reapply by the end of your current certification period, and

(b) You do not finish these steps by the end of your current certification period because we gave you more time to provide proof of your situation.

**WSR 02-09-064**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)

[Filed April 15, 2002, 3:45 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 02-04-097.

Title of Rule: Chapter 388-290 WAC, Working connections child care.

Purpose: WAC 388-290-0145, 388-290-0150, 388-290-0155, 388-290-0160 and 388-290-0165 are being revised to clarify the process for background checks and to expand the scope of individuals required to have a check.

Statutory Authority for Adoption: RCW 74.04.050, 74.13.085.

Statute Being Implemented: Chapters 74.04 and 74.13 RCW.

Summary: Clarifies the process of background checks for the working connections child care program to include the reason for doing the background check, information included in the check, what happens after the information is received, and notification of the results. The WAC changes also expand the scope of individuals subject to a background check to include individuals sixteen years of age and older when they reside with a relative provider and care takes place outside of the child's home.

Reasons Supporting Proposal: Clarification of processes and expansion of the individuals subject to a background check makes the WCCC program policies more consistent with other divisions within economic services and with other administrations.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Sheri Bruu-Deleon, Program Manager, 1009 College Street S.E., Lacey, WA 98503, (360) 413-3091.

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: Clarifies the process for background checks and expands the scope of individuals required to have a check. Both staff and consumers will have a clearer idea of the process involved and understand what information will be shared with the consumer. Children will be afforded further protection against individuals with disqualifying backgrounds who have direct access to them.

Proposal Changes the Following Existing Rules: Current rules do not include background checks for individuals sixteen and over who reside with a relative provider when that provider cares for a WCCC child outside of the child's home.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule does not impact small business.

RCW 34.05.328 does not apply to this rule adoption. These amendments are exempt under RCW 34.05.328 (5)(b)(vii).

Hearing Location: Office Building 2 Auditorium (DSHS Headquarters) (parking on 12th off Jefferson), 1115 Washington, Olympia, WA 98504, on May 21, 2002, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Andy Fernando, DSHS Rules Coordinator, by May 17, 2002, phone (360) 664-6094, TTY (360) 664-6178, e-mail fernaax@dshs.wa.gov.

Submit Written Comments to: Identify WAC Numbers, DSHS Rules Coordinator, Rules and Policies Assistance Unit, P.O. Box 45850, Olympia, WA 98504-5850, fax (360) 664-6185, e-mail fernaax@dshs.wa.gov, by 5:00 p.m., May 21, 2002.

Date of Intended Adoption: No sooner than May 22, 2002.

April 11, 2002

Brian H. Lindgren, Manager  
Rules and Policies Assistance Unit

#### NEW SECTION

**WAC 388-290-0143 Who must have a background check for the WCCC program and how often is the check done?** (1) A background check must be completed for:

(a) All in-home/relative providers who apply to care for a WCCC consumer's child; and

(b) Any individual sixteen years of age or older who is residing with a provider when care occurs outside of the WCCC child's home.

(2) A new background check must be completed:

(a) At least every two years;

(b) Any time an in-home/relative provider applies to provide care for a WCCC family;

(c) For any individual sixteen years of age or older newly residing with a provider when care occurs outside of the WCCC child's home; or

(d) When we have a valid reason to do a check more frequently.

AMENDATORY SECTION (Amending WSR 02-01-135, filed 12/19/01, effective 1/19/02)

**WAC 388-290-0145** ~~((When))~~ Why is ((my provider's criminal)) a background check required and will I be notified of the results? (1) ~~((The department requires the criminal))~~ We require the background check ((for each in-home/relative provider under chapter 74.15 RCW)) to:

(a) ~~((When you request WCCC payments for a new in-home/relative provider:~~

(b) ~~Every two years for existing in-home/relative providers; or~~

(c) ~~When the department has a valid reason to do a criminal background check more frequently.~~

(2) ~~You will receive notice telling you whether or not the department is able to authorize WCCC payment)~~ Help safeguard the health, safety, and well-being of children:

(b) Reduce the possible risk of harm from persons having access to WCCC children that have been convicted of certain crimes; and

(c) Help you make informed, safe and responsible decisions about individuals who have access to your children.

(2) As a WCCC consumer, you will be notified:

(a) Whether we can approve the provider for the WCCC program; and

(b) Of the following results from the background check:

(i) No background information is found given current sources of information;

(ii) Background information is found, but the information will not disqualify the individual being checked; or

(iii) Background information is found that disqualifies the individual being checked.

**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 02-01-135, filed 12/19/01, effective 1/19/02)

**WAC 388-290-0150** ~~((Where does the WCCC program get the criminal background))~~ What information ((on the in-home/relative provider)) is included in the background check and where does it come from? ~~((The WCCC program gets criminal))~~ (1) The background information ((from available sources such as:

~~(1)) will include, at a minimum, criminal convictions and pending charges.~~

~~(2) Additional sources may include:~~

~~(a) Child/adult protective service case or registry information; and~~

~~(b) Civil judgments, determinations, or disciplinary board final decisions of abuse or neglect.~~

~~(3) The background information is obtained from sources such as:~~

~~(a) The Washington state patrol under chapter 10.97 RCW;~~

~~((2)) (b) Child/adult protective service case files or registries;~~

~~(c) Other states and federally recognized Indian tribes;~~

~~((3)) (d) Law enforcement records of convictions and pending charges in other states or locations if:~~

~~(i) The individual being checked has lived in another state; and~~

~~(ii) Reports from credible community sources ((that)) indicate a need to investigate another state's records ((and (4))).~~

~~(e) Self-disclosure by the ((in-home/relative provider)) individual being checked.~~

AMENDATORY SECTION (Amending WSR 02-01-135, filed 12/19/01, effective 1/19/02)

**WAC 388-290-0155** What happens after ((the WCCC program reviews my in-home/relative provider's criminal)) we receive the background information? After ~~((the WCCC program receives the in-home/relative provider's criminal))~~ we receive the background information we:

(1) ~~Compare the ((criminal)) background information ((including pending charges)) with convictions listed in WAC 388-290-0160 ((or)) and 388-290-0165 ((and:~~

~~(1) Determine if the in-home/relative provider's criminal))~~

(2) Review the background ((contains)) information ((that will not allow the authorization of payment for part of the cost of WCCC)) using the following rules:

(a) A pending charge for a crime is given the same weight as a conviction;

(b) If the conviction has been renamed it is given the same weight as the previous named conviction. For example, larceny is now called theft; ((and)

(c) Convictions whose titles are preceded with the word "attempted" are given the same weight as those titles without the word "attempted((-

~~(2))"; and~~

(d) The crime will not be considered a conviction for the purposes of WCCC when it has been pardoned or a court of law acts to expunge or vacate the conviction record.

(3) Notify you whether or not ((the department is)) we are able to ((authorize payment for part of the cost of care;

~~(3)) approve the provider for WCCC.~~

(4) Allow you to decide character and suitability of the provider given an individual's nondisqualifying background information from the record of arrests and prosecutions (RAP) sheet.

(5) Deny or ~~((stops)) stop~~ payment ~~((for part of the cost of care by this in-home/relative provider,))~~ when the ~~((criminal))~~ background information disqualifies the ~~((in-home/relative provider; and~~

~~(4)) individual being checked.~~

(6) Assist you in finding other child care arrangements.

**AMENDATORY SECTION** (Amending WSR 02-01-135, filed 12/19/01, effective 1/19/02)

**WAC 388-290-0160** **What convictions permanently disqualify my in-home/relative provider from being authorized by ~~((the WCCC program)) us?~~** (1) If your provider or an individual listed in WAC 388-290-0143 (1)(b) has ~~((been convicted of any crime listed in WAC 388-006-0170))~~ a background containing the following felony convictions, the provider is permanently disqualified as an in-home/relative child care provider for WCCC:

(a) Child abuse and/or neglect;

(b) Spousal abuse;

(c) A crime against a child (including child pornography);

(d) A crime involving violence (including rape sexual assault, or homicide but not including other physical assault);  
or

(e) Any federal or out-of-state conviction for an offense that under the laws of this state would disqualify you from having unsupervised access to children or individuals with developmental disabilities in any home or facility.

(2) The disqualifying background of an individual sixteen years of age or over living with the provider may not permanently disqualify the provider if conditions in WAC 388-290-0167 (1)(a) and (b) are met.

**AMENDATORY SECTION** (Amending WSR 02-01-135, filed 12/19/01, effective 1/19/02)

**WAC 388-290-0165** ~~((Are))~~ **Is there other background information or convictions that will disqualify my in-home/relative provider?** (1) ~~((If))~~ Your in-home/relative provider ~~((has been convicted))~~ can be disqualified if the individual being checked has a background containing information other than conviction information that we determine:

(a) Makes the individual not of suitable character and competence or of sufficient physical or mental health to meet the needs of the child in care; or

(b) Puts the household at risk for harm.

(2) If an individual being checked as a background containing the following crimes within the last five years ~~((of any crime listed in WAC 388-006-0180))~~, your provider is disqualified as an in-home/relative child care provider for WCCC(~~(-~~

~~(2) If your provider))~~;

(a) Any physical assault not included in WAC 388-290-0160;

(b) Any sex offense not included in WAC 388-290-0160;

(c) Any felony conviction not included in WAC 388-290-0160;

(d) Felony violation of the following drug-related crimes:

(i) The Imitation Controlled Substances Act (for substances that are falsely represented as controlled substances, see chapter 69.52 RCW);

(ii) The Legend Drug Act (prescription drugs, see chapter 69.41 RCW);

(iii) The Precursor Drug Act (substance used in making controlled substances, see chapter 69.43 RCW);

(iv) The Uniform Controlled Substances Act (illegal drugs or substances, see chapter 69.50 RCW); or

(v) Unlawfully manufacturing, delivering or possessing a controlled substance with intent to deliver, or unlawfully using a building for drug purposes.

(e) Any federal or out-of-state conviction for an offense that under the laws of this state would disqualify you from having unsupervised access to children or individuals with developmental disabilities in your home or facility not less than five years from a conviction listed in this section.

(3) If an individual being checked has:

(a) A conviction listed in ~~((WAC 388-06-0180))~~ subsection (2)(a) through (e) of this section, and it has been more than five years ~~((, the department will review the provider's background))~~; or

(b) A conviction other than those listed in WAC 388-290-0160 or subsection (2)(a) through (e) of this section, we will allow you to determine the provider's character, suitability, and competence by reviewing:

~~((#))~~ (i) The amount of time that has passed since the conviction;

~~((b))~~ (ii) The seriousness of the crime that led to the conviction;

~~((e))~~ (iii) The ~~((provider's))~~ individual's age at the time of conviction;

~~((#))~~ (iv) The individual's behavior since the conviction;

(v) The number and types of convictions in the ~~((provider's))~~ individual's background; and

~~((e))~~ (vi) Documentation indicating ~~((you have))~~ the individual has successfully completed all court-ordered programs and restitution.

~~((3) If your provider has a conviction other than those listed in WAC 388-06-0170 or 388-006-0180 the department will review the provider as described in (2)(a) through (d) above.~~

~~(4) The crime will not be considered a conviction for the purposes of WCCC when it has been pardoned or a court of law acts to expunge or vacate the conviction record)~~ (4) The disqualifying background of an individual sixteen years of age or over living with the provider may not disqualify the provider if conditions in WAC 388-290-0167 (1)(a) and (b) are met.

#### NEW SECTION

**WAC 388-290-0167** **What happens if my in-home/relative provider, who provides care in their home, is disqualified based solely on the disqualifying background of an individual living with that provider?** (1) If

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your provider is disqualified based solely on the disqualifying background of an individual living with that provider, we will require that:

(a) Child care occurs in the child's home away from the disqualified individual, if you wish to continue using that provider; and

(b) The parent and provider sign an agreement with us indicating that:

(i) Care will occur in the child's home; and

(ii) There will be no contact between the child and disqualified individual during child care hours.

(2) The parent may choose a licensed provider or submit an application for a different in-home/relative provider.

(3) If we become aware that the parent and provider are not meeting the conditions in subsection (1)(a) and (b) of this section:

(a) We will terminate care without advance and adequate notice;

(b) You will need to find a different provider; and

(c) You may be subject to an overpayment.

#### WSR 02-09-065

#### PROPOSED RULES

#### DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

(Division of Employment and Assistance Programs)

[Filed April 15, 2002, 3:49 p.m.]

#### Original Notice.

Preproposal statement of inquiry was filed as WSR 02-03-091.

Title of Rule: WAC 388-406-0040 What happens if the processing of my application is delayed?, 388-406-0045 Is there a good reasons my application for cash or medical assistance has not been processed?, 388-406-0050 How do I know when my application is processed?, 388-406-0055 When do my benefits start?, 388-406-0060 What happens when my application is denied?, 388-406-0065 Can I still get benefits even after my application is denied?, 388-452-0005 Do I have to be interviewed in order to get benefits?, and 388-472-0005 What are my rights and responsibilities?

Purpose: Amending rules in chapter 388-406 WAC and WAC 388-452-0005 and 388-472-0005 to clarify and streamline policy.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 74.09.530.

Statute Being Implemented: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 74.09.530.

Summary: Amending rules in chapter 388-406 WAC and WAC 388-452-0005 and 388-472-0005.

Reasons Supporting Proposal: To clarify and streamline existing policy.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Vicky T. Robinson, 1009 College Street S.E., Lacey, WA, (360) 413-3031.

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

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

Explanation of Rule, its Purpose, and Anticipated Effects: Amending rules in chapter 388-406 WAC to clarify and streamline existing policy. Also amending WAC 388-452-0005 and 388-472-0005 for clarity.

Proposal Changes the Following Existing Rules: The proposed rules clarify what happens when the processing of an application is delayed, good cause reasons for the delay, when an application is processed, when benefits start, what happens when an application is denied, and reconsideration of denied applications. Also describes client's rights and responsibilities.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Small businesses are not affected by these rule changes.

RCW 34.05.328 does not apply to this rule adoption. These amendments do not meet the definition of significant legislative rule changes and are exempt under RCW 34.05.325 [34.05.328] (5)(b)(vii).

Hearing Location: Office Building 2 Auditorium (DSHS Headquarters) (parking on 12th off Jefferson), 14th and Jefferson, Olympia, WA 98504, on June 4, 2002, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact DSHS Rules Coordinator by May 31, 2002, phone (360) 664-6094, TTY (360) 664-6178, e-mail fernaax@dshs.wa.gov.

Submit Written Comments to: Identify WAC Numbers, DSHS Rules Coordinator, Rules and Policies Assistance Unit, P.O. Box 45850, Olympia, WA 98504-5850, fax (360) 664-6185, e-mail fernaax@dshs.wa.gov, by 5:00 p.m., June 4, 2002.

Date of Intended Adoption: No sooner than June 5, 2002.

April 11, 2002

Brian H. Lindgren, Manager

Rules and Policies Assistance Unit

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 02-10 issue of the Register.

#### WSR 02-09-066

#### PROPOSED RULES

#### DEPARTMENT OF ECOLOGY

[Order 02-04—Filed April 15, 2002, 4:29 p.m.]

#### Original Notice.

Preproposal statement of inquiry was filed as WSR 02-05-071.

Title of Rule: Chapter 173-422 WAC, Motor vehicle emission inspection.

Purpose: Upgrade emission testing procedures for diesel cars and light trucks. Clarify that all emission tests are valid for at least twelve months. Require automotive repair businesses to be able to check the on-board diagnostic system of 1996 and newer vehicles if they wish to be on the list of shops given to owners of failed vehicles. Remove obsolete language.

Statutory Authority for Adoption: RCW 70.120.120.

Statute Being Implemented: RCW 46.16.015, 70.120.120.

Summary: Upgrades emission testing procedures for diesel cars and light trucks. Clarifies that all emission tests are valid for at least twelve months. Requires automotive repair businesses to be able to check the on-board diagnostic system of 1996 and newer vehicles if they wish to be on the list of shops given to owners of failed vehicles. Removes obsolete language.

Reasons Supporting Proposal: The rule needs to be updated to reflect the testing procedures revisions contracted for as part of the new contract for the operation of the vehicle emission test stations starting July 1, 2002.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: John Raymond, Lacey, (360) 407-6856.

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: Upgrades emission testing procedures for diesel cars and light trucks from the snap-acceleration test currently used for diesel vehicles to a test where these vehicles are driven at twenty-five miles per hour on a dynamometer. Some owners of light-duty diesel vehicles have expressed concern that engine damage could result from the test as it is currently conducted. This rule change would change the test to one that alleviates these concerns.

Clarifies that all emission tests are valid for at least twelve months. The Department of Licensing has requested this change to ensure that their licensing procedures and computer programs are consistent with the regulations.

Requires automotive repair businesses to be able to check the on-board diagnostic system of 1996 and newer vehicles if they wish to be on the list of shops given owners of failed vehicles. Repair businesses contacted to date already have this tool and support the requirement.

Removes obsolete language. This should make the rule easier to understand.

Proposal Changes the Following Existing Rules: Upgrades emission testing procedures for diesel cars and light trucks. Clarifies that all emission tests are valid for at least twelve months. Requires automotive repair businesses vehicles to be able to check the on-board diagnostic system of 1996 and newer vehicles if they wish to be on the list of shops given owners of failed vehicles. Removes obsolete language.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

#### Small Business Economic Impact Statement

**INTRODUCTION:** Chapter 19.85 RCW, the Regulatory Fairness Act, requires that rule-making actions be examined for disproportionate impacts on small versus large businesses. If such impacts occur, they are to be mitigated to the extent feasible and legal under the stated objectives of the statute upon which the chapter 173-422 WAC is based. **An examination of the above referenced rule indicates that**

**no disproportionate impacts will occur.** The remainder of this document describes the analysis and the reasoning leading to that conclusion.

**BACKGROUND:** The purpose of this proposed rule amendment is to incorporate changes into state statute resulting from Department of Ecology (ecology) amendments to its regulation for the emission check program. The emission check program is required by federal law in areas that do not meet federal health-based standards for air pollution from motor vehicles. In Washington, it is in place in the urban areas of Clark, King, Pierce, Snohomish and Spokane counties. It helps reduce air pollution from motor vehicles by testing their exhaust emissions, identifying the most polluting vehicles, and requiring their repair. This is important because motor vehicles are Washington's largest source of air pollution, accounting for about 57% of air pollution statewide.

**PROPOSED CHANGES:** Ecology's proposed changes to the emission check program regulation will do the following:

1. Revise and upgrade the emission testing procedures for diesel cars and light trucks (less than 8,501 pounds gross vehicle weight rating). Currently, all vehicles are given a snap-acceleration test that requires them to be momentarily operated at full throttle. Some vehicle owners have expressed concerns that this could cause engine damage. Diesel cars and light trucks will now be driven on a dynamometer when testing their emissions, rather than being operated at full throttle.

2. Clarify in the rule that all emission tests are valid for at least twelve months. The Department of Licensing is responsible for notifying vehicle owners when emission checks are required. They have requested that this language be changed in order to simplify computer programs that checks whether a vehicle has met its test requirement or not.

3. Remove obsolete language.

4. Require automotive repair businesses that wish to be listed as ecology-authorized businesses to have the tool needed to check on-board diagnostic systems of 1996 and newer vehicles.

**ANALYSIS AND RESULTS:** The following is an analysis of the proposed rule changes on an individual basis and in the order presented in the previous section.

*Change 1:* An upgrade by the contractor to the testing procedure at the testing stations which is only a procedure change and will have no effect on any small businesses.

*Change 2:* This is a change of timeframe so that a valid emission certificate is good for twelve months. This change could extend some certificates an additional six months. This will have no negative effect on any small businesses. This relates to internal governmental operations.

*Change 3:* Removes obsolete language with no effect on small businesses.

*Change 4:* This change relates to a voluntary listing of businesses authorized to do diagnostic testing and repair of vehicles that do not pass the emission test. The cost of these repairs may be applied toward obtaining a waiver from having to meet the emission standards. The vehicle owner may obtain repairs anywhere including doing the repairs themselves. However, if the vehicle is not repaired to a passing

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condition, then the work and expense can not be applied toward obtaining a waiver. The change requires businesses that wish to be authorized to have an OBD II diagnostic tester. This proposed change is the one that this report will analyze for any possible negative economic impacts.

Analysis of Change #4, OBD II diagnostic tester requirement: The method of analysis is determined by RCW 19.85.040 and is done under "cost per hour of labor" per average number of employees of small businesses in the state of Washington for this SIC.

Information and data for this analysis is drawn from the following sources:

- 1. 2000 Occupational Employment Statistics (OES) Survey conducted by Washington State Department of Employment Security, Labor Market and Economic Analysis, in cooperation with USDOL Bureau of Labor Statistics.
- 2. Washington state Department of Ecology air quality program information on current providers of approved repair facilities.
- 3. <http://www.actron.com/> Actron OBD II Diagnostic Tester. (Several models)

The following table displays the results of the analysis process described above. Discussion of the results will follow.

**COST OF OBD II DIAGNOSTIC TESTER PER EMPLOYEE HOUR**

<u>SOC</u>	<u>SMALL BUSINESS</u>	<u>LARGE BUSINESS</u>
49-3023	\$0.0055- \$0.021	\$0.00067- \$0.0026

**DISCUSSION OF RESULTS:** The cost of the OBD II tester per employee hour is minor to both large and small businesses.

90% of the businesses with this SIC have fewer than fifty employees.<sup>1</sup> The computed average small business size is 5.4 persons. The average wage per employee is \$16.20 per hour which would put the average small business payroll at \$175,000 per year.<sup>1</sup> (Ave. hourly wage \*5.4 employees \*2000 hours)

The cost of example testers ranged from \$199.00 to \$769.00<sup>2</sup> with a median price of \$400. This cost could be depreciated over a three-year period and only one tester is required per business via this proposed rule change. This cost equates to an annual expense of: \$66-\$256 per small business per year, depending on the model of tester chosen. Ecology currently reports 683 businesses<sup>3</sup> that will be subject to the requirement if they **voluntarily** elect to be qualified for the list.

**MITIGATION:** The results presented here support a conclusion that the identifiable impacts of the proposed rule upon small versus large businesses are not disproportionate and will require no mitigation. The cost of this requirement is insignificant to any size business and is considered minor. An average one cent per hour change should not impact profit margins even in the 1% range. As a matter of practicality, any business that works on 1996 and newer vehicles for most reasons already own an OBD II tester that will qualify the business for the listing.

**SMALL BUSINESS INVOLVEMENT:** There will be public meetings held for participation and comments on the proposed rule change.

**APPENDIX: 1.** 2000 Occupational Employment Statistics (OES) Survey conducted by Washington State Department of Employment Security, Labor Market and Economic Analysis, in cooperation with USDOL Bureau of Labor Statistics.

TOTAL UNITS	TOTAL EMPLOYEES	UNITS	EMP	UNITS	EMP	UNITS	EMP
4,284	27,081	0	0	1-4	1-4	5-9	5-9
		627		2,031	4,631	957	6,252

TOTAL UNITS	TOTAL EMPLOYEES	UNITS 10-19	EMP 10-19	UNITS 20-49	EMP 20-49	UNITS 50-99	EMP 50-99	UNITS 100-249	EMP 100-249
4,284	27,081	466	6,080	157	4,489	29	1,980	14	2,173

**2000 Occupational Employment and Wage Estimates:**

Washington Statewide		Automotive Service Technicians and Mechanics
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### Washington Statewide

Estimated employment 12,750  
 Employment RSE 9.0%  
 Mean wage \$ 16.20  
 Mean RSE 2.4%  
 25th percentile wage \$ 12.00  
 50th percentile wage \$ 15.90  
 75th percentile wage \$ 19.70

### Top Employing Industries

**Employment**

Retail Trade	6,120	48.0%
Services	5,080	39.8%
Public Administration	730	5.7%
Manufacturing	270	2.1%
Transportation and public utilities	240	1.8%
Wholesale Trade	150	1.1%
Construction	130	1.0%
Agriculture, forestry and fishing	20	0.1%

### Best Paying Industries

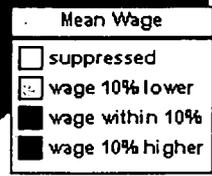
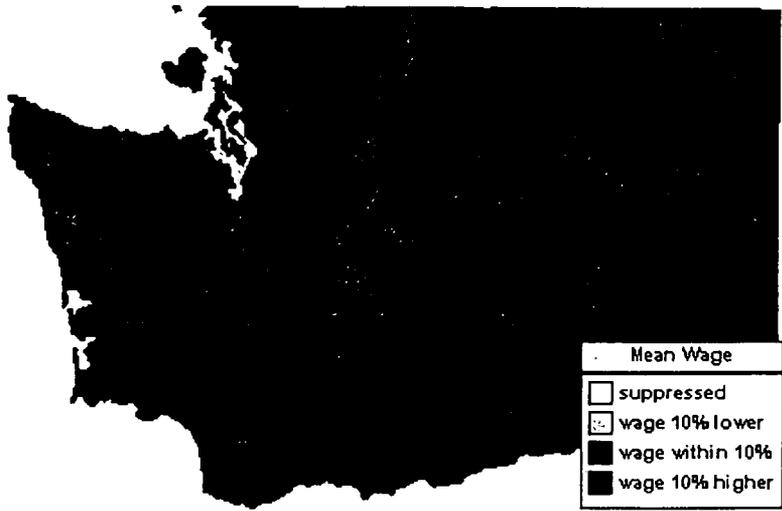
Industry	Employment	Mean Wage
Manufacturing	270	\$21.30
Public Administration	730	\$19.20
Construction	130	\$17.80
Transportation and public utilities	240	\$17.50
Retail Trade	6,120	\$17.00
Agriculture, forestry and fishing	20	\$15.40
Services	5,080	\$14.60
Wholesale Trade	150	\$14.20

### Automotive Service Technicians and Mechanics (49-3023)

Diagnose, adjust, repair, or overhaul automotive vehicles. Exclude "Automotive Body and Related Repairers" (49-3021), "Bus and Truck Mechanics and Diesel Engine Specialists" (49-3031), and "Electronic Equipment Installers and Repairers, Motor Vehicles" (49-2096).

### Top Areas For This Occupation

Highest Employment		Best Pay	
Mean Wage	Employment	Mean Wage	Employment
\$16.20	12,750	\$16.20	12,750



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2. List of companies affected available by request from ecology.
3. Sample OMB II Tester (median range):

### Kal OBD II System Tester - KM9615

The OBD II System Tester is an economical tool for performing generic OBD II system diagnostics on all OBD II compliant vehicles, 1996 to 2002.

- Covers domestic, Asian and European cars and light trucks built for sale in the United States
- Supports current OBD II communication protocols (PWM, VPM, ISO & Keyword 2000)



#### Functions

- On-line Help
- Read and Erase codes
- Read pending codes
- View, Record and Playback Data
- Freeze Frame
- Display and Customize Charts
- Trouble Code Definitions
- O<sub>2</sub> Monitor Test
- Continuous and Non-Continuous Test
- On-Board Systems Control

#### Features

- Large LCD display: 4 lines x 20 characters
- Easy-to-use 6-Button Keypad
- Heavy Duty J1962 Diagnostic Cable
- Complete Instructions
- Yearly firmware updates via user-replaceable chip
- 3 Year Warranty
- Made in U.S.A.
- For detailed specs, see the feature comparison chart
- Just looking for an OBD II code reader? Check out the KM9040

This product meets the requirements of the I & M programs in Vermont and Maine

**KM9615 OBD II System Tester (w/BFEB firmware) \$398.99**

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A copy of the statement may be obtained by writing to John Raymond, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, e-mail jray461@ecy.wa.gov, phone (360) 407-6856, fax (360) 407-75340 [407-7534].

RCW 34.05.328 applies to this rule adoption.

Hearing Location: Department of Ecology, 3190 160th Avenue S.E., Bellevue, WA 98008-5452, on May 22, 2002, 7:00 p.m.

Assistance for Persons with Disabilities: Contact Sandi Newton by May 20, 2002, TDD (360) 407-6006, or (360) 407-6826.

Submit Written Comments to: John Raymond, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, e-mail jray461@ecy.wa.gov, phone (360) 407-6856, fax (360) 407-7534, postmarked by May 30, 2002.

Date of Intended Adoption: June 1, 2002.

April 15, 2002  
Linda Hoffman  
Deputy Director

AMENDATORY SECTION (Amending Order 93-35, filed 2/28/95, effective 3/31/95)

**WAC 173-422-020 Definitions.** Unless a different meaning is clearly indicated by context, the following definitions will apply:

(1) "Appropriate repair" means the diagnosis of the cause(s) of an emission test failure and/or the repair of one or more of these causes. An appropriate repair should reduce at least one emission test reading or diagnose and/or repair an emission problem identified by the on-board diagnostic (OBD) system.

(2) "Certificate of acceptance" means an official form, issued by someone authorized by the department, which certifies that the following conditions have been met:

(a) The vehicle failed an emission inspection; and

(b) The vehicle failed a reinspection; and

(c) ~~((The vehicle has been in use for more than five years or fifty thousand miles; and~~

~~((d)))~~ All primary emission control components installed by the vehicle manufacturer, or its appropriate replacement, are installed and operative; and

~~((e)))~~ ~~(d)~~ The recipient has provided original receipts listing and providing the cost of each appropriate repair performed by an authorized emission specialist between the initial and last inspection; and

~~((f)))~~ ~~(e)~~ The total cost of the appropriate repairs must equal or exceed:

Pre-1981 vehicles	\$100
1981 and newer	\$150

~~((If needed to prevent federal sanctions, the minimum total cost of appropriate repairs required to obtain a certificate of acceptance may be increased to four hundred fifty dollars.~~

~~Before increasing the repair cost requirement ecology shall evaluate ways to alleviate the economic hardships resulting from vehicle repair costs incurred by vehicle owners in an effort to comply with this regulation.))~~

(3) "Certificate of compliance" means an official form, issued by someone authorized by the department, which certifies that the recipient's vehicle on inspection complied with applicable emission inspection standards.

(4) "Authorized emission specialist" means an individual who has been issued a certificate of instruction by the department as authorized in RCW 70.120.020 (2)(a) and has maintained the certification by meeting requirements of WAC 173-422-190(2).

(5) "Dealer" means a motor vehicle dealer, as defined in chapter 46.70 RCW as amended, that is licensed pursuant to chapter 46.70 RCW.

(6) "Department" means the department of ecology.

(7) "Emission contributing area" means a land area within whose boundaries are registered motor vehicles that contribute significantly to the violation of motor vehicle related air quality standards in a noncompliance area.

(8) "Fleet" means a group of fifteen or more motor vehicles owned or leased concurrently by one owner assigned a fleet identifier code by the department of licensing.

(9) "Gross vehicle weight rating (GVWR)" means the manufacturer stated gross vehicle weight rating.

(10) "Motor vehicle" means any self-propelled vehicle required to be licensed pursuant to chapter 46.16 RCW.

(11) "Noncompliance area" means a land area within whose boundaries any air quality standard for any air contaminant from the emissions of motor vehicles will probably be exceeded.

(12) "PPM" means parts per million by volume.

(13) "Primary emission control components" means the components of the vehicle installed by the manufacturer for the purpose of reducing emissions or its replacement or modification which is acceptable to the United States Environmental Protection Agency. These components are ~~((the fuel inlet restrictor)), but are not limited to,~~ the catalytic converter or thermal reactor, the air injection system components, the thermostatic air cleaner, the exhaust gas recirculation system components, the evaporative emission system components including the gas cap, the positive crankcase ventilation system components and the electronic control unit components that control the air/fuel mixture and/or ignition timing including all related sensors.

The primary emission control components of a vehicle with a different engine than the engine originally installed shall be an Environmental Protection Agency certified engine/emission control combination for that vehicle or its newer model.

AMENDATORY SECTION (Amending Order 95-11, filed 10/9/96, effective 11/9/96)

**WAC 173-422-030 Vehicle emission inspection requirement.** All motor vehicles, not specifically exempted by WAC 173-422-170, which are registered or reregistered within the boundaries of an emission contributing area, as specified in WAC 173-422-050, are subject to the vehicle emission inspection requirements of this chapter. In addition, the department may require an emission inspection of a motor vehicle, except military tactical vehicles, operated for more than sixty days a year on a federal installation located

within an emission contributing area, or a vehicle garaged at a location within an emission contributing area, or a vehicle which has previously passed an emission inspection but has been identified using on road testing as likely to no longer comply with the inspection standards. Neither the department of licensing (~~nor its agents~~), county auditors nor subagents appointed under RCW 46.01.140 may change the registered owner or may issue or renew a motor vehicle license for any vehicle registered in an emission contributing area, as that area is established under RCW 70.120.150, unless the application for issuance or renewal is: (1) Accompanied by a valid certificate of compliance issued pursuant to RCW 70.120.080 or 70.120.170 or a valid certificate of acceptance issued pursuant to RCW 70.120.070; or (2) exempted from this requirement pursuant to RCW 46.16.015(2). (~~The certificates must have a date of validation which is within six months of the date of application for the vehicle license, license renewal or registered owner change. However, (a) an emission inspection used to change the registered owner may also be used to renew the current license; (b) an emission inspection used to obtain the current license may also be used to change the registered owner.~~) Certificates (~~for fleet or owner tested vehicles may~~) must have a date of validation which is within twelve months of the assigned license renewal date.

AMENDATORY SECTION (Amending Order 00-15, filed 11/1/00, effective 12/2/00)

**WAC 173-422-031 Vehicle emission inspection schedules.** (1) Vehicles defined in RCW 46.16.015(2) or WAC 173-422-170 are exempt from emission inspections. Vehicles five through twenty-five years old, other than state and local government vehicles, shall be inspected every other year as described in the table below. This inspection schedule does not apply to vehicles that have already been (~~inspected during the current licensing period due to a change of ownership~~) issued a certificate of compliance or a certificate of acceptance within twelve months of the assigned license renewal date.

<u>Year</u>	<u>Model Year of Vehicles Needing Inspection</u>
<del>((2000</del>	<del>1976, 1978, 1980, 1982, 1984, 1986, 1988, 1990, 1992, 1994</del>
2001	<del>1977, 1979, 1981, 1983, 1985, 1987, 1989, 1991, 1993, 1995, 1996)</del>
2002	1978, 1980, 1982, 1984, 1986, 1988, 1990, 1992, 1994, 1997
2003	1979, 1981, 1983, 1985, 1987, 1989, 1991, 1993, 1995, 1996, 1998
2004	1980, 1982, 1984, 1986, 1988, 1990, 1992, 1994, 1997, 1999
2005	1981, 1983, 1985, 1987, 1989, 1991, 1993, 1995, 1996, 1998, 2000
2006	1982, 1984, 1986, 1988, 1990, 1992, 1994, 1997, 1999, 2001
2007	1983, 1985, 1987, 1989, 1991, 1993, 1995, 1996, 1998, 2000, 2002

2008	1984, 1986, 1988, 1990, 1992, 1994, 1997, 1999, 2001, 2003
2009	1985, 1987, 1989, 1991, 1993, 1995, 1996, 1998, 2000, 2002, 2004
2010	1986, 1988, 1990, 1992, 1994, 1997, 1999, 2001, 2003, 2005
<u>2011</u>	<u>1987, 1989, 1991, 1993, 1995, 1996, 1998, 2000, 2002, 2004, 2006</u>
<u>2012</u>	<u>1988, 1990, 1992, 1994, 1997, 1999, 2001, 2003, 2005, 2007</u>

(2) State and local government vehicles five through twenty-five years old shall be inspected yearly as described in the table below.

<u>Year</u>	<u>Model Year of Vehicles Needing Inspection</u>
<del>((2000</del>	<del>1975 through 1995</del>
2001	<del>1976 through 1996)</del>
2002	1977 through 1997
2003	1978 through 1998
2004	1979 through 1999
2005	1980 through 2000
2006	1981 through 2001
2007	1982 through 2002
2008	1983 through 2003
2009	1984 through 2004
2010	1985 through 2005
<u>2011</u>	<u>1986 through 2006</u>
<u>2012</u>	<u>1987 through 2007</u>

AMENDATORY SECTION (Amending Order 95-11, filed 10/9/96, effective 11/9/96)

**WAC 173-422-060 Gasoline vehicle emission standards.** Gasoline motor vehicles subject to this chapter shall:

(1) When tested using the exhaust emission testing procedures described in (II) Two Speed Idle Test (~~(or (III) Loaded Test)~~) of Appendix B Test Procedures of Subpart S-Inspection/Maintenance Program Requirements of Part 51 of Chapter 1, Title 40 of the Code of Federal Regulations adopted November 1, 1992, meet the applicable exhaust emission standards from the following table during both the idle and higher speed mode (~~(prior to receiving a certificate of compliance)~~).

Two Speed Idle Test Exhaust Emission Standards

<u>Model Year</u>	<u>CO(%)*</u>	<u>HC (ppm)*</u>
<u>80 and earlier</u>	<u>3.0</u>	<u>600</u>
<u>81 and newer (0-8500 GVWR)</u>	<u>1.2</u>	<u>220</u>
<u>81 and newer (Greater than 8500 GVWR)</u>	<u>3.0</u>	<u>400</u>

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\* Carbon monoxide (CO) and hydrocarbons (HC), measured as a percentage (%) or parts per million (ppm) of the exhaust volume.

(2) When tested using the acceleration simulation mode (ASM) procedure specified in WAC 173-422-070 meet the following standards during that mode and the applicable standard from WAC 173-422-060(1) during the idle mode ((to receive a certificate of compliance. ASM testing will not start in a region until ecology has considered all comments on the need for ASM testing obtained at a public hearing held in that region.

Compliance with the NOx standards will not be required of vehicles tested in a region until the following conditions are met:

(a) Ecology has determined that a reduction of NOx emissions in that region will assist in attaining or maintaining the national air quality standard for ozone.

(b) Ecology has considered all comments received at a public hearing held in that region.

(c) For at least twenty-four months prior, the vehicle emission test reports have included the NOx reading).

ASM Mode Exhaust Emission Standards

Model Year Test Weight (lbs.)	CO(%)*	HC(ppm)	((NOx(ppm)*))
((1968-1974 cars and trucks (0-8500 lbs. GVWR))			
1750	7.3	690	None
1875	6.8	650	
2000	6.5	620	
2125	6.1	580	
2250	5.8	550	
2375	5.5	520	
2500	5.2	500	
2625	5.0	470	
2750	4.7	450	
2875	4.5	430	
3000	4.3	410	
3125	4.2	400	
3250	4.0	400	
3375	3.9	400	
3500	3.7	400	
3625	3.6	400	
cars 3750 & greater	3.5	400	
trucks 3750 & greater	4.0	500))	

((1975-))1980 and earlier model year cars and trucks (0-8500 lbs. GVWR)

1750	4.2	400	((None))
1875	4.0	380	
2000	3.8	350	
2125	3.6	340	

Model Year Test Weight (lbs.)	CO(%)*	HC(ppm)	((NOx(ppm)*))
2250	3.4	320	
2375	3.2	300	
2500	3.0	290	
2625	2.9	270	
2750	2.8	260	
2875	2.7	250	
3000	2.6	240	
3125	2.5	230	
3250	2.4	220	
3375	2.3	220	
3500	2.2	210	
3625	2.1	200	
cars 3750 & greater	2.1	200	
trucks 3750 & greater	2.5	300	

1981 & ((newer)) later model year cars and trucks (0-8500 lbs. GVWR)

1750	1.8	250	((1500
1875	1.7	240	1500
2000	1.6	220	1500
2125	1.5	210	1500
2250	1.5	200	1500
2375	1.4	190	1500
2500	1.3	180	1500
2625	1.3	180	1500
2750	1.2	170	1500
2875	1.2	160	1500
3000	1.1	160	1500
3125	1.1	150	1500
3250	1.0	150	1500
3375	1.0	150	1500
3500	1.0	150	1500
3625	1.0	150	1500
cars 3750 & greater	1.0	150	1500
trucks 3750 & greater	1.5	200	2000))

\* ((The concentration of the gases,)) Carbon monoxide (CO) and hydrocarbons (HC), ((oxides of nitrogen (NOx))) measured as ((either)) a percentage (%) or parts per million (ppm) of the exhaust volume.

(3) ((If a 1971 or newer model year vehicle,)) The gasoline filler cap must not leak more than 60 cubic centimeters per minute at a pressure of 30 inches of water. ((Gas cap checking will not start in a region until ecology has considered all comments on the need for gas cap checking obtained at a public hearing held in that region.))

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(4) Standardized on-board diagnostic (OBD) systems (also known as OBDII) were required by Environmental Protection Agency starting with 1996 model gasoline vehicle cars and light trucks. If a 1996 or newer model vehicle is equipped with an Environmental Protection Agency certified on-board diagnostic (OBD) system, the information stored in the on-board computer must indicate that all emission-related functional checks have been completed except for 1996 to 2000 model year vehicles that can have up to two readiness monitors not set to ready, or 2001 or newer model year vehicles that have one readiness monitor not set to ready, and no malfunctions detected that would command the malfunction indicator light to be illuminated.

((Exhaust Emission Standards

Model Year	CO(%)*	HC (ppm)*
68-74	6.0	900
75-80	3.0	600
81-99 (0-8500 GVWR)	1.2	220
81-99 (Greater than 8500 GVWR)	3.0	400

\* The concentration of the gases, carbon monoxide (CO) and hydrocarbons (HC), measured as either a percentage (%) or parts per million (ppm) of the exhaust volume.))

AMENDATORY SECTION (Amending Order 93-35, filed 2/28/95, effective 3/31/95)

**WAC 173-422-065 Diesel vehicle exhaust emission standards.** (1) Diesel motor vehicles subject to this chapter shall meet the following opacity standards when using the snap-acceleration test procedures specified in WAC 173-422-075.

Model Year	Opacity (%)
<del>((1968—1973</del>	70))
<del>((1974—))</del> 1991 <u>and earlier</u>	<del>((60))</del> <u>55</u>
1992 and later	40

(2) When using the Acceleration Simulation Mode (ASM) test procedures specified in WAC 173-422-070 adapted for the testing of diesel cars or light trucks (0-8500 pounds gross vehicle weight rating), these vehicles shall meet a 20% opacity standard.

AMENDATORY SECTION (Amending Order 95-11, filed 10/9/96, effective 11/9/96)

**WAC 173-422-070 Gasoline vehicle exhaust emission testing procedures.** All persons certified by, or under contract to, the department to conduct motor vehicle emission inspections shall use the exhaust emission testing procedures described in (II) Two Speed Idle Test ~~((; or (III) Loaded Test))~~ of Appendix B-Test Procedures of Subpart S-Inspection/Maintenance Program Requirements of Part 51 of chapter 1, Title 40 of the Code of Federal Regulations adopted November 1, 1992, except that the department may require that the

following Acceleration Simulation Mode (ASM) test procedure replace the ~~((ruise))~~ 2500 rpm mode of the ~~((loaded))~~ Two Speed Idle Test. Equivalent procedures may be approved by the department.

Variations to the procedures specified may be established by the department for all or certain vehicles. Vehicles, not repaired as required by an emission recall for which owner notification was attempted after January 1, 1995, shall not be inspected until compliance with the recall is established.

Acceleration Simulation Mode (ASM)

1. Dynamometer Load: Set dynamometer horsepower load equal to [Vehicle Weight (lbs.)+ 300]/300. An Environmental Protection Agency specified loading may also be used.
2. Vehicle Gear Selection: Vehicles with automatic transmissions use Drive (not Overdrive), vehicles with manual transmissions use second gear ~~((unless))~~ Shift to the next higher gear if the engine speed exceeds 2500 revolutions per minute ~~((measured by the vehicle's tachometer or by an evaluation of the vehicle's sound) then use third gear))~~.
3. Vehicle Speed: Set vehicle speed at 25 miles per hour (mph) 1.5± mph.
4. Pass or Fail Determinations: Once the vehicle has been operating at 25 mph for 15 seconds, begin measuring exhaust HC, CO, and CO2, ~~((and NOx))~~ each second. The reading for pass or fail determinations is the running average of five measurements. When a final pass or fail determination is made, this mode will be stopped and the final readings recorded.
5. Fast Pass ~~((HC, CO))~~: ~~((When NOx is not measured, the vehicle will pass after 15 or more seconds of measurements if: Both))~~ Once HC and CO readings are ~~((passing, and three successive one second measurements are))~~ equal to or less than the HC and CO standards and are within 20 ppm HC and 0.20% CO of each other.
6. ~~((Fast Pass (HC, CO, NOx): When NOx is measured, the vehicle will pass after 45 or more seconds of measurements if the HC, CO and NOx readings are equal to or less than the standards.~~
- 7.)) Fast Fail: The vehicle will fail after 15 or more seconds of measurements when ~~((;))~~ the HC reading exceeds 1800 ppm, or the CO reading exceeds 9.0 percent.
- ~~((8.))~~ Full Term Pass/Fail: The vehicle will pass or fail the ASM mode after 90 seconds of measurements unless emission readings are declining at a rate that indicates that a failing vehicle will pass within the next 30 seconds. Then the failing vehicle will receive up to an additional 30 seconds of measurements ~~((will be taken))~~ before the ~~((vehicle fails))~~ final pass/fail determination is made.

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**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 93-10, filed 2/8/94, effective 3/11/94)

**WAC 173-422-075 Diesel vehicle inspection procedure.** Diesel vehicles shall be tested using the following snap-acceleration test procedure(~~(=~~

~~(1) With the transmission in neutral, move the accelerator pedal from normal idle as rapidly as possible to the full power position, and hold in this position until the speed governor limits the engine speed or the engine might exceed the maximum speed allowed by the vehicle manufacturer.~~

~~(2) Fully release the accelerator pedal so the engine decelerates to normal idle.~~

~~(3) Measure the smoke opacity with an opacity meter which meets the requirements specified in WAC 173-422-095 continuously during the test.~~

~~(4) Record the peak opacity reading.~~

~~(5) Repeat the previous steps up to ten times if necessary to obtain a peak opacity reading and two peak readings immediately following it that are equal to or less than the standard established in WAC 173-422-065)) unless the department requires the Acceleration Simulation Mode (ASM) test procedure specified in WAC 173-422-070 adapted for the testing of diesel cars or light trucks (0-8500 pounds gross vehicle weight rating) be used in lieu of the snap-acceleration test procedure.~~

Prior to beginning the test verify the engine is within its normal operating temperature range, all vehicle accessories including air conditioning are off, the parking brake and an engine brake or retarder is off, the transmission is in neutral (and clutch released if manual transmission).

(1) The vehicle shall receive at least three preliminary snap-acceleration test cycles until consistent engine operation is achieved. The snap-acceleration test cycle consists of moving the accelerator pedal from normal idle as rapidly as possible to the full power position, then fully releasing the throttle so the engine returns to idle.

(2) Then perform additional snap-acceleration test cycles while measuring the smoke opacity with an opacity meter which meets the requirements specified in WAC 173-422-095. The engine must be allowed to remain at idle for at least ten seconds between snap-acceleration test cycles. If a subsequent snap-acceleration cycle is not begun within 45 seconds, the entire sequence of snap-acceleration test cycles must be restarted. The three preliminary snap-acceleration test cycles described in (1) need not be repeated.

(3) Record peak opacity readings from each snap-acceleration test cycle up to nine times if necessary to obtain a peak opacity reading and two consecutive peak readings that are equal to or less than the standard established in WAC 173-422-065.

If a peak opacity reading and two consecutive peak readings that are equal to or less than the standard established in WAC 173-422-065 are not obtained, the vehicle fails the test.

(4) Steps 2 and 3 are repeated for any additional exhaust pipes.

AMENDATORY SECTION (Amending Order 95-11, filed 10/9/96, effective 11/9/96)

**WAC 173-422-190 Emission specialist authorization.**

(1) To become an authorized emission specialist an individual shall:

(a) Pass a course of study, approved by the department; and

(b) Agree in writing to meet the requirements of subsection (2) of this section and all requirements of law or regulation regarding the serving of motor vehicle emission control systems or the motor vehicle emission inspection program.

(2) To maintain certification, an authorized emission specialist shall:

(a) Successfully complete a department-approved course on emission repair within ninety days of being required to do so by the department unless an extension has been granted in writing by the department; and

(b) Sign, including the specialist identification number, all receipts and other forms required by the department for emission repairs or adjustments performed. These receipts must be prenumbered, preprinted with the business's name and address and clearly itemize all appropriate repairs performed by the specialist; and

(c) Record on all receipts:

(i) The vehicle's emission readings after appropriate repairs or the diagnosis and/or repair of problem(s) identified by the on-board diagnostic (OBD) during an emission inspection; and

(ii) A vehicle description including the license number and vehicle identification number (VIN); and

(iii) Any missing or inoperative primary emission control components; and

(iv) Any further recommended appropriate repairs; and

(d) Not tamper with emission control systems, including adjusting an engine outside of the manufacturer's specifications (chapter 173-421 WAC); and

(e) Not obtain or attempt to obtain a certificate of compliance, a certificate of acceptance (repair waiver) or an exemption from the inspection requirements by providing false information or by any fraudulent means (chapter 173-422 WAC); and

(f) Not aid or abet any individual in committing a violation of chapter 173-421 or 173-422 WAC.

(3) The certification of an authorized emission specialist may be revoked for a first violation of chapter 173-421 WAC or WAC 173-422-145, for a period of no more than one year, and may be permanently revoked for a second violation of chapter 173-421 or 173-422 WAC.

The certification of an authorized emission specialist may be temporarily revoked for violation of subsection (2) of this section and may be permanently revoked for continued willful violation of subsection (2) of this section.

An authorized emission specialist whose certification is revoked permanently or temporarily may appeal to the pollution control hearings board as provided for in RCW 43.21B.310.

(4) An authorized emission specialist whose certification has been temporarily revoked may reapply for certification twelve months after the date of revocation by applying to the

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department and meeting all requirements of subsection (1) of this section. An application for certification by a permanently revoked authorized emission specialist will be denied.

**AMENDATORY SECTION** (Amending Order 93-35, filed 2/28/95, effective 3/31/95)

**WAC 173-422-195 Listing of authorized emission specialists.** (1) A list of authorized emission specialists will be available to the public. Specialists will be listed under one employer's business name when the business is approved for listing. The list will be updated by the department at least once every six months.

(2) The employer's business name and address will be listed by the department, when the employer agrees in writing to:

(a) Require the use of a properly maintained and correctly calibrated exhaust analyzer and a scan tool capable of communicating with the on-board diagnostic (OBD) systems installed on all U.S. Environmental Protection Agency certified 1996 model year and newer gasoline vehicles to diagnosis emission test failures and as a final check for emission repairs or adjustments;

(b) Have all emission repairs or adjustments performed by an authorized emission specialist;

(c) Require the authorized emission specialist to sign the customer's receipt for emission repairs or adjustments, and to record the vehicle's emission readings or which problem(s) identified by the on-board diagnostic (OBD) system during an emission inspection that have been diagnosed and/or repaired on the receipt after the work is completed;

(d) Require that all employees not aid or abet any person to tamper with emission control systems, including adjusting a vehicle outside of the manufacturer's specifications (chapter 173-421 WAC); and

(e) Require that all employees not aid or abet any person to obtain a fraudulent certificate of compliance, certificate of acceptance or an exemption from the inspection requirement (repair waiver) (chapter 173-422 WAC).

(f) Notify the department when an authorized emission specialist begins or ends employment.

(3) An employer may be removed from the authorized emission specialist list for a first violation of chapter 173-421 or 173-422 WAC for a period of no more than one year and may be permanently removed after a second violation of chapter 173-421 or 173-422 WAC.

An employer may be temporarily removed from the authorized emission specialist list when failing to comply with the requirements of subsection (2) of this section and may be permanently revoked for continued and willful violation of subsection (2) of this section.

(4) An employer who has been temporarily removed from the authorized emission specialist list may reapply for listing twelve months after the date of removal from the listing by applying to the department and meeting all requirements of subsection (2) of this section. An application for listing from an employer permanently removed from the authorized emission specialist list will be denied.

(5) An employer who is removed from an authorized emission specialist list or denied listing in an authorized

emission specialist list may appeal to the pollution control hearings board as provided for in RCW 43.21B.310.

(6) (a) An employer approved for listing may display the "state authorized emission specialist" sign available from the department. Any employer advertising or providing of information to the public based on the department's certification of an authorized emission specialist must be discontinued immediately when the employer no longer meets the requirements.

(b) An employer violating (a) of this subsection shall be subject to a civil penalty not to exceed two hundred fifty dollars for each violation.

(c) A civil penalty imposed by the department may be appealed to the pollution control hearings board as provided for in RCW 43.21B.310.

#### WSR 02-09-069

#### WITHDRAWAL OF PROPOSED RULES EXECUTIVE ETHICS BOARD

(By the Code Reviser's Office)

[Filed April 16, 2002, 9:20 a.m.]

WAC 292-110-010, proposed by the Executive Ethics Board in WSR 01-20-088 appearing in issue 01-20 of the State Register, which was distributed on October 17, 2001, 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 02-09-070

#### WITHDRAWAL OF PROPOSED RULES DEPARTMENT OF LABOR AND INDUSTRIES

(By the Code Reviser's Office)

[Filed April 16, 2002, 9:21 a.m.]

WAC 296-150M-0304, proposed by the Department of Labor and Industries in WSR 01-20-093 appearing in issue 01-20 of the State Register, which was distributed on October 17, 2001, 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 02-09-071

#### PROPOSED RULES BELLEVUE COMMUNITY COLLEGE

[Filed April 16, 2002, 9:38 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 02-05-051.

Title of Rule: Facility usage for Community College District VIII.

Purpose: Amends chapter 132H-140 WAC concerning facilities usage and related services to conform with current practices.

Statutory Authority for Adoption: RCW 28B.50.140.

Summary: The proposed amendments, deletions and new sections clarify the facilities usage policy, preserve the college's right to deny use of facilities under certain circumstances, remove outdated forms, refer people to the appropriate location for requesting building usage, clarify the college's policy concerning animals on campus and adds a section concerning trespass.

Reasons Supporting Proposal: The current chapter has not been updated for ten years and did not conform to all current practices.

Name of Agency Personnel Responsible for Drafting and Implementation: Jamie Dye, K100, 3000 Landerholm Circle S.E., Bellevue, WA 98007, (425) 564-4050; and Enforcement: Campus Security, K100, 3000 Landerholm Circle S.E., Bellevue, WA 98007, (425) 564-2400.

Name of Proponent: Bellevue Community College, public.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The rule already exists. The changes make it more clear and easier for people requesting to rent space at Bellevue Community College what their rights and responsibilities are.

Proposal Changes the Following Existing Rules: The chapter language is amended to be more clear. Sections that are outdated have been repealed. New sections have been added that describe limitations and denial of use and trespass. Old forms that are no longer used have been removed.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule does not impact small business. All rental rules that were in place pertaining to small businesses who use the Bellevue Community College campus are still in effect.

Hearing Location: Bellevue Community College, 3000 Landerholm Circle S.E., K100, Bellevue, WA 98007-6484, on June 5, 2002, at 9:00 a.m.

Assistance for Persons with Disabilities: Contact Susan Gjomesli by June 3, 2002, TDD (425) 564-4110, or (425) 564-2498.

Submit Written Comments to: Jamie Dye, Bellevue Community College, 3000 Landerholm Circle S.E., K100, Bellevue, WA 98007-6484, fax (425) 564-5600, by June 3, 2002.

Date of Intended Adoption: June 18, 2002.

April 15, 2002

Elise J. Erickson

Rules Coordinator

## Chapter 132H-140 WAC

### Fees—Facility Rental—Additional Services for Community College District VIII

AMENDATORY SECTION (Amending WSR 82-11-039, filed 5/12/82)

**WAC 132H-140-020 Statement of purpose.** Bellevue Community College District VIII is an educational institution provided and maintained by the people of the state of Washington. The college reserves its facilities, buildings and grounds for those activities that are related to its broad educational mission. At other times, the college facilities ~~((will))~~ may be made available to other individuals and organizations.

The purpose of these regulations is to establish ~~((a basic facility fee structure and additional services regulations))~~ procedures and reasonable controls for the use of college facilities for noncollege groups and for college groups where applicable.

In keeping with this general purpose, and consistent with RCW 28B.50.140(7) and 28B.50.140(9), facilities should be available for a variety of uses which are of benefit to the general public if such general uses substantially relate to and do not interfere with the mission of the college. However, a state agency is under no obligation to make is public facilities available to the community for private purposes.

Primary consideration shall be given at all times to activities specifically related to the college's mission, and no arrangements shall be made that may interfere with, or operate to the detriment of, the college's own teaching, or public service programs.

Reasonable conditions may be impose to regulate the timeliness of requests, to determine the appropriateness of space assigned, time of use, and to insure the proper maintenance of the facilities. Subject to the same limitations, college facilities shall be made available for assignment to individuals or groups within the college community. Such arrangements by both organizations and individuals must be made through campus operations.

**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 79-10-51 [79-10-051], filed 9/17/79)

**WAC 132H-140-030 Request for use of facilities.** Requests by non-college groups for utilization of college facilities shall be made to the director of campus operations ~~((and services))~~ or a designee, who shall be the agent of the college in consummating rental and use agreements. ~~((Application for use of college facilities Form BCC 040-026 is to be completed by noncollege groups requesting facilities or college groups which use facilities under circumstances where a service charge would be levied.))~~

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

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

**AMENDATORY SECTION** (Amending WSR 82-11-039, filed 5/12/82)

**WAC 132H-140-040 Facility usage board policy.** The board of trustees of Bellevue Community College District VIII provides college personnel, students, ~~((faculty, staff,))~~ college ~~((formal and informal))~~ organizations and the general public ~~((other outside individuals and organizations for the purpose other than in connection with BCC's regular educational, public service or support programs))~~ the opportunity to use the college grounds and buildings subject to WAC 132H-140-010 through 132H-140-110 and in compliance with local, state and federal laws if

- (1) ~~((F))~~ the individual or organization requesting the space is ~~((eligible))~~ approved to use it and
- (2) ~~((F))~~ the space is available and has been reserved for the activity.

**AMENDATORY SECTION** (Amending WSR 82-11-039, filed 5/12/82)

**WAC 132H-140-050 Scheduling and reservation practices.** The primary purpose of college facilities is to serve the instructional program of the college. However, the facilities, when not required for scheduled college use, may be available for rental by the public in accordance with current fee schedules and other relevant terms and conditions for such use.

No college facilities may be used by individuals or groups from outside the college unless the facilities including buildings, equipment and facilities land have been reserved. ~~((Facilities will be scheduled according to the following priorities.))~~

In determining whether to accept a request for the use of college facilities, the administration shall use the college mission statement and the following items, listed in priority order, as guidelines:

- (1) Bellevue Community College scheduled programs and activities.
- (2) Major college events.
- (3) Foundation related events.
- (4) Non-college (outside individual or organization) events.

Arrangements for use of college facilities must be made through the campus operations office.

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

## **REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 132H-140-060      Limitations

## **NEW SECTION**

**WAC 132H-140-065 Limitations and denial of use.** Bellevue Community College is a state agency and exists to serve the public. However, the college may deny use of its facilities to any individual, group or organization if the requested use would

- (1) interfere or conflict with the college's instructional, student services or support programs;
- (2) interfere with the free flow of pedestrian or vehicular traffic on campus;
- (3) involve illegal activity;
- (4) create a hazard or result in damage to college facilities; or
- (5) create undue stress on college resources (e.g., a request for a major event may be denied if another major event is already scheduled for the same time period, because of demands for parking, security coverage, etc.).

Where college space is used for an authorized function (such as a class or a public or private meeting under approved sponsorship, administrative functions or service related activities), groups must obey or comply with directions of the designated administrative officer or individual in charge of the meeting.

Any individual or group granted permission to use college facilities shall agree in advance to abide by all college rules and regulations. The college reserves the right to deny use of college facilities to any individual or group whose past conduct indicates a likelihood that college rules and regulations will not be obeyed. The college may also deny use to a requesting individual or organization which has used the facilities in the past and has damaged college property, left college buildings and grounds in excessive disorder, or failed to cooperate with college staff concerning use of the facilities.

No person or group may use or enter onto college grounds or facilities having in their possession firearms or other dangerous weapons, even if licensed to do so, except commissioned police officers as prescribed by law.

College facilities may be used for purposes of political campaigning by or for candidates who have filed for public office, directed to members of the public, only when the full rental cost of the facility is paid. Use of state funds to pay for facility rental costs for political campaigns is prohibited. No person may solicit contributions on college property for political uses, except where this limitation conflicts with federal law regarding interference with the mails.

Orderly picketing and other forms of peaceful dissent are protected activities on and about the college premises when such premises are open to public use. However, interference with free passage through areas where members of the college community have a right to be, interference with ingress and egress to college facilities, interruption of classes, injury to persons, or damage to property exceeds permissible limits. While peaceful dissent is acceptable, violence or disruptive behavior is not a legitimate means of dissent. If any person, group, or organization attempts to resolve differences by means of violence, the college retains the right to take steps to protect the safety of individuals, the continuity of the educational process, and the property of the state.

If at any time actual use of college facilities by an individual or group constitutes an unreasonable disruption of the normal operation of the college, such use shall immediately terminate, all persons engaged in such use shall immediately vacate the premises, and leave the college property upon command of the appropriate college official.

Advertising or promotional materials for any event being held in a college facility must follow the same procedure as applies to students outlined in WAC 132H-120-050.

Use of audio amplifying equipment is permitted only in locations and at times that will not interfere with the normal conduct of college affairs.

BCC facilities may not be used for private or commercial purposes unless such activities clearly serve the educational mission of the college, are either sponsored by an appropriate college unit or conducted by contractual agreement with the college. Commercial uses may also be made as noted in WAC 132H-133-050.

Alcoholic beverages will not be served without the approval of the president or his/her designee. It shall be the responsibility of the event sponsor to obtain all necessary licenses from the Washington State Liquor Control Board and adhere to their regulations, and those of Bellevue Community College.

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

AMENDATORY SECTION (Amending WSR 82-11-039, filed 5/12/82)

**WAC 132H-140-070 Other requirements.** (1) ~~((When deemed advisable by the dean of administrative services;))~~ When using college facilities, an individual or organization may be required to make an advance deposit, post a bond and/or obtain insurance to protect the college against cost or other liability.

(2) When the college grants permission to an individual or organization to use its facilities it is with the expressed understanding and condition that the individual or organization assumes full responsibility for any loss or damage resulting from such use and agrees to hold harmless and ~~((indemnity))~~ indemnify the college against any loss or damage claim arising out of such use.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132H-140-080	Basic facility fee structure
WAC 132H-140-090	Services and equipment fees.
WAC 132H-140-100	Delegation of authority

#### NEW SECTION

**WAC 132H-140-085 Facility rental/use fees.** Fees will be charged in accordance with a schedule available at the campus operations office. The college reserves the right to

make pricing changes without prior written notice, except that such price changes shall not apply to facility use agreements already approved by the administration.

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

AMENDATORY SECTION (Amending WSR 82-11-039, filed 5/12/82)

**WAC 132H-140-110 ((Pet)) Animals policy.** ~~((Pets (dogs, cats, birds, etc.) are prohibited from entering buildings operated by Bellevue Community College.))~~

Pets on the grounds of Bellevue Community College shall be in the physical control of their owner in accordance with the city of Bellevue "leash law" ordinance, chapter 8.04.

~~((Exceptions to these regulations are animals used for the following purposes:~~

- ~~(1) Assisting the visual or hearing impaired persons~~
- ~~(2) As part of an authorized BCC program purpose requiring their use.~~
- ~~(3) As part of a law enforcement agency in the performance of its duties.~~
- ~~(4) Participation in authorized special events.~~

~~Animals found to be in violation of these regulations shall be impounded and turned over to the King County animal control or a citation issued and a fine imposed on the owner. Exceptions to these regulations other than those listed above shall be directed to the dean of administrative services.)~~ Animals, except for service animals, are prohibited from entering buildings operated by Bellevue Community College.

#### NEW SECTION

**WAC 132H-140-120 Trespass.** (1) Individuals who are not students or members of the faculty or staff and who violate these rules will be advised of the specific nature of the violation, and if they persist in the violation, they will be requested by the president, or his or her designee, to leave the college property. Such a request prohibits the entry of and withdraws the license or privilege to enter onto or remain upon any portion of the college facilities by the person or group of persons requested to leave. Such persons shall be subject to arrest under the provisions of chapter 9A.52 RCW. Individuals requested to leave college property may appeal that decision by submitting to the college president by certified mail, return receipt requested, a letter stating the reasons the person should not be barred from college facilities. The college president or designee shall respond in writing within 15 calendar days with a final decision of the college. Persons shall continue to be barred from college property while an appeal is pending.

(2) Students, faculty, and staff of the college who do not comply with these regulations will be reported to the appropriate college office or agency for action in accordance with this chapter or with other applicable rules, regulations, or policies.

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

### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 132H-140-900 Application for use of college facilities.

**WSR 02-09-072**  
**PROPOSED RULES**  
**MILITARY DEPARTMENT**  
 [Filed April 16, 2002, 2:58 p.m.]

**Original Notice.**

Preproposal statement of inquiry was filed as WSR 01-23-011.

Title of Rule: Chapter 118-65 WAC, Enhanced 9-1-1 funding.

Purpose: RCW 38.52.540 establishes the enhanced 9-1-1 account in the state treasury and specifies that moneys in the account shall be used only to help implement and operate enhanced 9-1-1 statewide. The purpose of chapter 118-65 WAC is to specify by rule the purposes for which moneys may be expended from the enhanced 9-1-1 account.

Statutory Authority for Adoption: RCW 38.52.540.

Statute Being Implemented: RCW 38.52.540.

Summary: The purpose of chapter 118-65 WAC is to specify by rule the purposes for which moneys may be expended from the enhanced 9-1-1 account as enacted by the 2001 legislature, chapter 128, Laws of 2001.

Reasons Supporting Proposal: This amends existing rules to implement RCW 38.52.540 as enacted and signed during 2001 legislative session.

Name of Agency Personnel Responsible for Drafting: Kurt Hardin, Camp Murray, Building 20, (253) 512-7014; Implementation and Enforcement: Bob Oenning, Camp Murray, Building 20, (253) 512-7014.

Name of Proponent: State Enhanced 9-1-1 Coordinator, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Chapter 118-65 WAC defines the criteria and eligibility of counties to receive assistance from the state enhanced 9-1-1 account.

Proposal Changes the Following Existing Rules: This change reflects RCW 38.52.540 passed into law during the 2001 legislative session. Sections being changed are:

WAC 118-65-020 defines the purpose of chapter 118-65 WAC.

WAC 118-65-030 provides definitions within the chapter.

WAC 118-65-040 specifies the eligible jurisdictions.

WAC 118-65-050 specifies the items to receive funding.

WAC 118-65-060 specifies the requirement for local plans.

WAC 118-65-070 specifies funding priorities.

WAC 118-65-081 specifies the development of an application format.

WAC 118-65-090 specifies rules to be adopted through other state agencies.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This amended rule does not impact small businesses.

RCW 34.05.328 does not apply to this rule adoption. Chapter 118-65 WAC applies to the enforcement of RCW 38.52.540.

Hearing Location: Radisson Hotel Seattle Airport, 17001 Pacific Highway South, Seattle, WA 98188 (for directions contact Teresa Lewis at (253) 512-7012), on May 29, 2002, at 1:00 - 3:00 p.m.

Assistance for Persons with Disabilities: Contact Teresa Lewis at (253) 512-7012 or t.lewis@emd.wa.gov, by May 27, 2002, TDD (800) 833-6384; request to be connected to Teresa Lewis, (253) 512-7012.

Submit Written Comments to: Kurt Hardin, Customer Support Supervisor, Enhanced 911 Program, Emergency Management Division, Building 20, TA-20, Camp Murray, Washington 98430-5122, written comments accepted until May 9, 2002.

Date of Intended Adoption: May 29, 2002.

April 15, 2002

Bob Oenning

State Enhanced 911 Coordinator

AMENDATORY SECTION (Amending WSR 98-01-064, filed 12/11/97, effective 1/1/98)

**WAC 118-65-020 Purpose.** RCW 38.52.540 (~~establishes the~~) authorizes the establishment of an enhanced ((9-1-1)) 911 account in the state treasury and specifies that ((moneys in the account)) the funds shall be used only to ((help implement and operate enhanced 9-1-1 statewide)) support the statewide coordination and management of the enhanced 911 system. The state enhanced 911 coordinator, with the advice and assistance of the enhanced 911 advisory committee, is authorized to enter into statewide agreements to improve the efficiency of enhanced 911 services for all counties and to specify by rule the operational purposes for which funds, if available, may be expended from the enhanced 911 account. The purpose of ((this chapter)) these rules is to ((specify by rule)) define the ((purposes for which moneys may be expended)) criteria and eligibility of counties to receive assistance from the state enhanced ((9-1-1)) 911 account.

AMENDATORY SECTION (Amending WSR 98-01-064, filed 12/11/97, effective 1/1/98)

**WAC 118-65-030 Definitions.** (1) "~~((9-1-1)) 911 voice network~~" ((means all switches)) switching systems and circuits which provide the connection between the caller's ((een-

~~tral~~) switching office and the public safety answering point (PSAP).

(2) "Address" (~~(means an)~~) the identification of a unique physical location by street name, number, and postal community~~(-If applicable it also includes), latitude, longitude and when available, altitude. When applicable, the address may contain~~ the identification of separately-occupied subunits, such as apartment or suite numbers, and where appropriate, other information such as building name or floor number which defines a unique physical location.

(3) "Advisory committee" (~~(means the E9-1-1)~~) the 911 advisory committee as established by RCW 38.52.530.

(4) "Automatic location identification/data management system" (ALI/DMS) (~~((data management system)" means)~~) a system of manual procedures and computer programs used to create, store, and update the data required for (~~(ALI)~~) automatic location identification(~~(s)~~) in support of enhanced (~~(9-1-1)~~) 911.

(5) "Alternate routing" (~~(means)~~) a method (~~(by which 9-1-1 calls are routed)~~) of routing 911 calls to a designated alternate PSAP location (~~(if)~~) when all (~~(E9-1-1)~~) 911 lines (~~(to a PSAP)~~) are busy at the primary PSAP location.

(6) "Automatic location identification (ALI)" (~~(means)~~) a feature of the enhanced 911 system by which the name and address associated with the calling party's telephone number (identified by ANI feature) is forwarded to the PSAP for display.

(7) "Automatic number identification (ANI)" (~~(means)~~) a feature of the enhanced 911 system that allows for the automatic display of the (~~(seven digit)~~) telephone number used to place a (~~(9-1-1)~~) 911 call.

(8) "~~((Central))~~ Switching office" (~~(means a telephone company)~~) a telecommunications provider facility that houses the switching and trunking equipment serving telephones in a defined area.

(9) "~~((Central))~~ Switching office enabling" (~~(means)~~) the technology that allows the public network telephone (~~(switch(s))~~) switching office to recognize and accept the digits (~~(9-1-1)~~) 911.

(10) "Department" (~~(means)~~) the military department (~~(of community development)~~).

(11) "Route diversity" (~~(means)~~) a method of assuring continuity of service by using multiple transmission routes to deliver a particular service between two points on a network.

(12) "Master street address guide (MSAG)" (~~(means)~~) a data base of street names and address ranges within their associated postal communities defining emergency service zones for (~~(9-1-1)~~) 911 purposes.

(13) (~~("Network performance level monitoring" means steps taken by a telephone company to determine that the network is operating properly.)~~) "Language line service" interpreter services of languages for enhanced 9-1-1 calls.

(14) "Night service" (~~(means)~~) a feature that (~~(automatically)~~) forwards all 9-1-1 calls routed to a designated PSAP to an alternate directory number (~~(assigned)~~) preassigned for that PSAP. The alternate directory number may be associated with (~~(a secondary)~~) another PSAP or (~~(another)~~) other alternate destination.

(15) "Public safety answering point (PSAP)" (~~(means an)~~) the public safety answering location for 9-1-1 calls orig-

inating in a given area. PSAPs are designated as primary or secondary, which refers to the order in which calls are directed for answering.

(16) "Reverse ALI search (~~(capability)~~)" (~~(means)~~) the ability to electronically query the ALI data base to (~~(electronically)~~) obtain (~~(the ALI data)~~) an address associated with a known telephone number (~~(for purposes of handling an emergency)~~).

(17) "Selective routing" (~~(means)~~) a feature that permits a 9-1-1 call to be routed to a predesignated (~~(public safety answering point)~~) PSAP(~~(s)~~) based upon the (~~(identified telephone number of the calling party and an)~~) address and/or location associated with (~~(that)~~) the originating telephone number.

(18) (~~("TDD (telecommunications device for the deaf)" means)~~) "TTY" a telecommunications device that permits typed telephone conversations with or between deaf, hard of hearing, or speech impaired people with a machine at their location.

(19) (~~("Telephone system management information system (TSMIS)" means the equipment that records call volume and usage data that is helpful to a PSAP in their staffing and coverage decisions.~~

(20)) "Traffic studies" (~~(means)~~) 9-1-1 call studies performed by a (~~(telephone company or others that measure the volume of calls made over the 9-1-1 network)~~) telecommunications provider.

(21) "911 management information system" equipment that collects, stores and collates 9-1-1 call data into reports and statistics.

(22) "Uninterruptible power supply (UPS)" (~~(means)~~) a system designed to provide power, without delay or transients, during a period when the normal power supply is incapable of performing acceptably. (~~(UPS must allow operation for at least thirty minutes after loss of commercial power.)~~)

(23) "Emergency service number (ESN)" a number representing an emergency service zone, used to facilitate the selective routing and selective transfer of 9-1-1 calls to the appropriate PSAP.

(24) "Emergency service zone (ESZ)" a geographical area with a combination of designated police, fire, and emergency medical service providers.

(25) "Regional PSAP" a single facility answering 9-1-1 calls for multiple counties (two or more) on a twenty-four hours a day, seven days a week basis and operated under a single management and fiscal structure.

(26) "B.01/P.01 grade of service" a level of service where the probability that one call out of one hundred (one percent) will be blocked during the average busy hour.

(27) "Location" has the same definition as "address" in this section.

(28) "ANI/ALI display equipment" the equipment at the PSAP call answering position necessary for the display of automatic number identification and/or automatic location identification.

(29) "Telecommunications provider" a telecommunications company or radio communication service company as defined in RCW 80.04.010, and commercial mobile radio service providers as defined in 47 CFR, section 20.3.

(29) "Multicounty region" two or more counties served by a regional PSAP.

(30) "Electronic mail" a means of delivering text, data, graphics and other electronic media via a private computer network or the internet.

(31) "Call detail recorder" equipment used to store, record and/or print ANI/ALI information for 9-1-1 calls.

(32) "Instant call check" equipment which records 9-1-1 call conversations for immediate playback on demand.

(33) "Logging recorder" a device that is capable of time stamping, recording and replaying 9-1-1 call conversations.

(34) "Mapping display" equipment capable of displaying 9-1-1 call locations on a map.

(35) "Computer aided dispatch (CAD)" equipment capable of receiving and disseminating detailed information related to emergency services call taking and dispatching.

AMENDATORY SECTION (Amending WSR 98-01-064, filed 12/11/97, effective 1/1/98)

WAC 118-65-040 Eligible jurisdictions. ((The counties of the state of Washington shall be eligible to receive funds from the enhanced 9-1-1 account.)) The county shall provide funding for the enhanced 911 communication system in the county or district in an amount equal to the amount the maximum tax under RCW 82.14B.030(1) would generate in the county or district or the amount necessary to provide full funding of the system in the county or district, whichever is less. The counties of the state of Washington shall be eligible to receive funds from the enhanced 911 account. Funds shall not be distributed to any county that has not imposed the maximum county enhanced 911 taxes allowed under RCW 82.14B.030 (1) and (2).

AMENDATORY SECTION (Amending WSR 98-01-064, filed 12/11/97, effective 1/1/98)

WAC 118-65-050 Fundable items. Enhanced ((9-1-1)) 911 systems are ((made up of four main)) comprised of multiple components((= Network, data base, customer premise equipment (CPE), and operational items. Both)). The implementation, operation, and maintenance costs of these components will be eligible for funding. The following ((subcomponents within each of these major)) components will be eligible for funding from the enhanced ((9-1-1)) 911 account in accordance with priorities established in WAC 118-65-070.

(1) ((~~NETWORK~~)) Statewide dialing items:

(a) ((~~Central~~)) Switching office enabling;

(b) Automatic number identification (ANI) ((~~provisioning~~));

(c) Selective routing ((~~hardware, software, data base~~));

(d) ((9-1-1)) 911 voice network (B.01/P.01 service level required);

(e) Automatic location identification (ALI) data link;

(f) ((~~Noncompatible central office switch upgrades~~;

~~(g) Diversity;~~

~~(h) Network performance level monitoring;~~

~~(i) Traffic studies;~~

~~(j) Alternate routing or night service.~~

~~(2) DATA BASE;~~

(a) County or regional provided:

(i) Addressing (house number, street, postal community) exclusive of house numbering and street signs;

(ii) MSAG development and maintenance.

(b) Telephone company provided:

(i) ALI data base;

MSAG development and maintenance;

Subscriber record purification.

(ii) ALI/DMS equipment (for the storage and retrieval of ALI) may be provided by several vendors but the equipment must conform to the interfacing telephone companies standards.

~~(3) CUSTOMER PREMISE EQUIPMENT;~~

~~(a) ANI/ALI display equipment for both primary and secondary PSAPs;~~

~~(b) Telephone system if existing is incompatible with enhanced 9-1-1;~~

~~(c) ALI controller;~~

~~(d) ANI controller;~~

~~(e) ALI/DMS equipment (must conform to interfacing telephone company's standards);~~

~~(f) Call detail interface and printer;~~

~~(g) Telephone system management information system;~~

~~(h) Radio communications equipment (if necessary as part of a regional or consolidated E9-1-1 system);~~

~~(i) Uninterruptible power supply (UPS) for telephone system and 9-1-1 equipment;~~

~~(j) Auxiliary generator to support 9-1-1 emergency telephone service for backup;~~

~~(k) TDD if existing is incompatible with enhanced 9-1-1;~~

~~(l) Recording equipment if existing is incompatible with enhanced 9-1-1;~~

~~(m) Reverse ALI search capability.~~

~~(4) OPERATIONAL ITEMS:~~

~~(a) Funding necessary to develop the detailed E9-1-1 implementation and budget plan required by the state E9-1-1 office;~~

~~(b) Call receiver training.~~

~~(5) ADDITIONAL ITEMS:~~

~~Additional equipment and local requirements will be considered for funding if they are an element in a regional or consolidated E9-1-1 system, including increased PSAP staffing needs directly attributable and documentable as being required for E9-1-1 implementation.))~~ Traffic studies;

(g) MSAG coordination and maintenance;

(h) ALI/DMS service;

(i) ANI/ALI controllers and necessary interfaces to send data to other PSAP equipment;

(j) ANI/ALI display equipment for primary and secondary PSAPs;

(k) Telephone system compatible with enhanced 911, only the portion used to answer 9-1-1 calls;

(l) TTY required for compliance with the American Disabilities Act (ADA);

(m) Reverse ALI search capability.

(2) Basic service items:

(a) Call detail recorder and/or printer;

(b) Instant call checks (one per 9-1-1 call answering position);

- (c) Uninterruptible power supply (UPS) for PSAP enhanced 911 equipment;
- (d) 911 management information system;
- (e) Mapping display for call answering positions that are ANI/ALI equipped;
- (f) Headsets for 911 call takers;
- (g) 911 call receiver salaries and benefits;
- (h) County enhanced 911 coordinator duties;
- (i) Language line charges;
- (j) Call receiver training;
- (k) Enhanced 911 document retention and destruction;
- (l) 911 mapping administration;
- (m) 911 coordinator electronic mail;
- (n) Route diversity;
- (o) Alternate routing and/or night service;
- (3) Capital:
  - (a) Auxiliary generator to support 911 emergency telephone service for backup;
  - (b) Logging recorder for 9-1-1 calls;
  - (c) Computer aided dispatch (CAD) system hardware and software.

AMENDATORY SECTION (Amending WSR 98-01-064, filed 12/11/97, effective 1/1/98)

**WAC 118-65-060 Local plan requirements.** Prior to the allocation of funds ~~((to a local jurisdiction, other than the allocation of funds to develop local implementation plans and budgets, the local jurisdiction must develop an approved implementation plan and budget. The plans shall detail how each jurisdiction(s) will implement enhanced 9-1-1 in the most efficient and effective manner and shall include a proposed implementation schedule and estimate of required state and local resources. Such)), the requesting entity must submit plans and budget information justifying its request for state funds. Applications and documents shall be submitted on forms developed by the ((department and shall be subject to review and approval by the)) state enhanced 9-1-1 coordinator ((with the advice of the advisory committee)).~~

AMENDATORY SECTION (Amending WSR 98-01-064, filed 12/11/97, effective 1/1/98)

**WAC 118-65-070 Funding priorities.** Within available revenues, funds (subject to RCW 38.52.510) will be allocated in the manner best calculated, at the discretion of the state enhanced ~~((9-1-1))~~ 911 coordinator, with the advice and assistance of the state enhanced ~~((9-1-1))~~ 911 advisory committee, to facilitate the statewide ~~((implementation and))~~ operation of enhanced ~~((9-1-1))~~ 911. This discretion shall be guided by the following prioritized factors:

~~((1) The nature of existing and planned services in the local jurisdiction. Funds will generally be allocated first to those counties without 9-1-1, then to those counties which have some 9-1-1 capability, and then to counties which have fully enhanced 9-1-1;~~

~~((2) Priority will be given to those counties proposing to develop consolidated or regional enhanced 9-1-1 systems;~~

~~((3) The difference between locally generated revenue and revenue needed to fund services in accordance with the approved local plan and budget;~~

~~((4) Funding required in a particular time period for planning purposes;~~

~~((5) The differential impacts on local jurisdictions due to the costs and services of enhanced 9-1-1 as provided in tariffs approved by the Washington utilities and transportation commission; and~~

~~((6) Such additional factors directly related to implementation and operation of enhanced 9-1-1 statewide as may be identified within the local jurisdiction's application for funding and are otherwise consistent with these rules.)) (1) To assure that 911 dialing is operational statewide;~~

(2) Funds will be used to assist counties as necessary to assure that they can achieve a basic service level for 911 operations;

(3) Funds will be used to assist counties as practicable to acquire items of a capital nature appropriate to increasing 911 effectiveness.

AMENDATORY SECTION (Amending WSR 98-01-064, filed 12/11/97, effective 1/1/98)

**WAC 118-65-081 Application procedures.** The ~~((department))~~ state E911 office shall develop an application format including an annual schedule of eligible items and funding levels ((and)). Applications shall be made in accordance with this format. The ~~((department))~~ state E911 office shall further establish a schedule of annual application dates. ~~((Funding awards will be made by the department with the advice and assistance of the advisory committee.))~~

AMENDATORY SECTION (Amending WSR 98-01-064, filed 12/11/97, effective 1/1/98)

**WAC 118-65-090 Other rules.** Through other state agencies, including the Washington utilities and transportation commission, rules have and will be adopted which will ~~((direct))~~ impact the statewide ~~((implementation and))~~ operation of enhanced 9-1-1. By this reference, this rule is intended to be consistent with and complementary to these other rules.

## WSR 02-09-075

### PROPOSED RULES

### DEPARTMENT OF

### SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed April 16, 2002, 3:46 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 01-16-017 and 02-01-008.

Title of Rule: Temporary assistance to needy families, state financial assistance and WorkFirst, WAC 388-310-1600, 388-484-0005, and 388-484-0006.

Purpose: These rule changes are necessary to implement the policy for the sixty-month time limit of TANF/SFA cases.

Statutory Authority for Adoption: RCW 74.08A.010(4), 74.08A.340, 74.08.090, 74.04.050.

Statute Being Implemented: RCW 74.08A.010(4), 74.08A.340, 74.08.090, 74.04.050.

Summary:

Amended: Title of Rule	CR-101 WSR #	Summary
388-310-1600 Work-First—Sanctions.	02-01-008	Mandates sanctions for those who do not participate in Work-First activities and how and when they are applied.
388-484-0005 There is a five year (sixty month) time limit for TANF/SFA and GA-S cash assistance.	01-16-017	Describes the sixty month TANF/SFA time limit and mandates how it is applied.
New: Title of Rule	CR-101 WSR #	Summary
388-484-0006 TANF/SFA time limit extension.	01-16-017	Describes who can get an extension after sixty months on TANF/SFA, how benefits change with an extension and how long extensions can last.

Reasons Supporting Proposal: This proposal implements the sanctions rules for all clients and extension rules for clients that exceed the TANF/SFA sixty-month time limit.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Sandy Isames, 1009 College Street S.E., Lacey, WA, (360) 413-3239.

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

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

Explanation of Rule, its Purpose, and Anticipated Effects: This proposal implements the sanctions rules for all clients and extension rules for clients that exceed the TANF/SFA sixty-month time limit. See also Summary above.

Proposal Changes the Following Existing Rules: These rule changes will establish new policies for clients who are still receiving TANF/SFA after sixty months, including the creation of the child safety net payments. There are also new participation and sanction policies for all TANF/SFA recipients.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules do not affect businesses.

RCW 34.05.328 does not apply to this rule adoption. These amendments are exempt under RCW 34.05.328 (5)(b)(vii).

Hearing Location: Office Building 2 Auditorium (DSHS Headquarters) (parking on 12th off Jefferson), 1115 Washington, Olympia, WA 98504, on May 21, 2002, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Andy Fernando, DSHS Rules Coordinator, by May 17, 2002, phone (360) 664-6094, TTY: (360) 664-6178, e-mail fernaax@dshs.wa.gov.

Submit Written Comments to: Identify WAC Numbers, DSHS Rules Coordinator, Rules and Policies Assistance Unit, P.O. Box 45850, Olympia, WA 98504-5850, fax (360) 664-6185, e-mail fernaax@dshs.wa.gov, by 5:00 p.m., May 21, 2002.

Date of Intended Adoption: No earlier than May 22, 2002.

April 16, 2002

Brian H. Lindgren, Manager  
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 99-10-027, filed 4/28/99, effective 5/29/99)

**WAC 388-310-1600 WorkFirst—Sanctions. (1) What ((is a sanction and when is it used)) WorkFirst requirements do I have to meet?**

((A sanction is a penalty that alters your grant when you refuse to:

- ~~(a) Give the department the information we need to develop your individual responsibility plan;~~
- ~~(b) Come to scheduled appointments with people who provide WorkFirst services or activities;~~
- ~~(c) Do all of the activities listed on your individual responsibility plan; or~~
- ~~(d) Accept paid employment that meets the criteria in WAC 388-310-1500.~~

**(2) What happens once I do not provide information, go to an appointment, follow my individual responsibility plan or accept a job?**

If you do not provide information, go to an appointment, follow up on your individual responsibility plan or accept a job, your case manager or social worker will send you a notice to set up an appointment so they can talk to you about the situation. If they are unable to contact you, they will use the information already on hand to find out why you did not follow through with the required activity. Then, your case manager will decide whether:

- ~~(a) You were unable to do what was required; or~~
- ~~(b) You were able, but refused, to do what was required.~~
- (3) What is considered a good reason for not being able to do what WorkFirst requires?**

You have a good reason if it was not possible to follow through on a required activity due to an event outside of your control. Some examples of good reasons may include:

- ~~(a) You, your children or other family members were ill;~~
- ~~(b) Your transportation or child care arrangements broke down and you could not make new arrangements in time to comply;~~
- ~~(c) You could not locate child care, for your children under thirteen years, that was:~~

- ~~(i) Affordable (did not cost you more than your co-payment would under the working connections child care program in WAC 388-290);~~

- ~~(ii) Appropriate (licensed, certified or approved under federal, state or tribal law and regulations for the type of care you use and you were able to choose, within locally available options, who would provide it); and~~

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~~(iii) Within a reasonable distance (within reach without traveling farther than is normally expected in your community).~~

~~(d) You could not locate other care services for an incapacitated person who lives with you and your children;~~

~~(e) You had a physical, mental or emotional condition, confirmed by a licensed health care professional, that interfered with your ability to participate;~~

~~(f) A significant person in your life died;~~

~~(g) You were threatened with or subjected to family violence;~~

~~(h) You had an immediate legal problem, such as an eviction notice; or~~

~~(i) You did not get notice telling you about our information request, an appointment or a requirement on your individual responsibility plan.~~

~~(4) **What if my case manager decides that I refused to meet WorkFirst requirements without good reason?**~~

~~If your case manager decides you refused to meet WorkFirst requirements without good reason, they will send you a notice that tells you:~~

~~(a) What you refused to do;~~

~~(b) You will be sanctioned (a penalty will be applied to your grant);~~

~~(c) When the sanction starts;~~

~~(d) How to request a fair hearing if you disagree with this decision; and~~

~~(e) How to end the sanction.~~

~~(5) **What are the penalties to my grant?**~~

~~The following penalties are applied to your grant for anyone who is sanctioned in your household:~~

~~(a) In the first month, we calculate your family's grant and then remove the noncompliant person(s) share of the grant.~~

~~(b) In the second month, your reduced grant will be sent to a protective payee every month until the sanction is lifted. (WAC 388-460-0001 describes the protective payee rules.)~~

~~(c) In the third and following months, your grant is reduced by the person(s) share or forty percent, whichever is more.~~

~~(6) **How do I stop (or end) the sanction?**~~

~~To end your sanction:~~

~~(a) You must provide the information we requested to develop your individual responsibility plan; and/or~~

~~(b) Start and continue to do your required WorkFirst activities;~~

~~(c) Your grant will be restored after two weeks of participation, beginning with the day you began doing your required activities.~~

~~(7) **What happens if I get sanctioned again after my sanction has been stopped?**~~

~~If you are sanctioned again, the sanction process will start again.~~

~~(8) **What if I reapply for TANF, SFA or GA S and I was in sanction when my case closed?**~~

~~You are still sanctioned at the level which was in effect when your case closed until you cure your sanction)) You must do the following when you are a mandatory WorkFirst participant:~~

(a) Give the department the information we need to develop your individual responsibility plan (see WAC 388-310-0500);

(b) Show that you are doing the best you can to meet all of the requirements listed on your individual responsibility plan;

(c) Go to scheduled appointments listed in your individual responsibility plan;

(d) Follow the participation and attendance rules of the people who provide your assigned WorkFirst services or activities; and

(e) Accept available paid employment when it meets the criteria in WAC 388-310-1500.

(2) **What happens if I don't meet WorkFirst requirements?**

(a) If you do not meet WorkFirst requirements, we will send you a letter telling you what you did not do.

(b) You will have ten days to contact us so we can talk with you about the situation. You can contact us in writing, by phone, by going to the appointment described in the letter, or by asking for an individual appointment.

(c) If you do not contact us within ten days, we will have to use existing information to decide whether:

(i) You were unable to do what was required; or

(ii) You were able, but refused, to do what was required.

(d) If you had a good reason not to do a required activity we will work with you and, if needed, change the requirements in your individual responsibility plan.

(3) **What is considered a good reason for not being able to do what WorkFirst requires?**

You have a good reason if it was not possible to do what WorkFirst requires due to a significant problem or event outside your control. Some examples of good reasons include:

(a) You had an emergent physical, mental or emotional condition, confirmed by a licensed health care professional that interfered with your ability to participate;

(b) You were threatened with or subjected to family violence;

(c) You could not locate child care for your children under thirteen years that was:

(i) Affordable (did not cost you more than your co-payment would under the working connections child care program in chapter 388-290 WAC);

(ii) Appropriate (licensed, certified or approved under federal, state or tribal law and regulations for the type of care you use and you were able to choose, within locally available options, who would provide it); and

(iii) Within a reasonable distance (within reach without traveling farther than is normally expected in your community).

(iv) You could not locate other care services for an incapacitated person who lives with you and your children.

(d) You had an immediate legal problem, such as an eviction notice; or

(e) You are a person who gets necessary supplemental accommodation (NSA) services under chapter 388-472 WAC and your limitation kept you from participating. If you have a good reason because you need NSA services, we will review your accommodation plan.

**(4) What if we decide that you did not have a good reason for failing to meet WorkFirst requirements?**

If we decide that you did not have a good reason for failing to meet WorkFirst requirements, we will send you a letter that tells you:

- (a) What you failed to do;
- (b) That you are in sanction status;
- (c) Penalties that will be applied to your grant;
- (d) When the penalties will be applied;
- (e) How to request a fair hearing if you disagree with this decision; and
- (f) How to end the penalties and get out of sanction status.

**(5) What is sanction status?**

When you are a mandatory WorkFirst participant, you must follow WorkFirst requirements to qualify for your full grant. If you or someone else on your grant doesn't comply and you can't prove that you had a good reason, you do not qualify for your full grant. This is called being in WorkFirst sanction status.

**(6) Are there penalties when someone in my household goes into sanction status?**

(a) When someone in your household is in sanction status, we impose penalties. The penalties last until you meet WorkFirst requirements.

(b) There are three penalty levels:

(i) Level one: We calculate your family's grant and then remove the noncompliant person(s) share of the grant;

(ii) Level two: Your reduced grant (removing the non-compliant person's share) will be sent to a protective payee every month until you get out of sanction status. (WAC 388-460-0001 describes the protective payee rules.)

(iii) Level three: Your grant is reduced by the person(s) share or forty percent, whichever is more and your reduced grant will be sent to a protective payee until you get out of sanction status.

(c) The penalties change depending on how long you have been in sanction status and how many times you have been in sanction status:

(i) The first time you go into sanction your penalties will start at level one. If you are still in sanction after three months, you will go to level two. If you are still in sanction after another three months, you will go to level three.

(ii) The second time you are in sanction, your penalties start at level two and changes to level three after three months.

(iii) After three or more times in sanction, you start at level three.

(d) If you are in sanction status on August 1, 2002, your penalties will start at level one, two, or three depending on how long you have been in sanction status. This will be considered your first sanction.

**(7) How do I end the penalties and get out of sanction status?**

To stop the penalties and get out of sanction status:

(a) You must provide the information we requested to develop your individual responsibility plan; and/or

(b) Start and continue to do your required WorkFirst activities, as follows:

(i) For two weeks in a row if you are in level one of sanction;

(ii) For four weeks in a row if you are in level two or three of sanction.

(c) When you leave sanction status, your grant will be restored beginning with the day you began doing your required activities.

**(8) What if I reapply for TANF or SFA and I was in sanction status when my case closed?**

(a) If your case closes while you are in sanction status and is reopened in six months or less, you will start out in sanction where you were when the case was closed.

(b) If your case has been closed for more than six months, you will not be in sanction status if your case is reopened.

**AMENDATORY SECTION** (Amending WSR 01-04-016, filed 1/26/01, effective 2/1/01)

**WAC 388-484-0005 There is a five year (sixty-month) time limit for TANF, SFA and GA-S cash assistance. (1) What is the sixty-month time limit?**

(a) You can receive cash assistance for temporary assistance for needy families (TANF), state family assistance (SFA), and general assistance for pregnant women (GA-S) for a lifetime limit of sixty months. The time limit applies to cash assistance provided by any combination of these programs, and whether or not it was received in consecutive months.

(b) If you receive cash assistance for part of the month, it counts as a whole month against the time limit.

(c) If you have received cash assistance from another state on or after August 1, 1997, and it was paid for with federal TANF funds, those months will count against your time limit.

(d) The time limit does not apply to diversion cash assistance, support services, food assistance or Medicaid.

**(2) When did the sixty-month time limit go into effect?**

The sixty-month time limit applies to cash assistance received on or after August 1, 1997 for TANF and SFA. Although the GA-S program no longer exists, the time limit applies to GA-S cash assistance received from May 1, 1999 through July 31, 1999.

**(3) Does the time limit apply to me?**

The sixty-month time limit applies to you for any month in which you are a parent or other relative as defined in WAC 388-454-0010, or a minor parent emancipated through court order or marriage.

**(4) Do any exceptions to the time limits apply to me?**

The department does not count months of assistance towards the sixty-month time limit if you are:

(a) A nonneedy adult caretaker relative who is not a member of the assistance unit and you are receiving cash assistance on behalf of a child;

(b) An unemancipated pregnant or parenting minor living in a department approved living arrangement as defined by WAC 388-486-0005; or

(c) An American Indian or Native Alaskan adult and you are living in Indian country, as defined under 18 U.S.C. 1151, or an Alaskan Native village and you are receiving TANF, SFA, or GA-S cash assistance during a period when at least fifty percent of the adults living in Indian country or in the village were not employed. See WAC 388-484-0010.

**(5) What happens if a member of my assistance unit has received sixty months of TANF, SFA, and GA-S cash benefits?**

Once any adult or emancipated minor in the assistance unit has received sixty months of cash assistance, the entire assistance unit becomes ineligible for TANF or SFA cash assistance (~~(-Some people may be)~~), unless you are eligible for an extended period of cash assistance ((based on hardship criteria to be developed by the department)) called a TANF/SFA time limit extension under WAC 388-484-0006.

**(6) What can I do if I disagree with how the department has counted my months of cash assistance?**

(a) If you disagree with how the department has counted your months of cash assistance, you may ask for a hearing within ninety days of receiving notice of the count.

(b) If your cash assistance is terminated after sixty months and you ask for a hearing as provided under chapter 388-02 WAC, your cash assistance will be continued during the course of your initial administrative appeal. You ((must repay the cash assistance, however,)) may be required to repay up to sixty days of cash assistance if the department's decision is found to be correct as described in WAC 388-410-0001 (3)(b).

## NEW SECTION

**WAC 388-484-0006 TANF/SFA time limit extensions. (1) What happens after I receive sixty or more months of TANF/SFA cash assistance?**

After you receive sixty or more months of TANF/SFA cash assistance, you may qualify for additional months of cash assistance. We call these additional months of TANF/SFA cash assistance a TANF/SFA time limit extension.

**(2) Who is eligible for a TANF/SFA time limit extension?**

You are eligible for a TANF/SFA time limit extension if you are on TANF or otherwise eligible for TANF and:

(a) You qualify for one of the exemptions listed in WAC 388-310-0350; or

(b) You:

(i) Are participating satisfactorily in the WorkFirst program (see chapter 388-310 WAC for a description of WorkFirst participation requirements); or

(ii) Meet the family violence option criteria in WAC 388-61-001 and are participating satisfactorily in specialized activities listed in your individual responsibility plan.

(c) If you are refusing to participate as required and you do not have a good reason under WAC 388-310-1600(4), you do not qualify for a regular TANF/SFA time limit extension but your family may qualify for a Child SafetyNet Payment extension, described in WAC 388-310-1650.

**(3) Who reviews and approves an extension?**

(a) Your case manager or social worker will review your case and we will use the case staffing process to determine which extension type will be approved. Case staffing is a process to bring together a team of multidisciplinary experts including relevant professionals and you to identify issues, review case history and information, and recommend solutions.

(b) This review will not happen until after you have received at least fifty-two months of assistance but before you reach your time limit.

(c) During the case staffing, we will tell you about the different extensions. If you are in sanction (see WAC 388-310-1600), we will explain the consequences of continued nonparticipation and tell you the steps you must take to end the sanction. We will explain that continued failure to participate will result in your getting a Child SafetyNet Payment with additional restrictions after the sixtieth month.

(d) After the case staffing and before you reach your time limit, the department will send you a notice that tells you whether your extension was approved, how to request a fair hearing if you disagree with the decision, and any changes to your IRP that were made as a result of the case staffing.

**(4) Do my WorkFirst participation requirements change if I receive a TANF/SFA time limit extension?**

Your participation requirements do not change. You must still meet all of the WorkFirst participation requirements listed in chapter 388-310 WAC while you receive a TANF/SFA time limit extension.

**(5) Do my benefits change if I receive a TANF/SFA time limit extension?**

(a) You are still a TANF/SFA recipient. If you are:

(i) Receiving a regular TANF/SFA time limit extension, your cash assistance, services, or supports will not change as long as you continue to meet all other TANF/SFA eligibility requirements.

(ii) Receiving a Child SafetyNet Payment, your benefits will be different and are described in WAC 388-310-1650.

(b) During the TANF/SFA time limit extension, you must continue to meet all other TANF/SFA eligibility requirements. If you no longer meet TANF/SFA eligibility criteria during your extension, your benefits will end.

**(6) What happens if I stop participating in WorkFirst activities as required during a TANF/SFA time limit extension?**

If you do not participate in the WorkFirst activities required in your individual responsibility plan, and you do not have a good reason under WAC 388-310-1600(4), the department will follow the sanction rules in WAC 388-310-1600, and will move you into Child SafetyNet Payment which will reduce your benefits (see WAC 388-310-1650).

**(7) How long will a TANF/SFA time limit extension last?**

(a) We will review your TANF/SFA time limit extension and your case periodically for changes in family circumstances:

(i) If you are extended under WAC 388-484-0006 (2)(a) then we will review your extension at least every twelve months;

(ii) If you are extended under WAC 388-484-0006 (2)(b) then we will review your extension at least every six months;

(iii) If you are extended under WAC 388-484-0006 (2)(c) then we will review your extension at least every twelve months.

(b) Your TANF/SFA time limit extension may be renewed for as long as you continue to meet the criteria to qualify.

(c) If during the extension period we get proof that your circumstances have changed, we may review your case and change the type of TANF/SFA time limit extension.

PROPOSED

**WSR 02-09-076**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Economic Services Administration)

[Filed April 16, 2002, 3:47 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 02-01-008.

Title of Rule: Temporary assistance to needy families, state financial assistance and WorkFirst, WAC 388-310-0200, 388-310-0350, 388-310-0400, 388-310-0500, 388-310-0600, and 388-310-0900.

Purpose: These rule changes are necessary to implement the policy for the sixty-month time limit of TANF/SFA cases.

Statutory Authority for Adoption: RCW 74.08A.010(4), 74.08A.340, 74.08.090, 74.04.050.

Statute Being Implemented: RCW 74.08A.010(4), 74.08A.340, 74.08.090, 74.04.050.

Summary:

Amended: Title of Rule	CR-101 WSR #	Summary
388-310-0200 Work-First—Activities.	02-01-008	Summarizes who is required to participate in WorkFirst activities, what activities they must participate in, how much time they must participate, and what happens after getting a job.
388-310-0400 Work-First—Entering the WorkFirst program as a mandatory participant.	02-01-008	Outlines the requirements for mandatory WorkFirst participants.
388-310-0500 Work-First—Individual responsibility plan.	02-01-008	Outlines the elements of an individual responsibility plan and mandates how they are developed.
388-310-0600 Work-First—Job search.	02-01-008	Defines job search and its components like preemployment training and profiles who must participate.
388-310-0900 Work-First—Basic education.	02-01-008	Defines basic education and who can participate in it.

New: Title of Rule	CR-101 WSR #	Summary
388-310-0350 Work-First—Other exemptions from mandatory participation.	02-01-008	Mandates who is exempt from mandatory participation, how the exemption is processed and approved, how an exemption affects the sixty month limit and how long an exemption can last.

Reasons Supporting Proposal: This proposal implements the sanctions rules for all clients and extension rules for clients that exceed the TANF/SFA sixty-month time limit.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Sandy Jsames, 1009 College Street S.E., Lacey, WA, (360) 413-3239.

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

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

Explanation of Rule, its Purpose, and Anticipated Effects: This proposal implements the sanctions rules for all clients and extension rules for clients that exceed the TANF/SFA sixty-month time limit. See also Summary above.

Proposal Changes the Following Existing Rules: These rule changes will establish new policies for clients who are still receiving TANF/SFA after sixty months, including the creation of the child safety net payments. There are also participation and sanction policies for all TANF/SFA recipients.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules do not affect businesses.

RCW 34.05.328 does not apply to this rule adoption. These amendments are exempt under RCW 34.05.328 (5)(b)(vii).

Hearing Location: Office Building 2 Auditorium (DSHS Headquarters) (parking on 12th off Jefferson), 1115 Washington, Olympia, WA 98504, on May 21, 2002, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Andy Fernando, DSHS Rules Coordinator, by May 17, 2002, phone (360) 664-6094, TTY (360) 664-6178, e-mail fernaax@dshs.wa.gov.

Submit Written Comments to: Identify WAC Numbers, DSHS Rules Coordinator, Rules and Policies Assistance Unit, P.O. Box 45850, Olympia, WA 98504-5850, fax (360) 664-6185, e-mail fernaax@dshs.wa.gov, by 5:00 p.m., May 21, 2002.

Date of Intended Adoption: No earlier than May 22, 2002.

April 16, 2002  
 Brian H. Lindgren, Manager  
 Rules and Policies Assistance Unit

**AMENDATORY SECTION** (Amending WSR 00-16-055, filed 7/26/00, effective 8/1/00)

**WAC 388-310-0200 WorkFirst—Activities. (1) Who is required to participate in WorkFirst activities?**

(a) You are required to participate in WorkFirst activities, and become what is called a "mandatory participant," if you:

- (i) Receive TANF or SFA cash assistance; and
- (ii) Are a custodial parent or age sixteen or older; and
- (iii) Are not exempt. ~~((You can only get this exemption if you are caring for your child under three months of age.))~~ For exemptions see WAC 388-310-0300 ((for more details.)) and 388-310-0350.

(b) Participation is voluntary for all other WorkFirst participants (those who no longer receive or have never received TANF or SFA cash assistance).

**(2) What activities do I participate in when I enter the WorkFirst program?**

When you enter the WorkFirst program, you will participate in one or more of the following activities (which are described in more detail in other sections of this chapter):

- (a) Paid employment (see WAC 388-310-0400 (2)(a) and 388-310-1500);
- (b) Self employment (see WAC 388-310-1700);
- (c) Job search (see WAC 388-310-0600);
- (d) Community jobs (see WAC 388-310-1300)
- (e) Work experience (see WAC 388-310-1100);
- (f) On-the-job training (see WAC 388-310-1200);
- (g) Vocational educational training (see WAC 388-310-1000);
- (h) Basic education activities (see WAC 388-310-0900);
- (i) Job skills training (see WAC 388-310-1050);
- (j) Community service (see WAC 388-310-1400); ~~((and/or))~~
- (k) Activities provided by tribal governments for tribal members and other American Indians (see WAC 388-310-1400(1) and 388-310-1900); and/or

(l) Other activities identified by your case manager on your individual responsibility plan that will help you with situations such as family violence, drug and/or alcohol abuse, homelessness, or mental health issues.

**(3) If I am a mandatory participant, how much time must I spend doing WorkFirst activities?**

If you are a mandatory participant, you will be required to ~~((spend up to forty hours a week))~~ participate full-time, working, looking for work or preparing for work. You might be required to participate in more than one part-time activity at the same time that add up to full-time participation. You will have an individual responsibility plan (described in WAC 388-310-0500) that includes the ~~((number of hours a week that you are required to participate))~~ specific activities and requirements of your participation.

**(4) What activities do I participate in after I get a job?**

You ~~((may))~~ will participate in other activities, ~~((which are called "post-employment services" (described in WAC 388-310-1800)))~~ such as job search or training once you are working twenty hours or more a week ~~((Work can include a~~

~~paid, unsubsidized job, self-employment, college work study or a subsidized job like a community jobs placement. Post-employment services))~~ in a paid unsubsidized job, to bring your participation up to full-time.

You may also engage in activities if you are working full-time and want to get a better job.

Post-employment services (described in WAC 388-310-1800) include:

- (a) Activities that help you keep a job (called an "employment retention" service); and/or
- (b) Activities that help you get a better job or better wages (called a "wage and skill progression" service).

**NEW SECTION**

**WAC 388-310-0350 WorkFirst—Other exemptions from mandatory participation. (1) When am I exempt from mandatory participation?**

You are exempt from mandatory participation if you are:

(a) An older needy caretaker relative:

- (i) You are fifty-five years of age or older and caring for a child and you are not the child's parent; and
- (ii) Your age is verified by any reliable documentation (such as a birth certificate or a driver's license).

(b) An adult with a severe and chronic disability:

(i) The disability must be a severe and chronic mental, physical, emotional, or cognitive impairment that prevents you from participating in work activities and is expected to last at least twelve months; or

(ii) You have been assessed by a DSHS SSI facilitator as likely to be approved for SSI or other benefits and are applying for SSI or another type of federal disability benefit (such as Railroad Retirement or Social Security Disability); and

(iii) Your disability is verified by documentation from the division of developmental disabilities (DDD), division of vocational rehabilitation (DVR), home and community services division (HCS), division of mental health (MHD), and/or regional support network (RSN), or evidence from another medical or mental health professional; and

(iv) Your SSI application status may be verified through the SSI facilitator and/or state data exchange.

(c) Required in the home to care for a child with special needs when:

(i) The child has a special medical, developmental, mental, or behavioral condition; and

(ii) The child is determined by a public health nurse, physician, mental health provider, school professional, other medical professional, HCS, MHD, and/or a RSN to require specialized care or treatment that significantly interferes with your ability to look for work or work.

(d) Required to be in the home to care for another adult with disabilities when:

(i) The adult with disabilities cannot be left alone for significant periods of time; and

(ii) No adult other than yourself is available and able to provide the care; and

(iii) The adult with the disability is related to you; and

(iv) The disability is verified by documentation from DDD, DVR, HCS, MHD, and/or a RSN, or evidence from another medical or mental health professional.

**(2) Who reviews and approves an exemption?**

(a) If it appears that you may qualify for an exemption or you ask for an exemption, your case manager or social worker will review the information and we will use the case staffing process to determine whether the exemption will be approved. Case staffing is a process to bring together a team of multidisciplinary experts including relevant professionals and the client to identify participant issues, review case history and information, and recommend solutions.

(b) If additional medical or other documentation is needed to determine if you are exempt, your IRP will allow between thirty days and up to ninety if approved to gather the necessary documentation.

(c) Information needed to verify your exemption should meet the standards for verification described in WAC 388-490-0005. If you need help gathering information to verify your exemption, you can ask us for help. If you have been identified as needing NSA services, under chapter 388-472 WAC, your accommodation plan should include information on how we will assist you with getting the verification needed.

(d) After the case staffing, we will send you a notice that tells you whether your exemption was approved, how to request a fair hearing if you disagree with the decision, and any changes to your IRP that were made as a result of the case staffing.

**(3) Can I participate in WorkFirst while I am exempt?**

(a) You may choose to participate in WorkFirst while you are exempt.

(b) Your WorkFirst case manager may refer you to other service providers who may help you improve your skills and move into employment.

(c) If you choose to participate while exempt. If you decide later to stop participating, and you still qualify for an exemption, you will be put back into exempt status with no financial penalty.

**(4) Does an exemption from participation affect my sixty-month time limit for receiving TANF/SFA benefits?**

An exemption from participation does not affect your sixty-month time limit (described in WAC 388-484-0005) for receiving TANF/SFA benefits. Even if exempt from participation, each month you receive a TANF/SFA grant counts toward your sixty-month limit.

**(5) How long will my exemption last?**

Unless you are an older caretaker relative, your exemption will be reviewed at least every twelve months to make sure that you still meet the criteria for an exemption. Your exemption will continue as long as you continue to meet the criteria for an exemption.

**(6) What happens when I am no longer exempt?**

If you are no longer exempt, then:

(a) You will become a mandatory participant under WAC 388-310-0400; and

(b) If you have received sixty or more months of TANF/SFA, your case will be reviewed for an extension.

(See WAC 388-484-0006 for a description of TANF/SFA time limit extensions.)

AMENDATORY SECTION (Amending WSR 00-06-062, filed 3/1/00, effective 3/1/00)

**WAC 388-310-0400 WorkFirst—Entering the WorkFirst program as a mandatory participant. (1) What happens when I enter the WorkFirst program as a mandatory participant?**

If you are a mandatory participant, (~~WorkFirst requires you to look for a job as your first activity unless you are temporarily deferred from job search.~~) you must follow instructions as written in your individual responsibility plan (see WAC 388-310-0500) (~~while you are in job search.~~

~~(2) Are there any reasons why I might be temporarily deferred from looking for a job?)~~ If you have been identified as someone who needs necessary supplemental accommodation (NSA) services (defined in chapter 388-472 WAC) your case manager will first develop an accommodation plan to help you access WorkFirst services. The case manager will use the accommodation plan to help develop your IRP with you.

If you are a mandatory participant, your case manager will (~~ask if you have any reasons why you cannot go to job search. You may be temporarily deferred from looking for a job for any of the following reasons~~) refer you to job search activities unless any of the following applies to you:

(a) You work (~~twenty~~) thirty-two or more hours a week. "Work" means to engage in any legal, income generating activity which is taxable under the United States Tax Code or which would be taxable with or without a treaty between an Indian Nation and the United States; or

(b) You work sixteen or more hours a week in the federal or state work study program and you attend a Washington state community or technical college at least half-time; or

(c) You work twenty or more hours a week in unsubsidized employment and attend a Washington state community or technical college at least half-time; or

(d) You are under the age of eighteen, have not completed high school, GED or its equivalent and are in school full-time; or

~~((d))~~ (e) You are eighteen or nineteen years of age and are attending high school or an equivalent full-time; or

~~((e))~~ (f) You are pregnant or have a child under the age of twelve months, and are participating in other pregnancy to employment activities. See WAC 388-310-1450; or

~~((f) You are fifty five years old or older and caring for a child you are related to (and you are not the child's parent); you may go into community service (described in WAC 388-310-1400 (2)(b)); or)~~

(g) Your situation prevents you from looking for a job and you are conducting special activities identified on your IRP to help you with your situation. (For example, you may be unable to look for a job while you have health problems, are homeless and/or dealing with family violence.)

~~((3))~~ (2) What are my requirements if I am ((temporarily deferred from)) not required to participate in job search activities?

(a) If and when ~~((your)) you are not required to participate in~~ job search ~~((is temporarily deferred)) activities~~, you may be required to take part in an employability evaluation ~~((as part of your individual responsibility plan))~~. Your individual responsibility plan will describe what you need to do to be able to enter job search and then find a job (see WAC 388-310-0500 and 0700).

(b) If you enter the pregnancy to employment pathway (described in WAC 388-310-1450(2)), you must take part in an assessment.

~~((4)) (3) **What happens if I do not follow my WorkFirst requirements?**~~

If you do not participate in job search, or in the activities listed in your individual responsibility plan, and you do not have a good reason, the department will ~~((impose a financial penalty))~~ reduce your WorkFirst grant (sanction, see WAC 388-310-1600).

**AMENDATORY SECTION** (Amending WSR 99-10-027, filed 4/28/99, effective 5/29/99)

**WAC 388-310-0500 WorkFirst—Individual responsibility plan. (1) What is the purpose of my individual responsibility plan?**

The purpose of your individual responsibility plan is to give you a written statement that describes:

- (a) What your responsibilities are; and
- (b) Which WorkFirst activities you are required to participate in; and
- (c) What services you will receive so you are able to participate.

**(2) What is included in my individual responsibility plan?**

Your individual responsibility plan includes the following:

- (a) What WorkFirst activities you must ~~((be engaged in))~~ do and the participation requirements for those activities including the amount of time you will spend doing the activities, a start and end date for each activity and ((how many hours a week you must spend in each activity)) the requirement to participate fully.
- (b) Any other specific requirements that are tied to the WorkFirst work activity. For example, you might be required to learn English as part of your work experience activity.
- (c) What services we will provide to help you ~~((need to))~~ participate in the activity. For example, you may require support services (such as help with paying for transportation) or help with paying childcare.
- (d) Your statement that you recognize the need to become and remain employed as quickly as possible.

(c) What services we will provide to help you ~~((need to))~~ participate in the activity. For example, you may require support services (such as help with paying for transportation) or help with paying childcare.

(d) Your statement that you recognize the need to become and remain employed as quickly as possible.

**(3) How is my individual responsibility plan developed?**

You and your case manager will work together and use information gathered from your employability evaluation (see WAC 388-310-0700) to develop your individual responsibility plan and decide what activities will be included in it. Then, your case manager will assign you to specific Work-

First activities that will help you find employment as quickly as possible.

**(4) What happens after my individual responsibility plan is completed?**

Once your individual responsibility plan is completed:

(a) You will sign and get a copy of your individual responsibility plan.

(b) You and your case manager will review your plan as necessary over the coming months to make sure your plan continues to meet your employment needs. You will sign and get a copy of your individual responsibility plan every time it is reviewed and changed.

**(5) What should I do if I cannot go to a required WorkFirst appointment or activity because of a temporary situation outside of my control?**

If you cannot participate because of a temporary situation outside of your control, you must call the telephone number shown on your individual responsibility plan on the same day you were to report to explain your situation. You will be given an excused absence. Some examples of excused absences include:

- (a) You, your children or other family members are ill;
- (b) Your transportation or child care arrangements break down and you cannot make new arrangements in time to comply;
- (c) A significant person in your life died; or
- (d) A family violence situation arose or worsened.

**(6) What happens if I don't call in on the same day I am unable to attend to get an excused absence?**

If you do not call in on the same day you are unable to attend to get an excused absence, it will be considered an unexcused absence.

If you exceed the number of unexcused absences allowed on your individual responsibility plan, without good cause, your case manager will begin the sanction process. (See WAC 388-310-1600 for more details.)

**AMENDATORY SECTION** (Amending WSR 02-04-058, filed 1/30/02, effective 3/2/02)

**WAC 388-310-0600 WorkFirst—Job search. (1) What is job search?**

Job search is an opportunity to learn and use skills you need to find and keep a job. Job search may include:

- (a) Classroom instruction; and/or
  - (b) Structured job search that helps you find job openings, complete applications, practice interviews and apply other skills and abilities with a job search specialist or a group of fellow job-seekers; and/or
  - (c) Preemployment training; and/or
  - (d) High-wage/high-demand training.
- (2) What is preemployment training?**

Preemployment training helps you learn skills you need for an identified entry level job that pays more than average entry level wages.

(a) Preemployment training is an acceptable job search activity when an employer or industry commits to hiring or giving hiring preference to WorkFirst participants who successfully complete preemployment training.

(b) You can find out about current preemployment training opportunities by asking your job service specialist, your case manager or staff at your local community and technical college.

**(3) What is high-wage/high-demand training?**

(a) There are two types of high-wage/high-demand (HWHD) full-time training options for TANF recipients to complete a certificate or degree that will lead to employment in a high-wage/high-demand occupation:

(i) Information technology & health care: This option allows you to start and finish a one-year community or technical college training program in the information technology or health care fields; and/or

(ii) Certificate/degree completion: This option allows you to finish up the last year of a two- or four-year certificate or degree in a high-wage/high-demand field on an exception basis. The high-wage/high-demand criteria for this option is based on median income and high-demand occupations within the local labor market as determined by employment security department.

(b) For both types of HWHD training, the training can be approved one-time only (barring an approved exception to policy). There is no work requirement with either option for the twelve months of training time.

(c) To qualify for HWHD training, you must also:

(i) Meet all of the prerequisites for the course;

(ii) Obtain the certificate or degree within twelve calendar months;

(iii) Participate full-time in the training program and make satisfactory progress;

(iv) Work with co-located ESD staff during the last quarter of training for job placement; and

(v) Return to job search once you completes the educational program if still unemployed.

**(4) Who provides me with job search?**

You get job search from the employment security department or another organization under contract with WorkFirst to provide these services.

**(5) How long do I stay in job search?**

Periods of job search may last up to twelve continuous weeks. Job search specialists will monitor your progress. By the end of the first four weeks, a job search specialist will determine whether you should continue in job search. Job search will end when:

(a) You find a full-time job; or

(b) You become exempt from WorkFirst requirements (see WAC 388-310-0300); or

(c) Your situation changes and ~~((you are temporarily deferred from continuing with job search))~~ the case manager changes the activities on your IRP to fit your new circumstances (see WAC 388-310-0400); or

(d) After fully participating in job search ((specialists have)), and based on your experience in looking for work in the local labor market, it is determined that you need additional skills and/or experience to find a job; or

(e) You have not found a job at the end of the job search period.

**(6) What happens at the end of job search if I have not found a job?**

At the end of each job search period, you will be referred back to your case manager for an employability evaluation if you have not found a job. You and your case manager will also modify your individual responsibility plan.

AMENDATORY SECTION (Amending WSR 01-15-009, filed 7/6/01, effective 8/6/01)

**WAC 388-310-0900 WorkFirst—Basic education. (1)**

**What is basic education?**

Basic education is high school completion, classes to prepare for general equivalency diploma (GED) and testing to acquire GED certification. It may include ~~((families that work, workplace bases,))~~ adult basic education (ABE) or English as a second language (ESL) training if:

(a) It is determined you need this education to become employed or get a better job; and

(b) This activity is combined with paid or unpaid employment or job search; or

(c) You have fully participated in job search without finding a job.

**(2) When do I participate in basic education as part of WorkFirst?**

You may participate in basic education as part of WorkFirst under any of the following circumstances:

(a) ~~((You may choose to participate,))~~ If you are twenty years of age or older and are working in paid or unpaid employment or in job search for a minimum of twenty hours a week ~~((in addition to the basic education))~~ your case manager may add basic education to your IRP as part of your full-time participation.

(b) You may attend full-time basic education classes if you have fully participated in job search without finding a job, and it has been determined that you need this training to become employed.

(c) You may be required to participate if you are a mandatory participant, a parent eighteen or nineteen years of age, you do not have a high school diploma or GED certificate and you need this education in order to find employment.

~~((e))~~ (d) You will be required to be in high school or a GED certification program if you are a mandatory participant, sixteen or seventeen years old and you do not have a high school diploma or GED certificate.

~~((d))~~ (e) Employment security department (ESD) has determined that you are a seasonal worker (that is, your ~~((normal way of life))~~ usual pattern of employment is based on recurring cycle of seasonal employment). Under WorkFirst, seasonal workers qualify for full-time education and training during the off season.

WSR 02-09-077

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed April 16, 2002, 3:48 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 02-01-008.

Title of Rule: Temporary assistance to needy families, state financial assistance and WorkFirst, WAC 388-310-1000, 388-310-1050, 388-310-1700, 388-310-1800, and 388-290-0255.

Purpose: These rule changes are necessary to implement the policy for the sixty-month time limit of TANF/SFA cases.

Statutory Authority for Adoption: RCW 74.08A.010(4), 74.08A.340, 74.08.090, 74.04.050.

Statute Being Implemented: RCW 74.08A.010(4), 74.08A.340, 74.08.090, 74.04.050.

Summary:

Amended: Title of Rule	CR-101 WSR #	Summary
388-290-0255 When can the WCCC program establish a protective payee to pay my in-home/relative provider?	02-01-008	Defines when the working connections child care program will use a protective payee to pay an in-home/relative provider.
388-310-1000 Work-First—Vocational education.	02-01-008	Defines vocational education and when it can be included in an individual responsibility plan.
388-310-1050 Work-First—Job skills training.	02-01-008	Defines job skills training and when it can be included in an individual responsibility plan.
388-310-1700 Work-First—Self-employment.	02-01-008	Defines self-employment and tells when job search can be deferred to pursue self-employment along with other benefits available to the self employed.
388-310-1800 Work-First—Post employment services.	02-01-008	Defines post employment services and mandates who can get it and the criteria along with other available services.

Reasons Supporting Proposal: This proposal implements the sanctions rules for all clients and extension rules for clients that exceed the TANF/SFA sixty-month time limit.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Sandy JAMES, 1009 Colgate Street S.E., Lacey, WA, (360) 413-3239.

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

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

Explanation of Rule, its Purpose, and Anticipated Effects: This proposal implements the sanctions rules for all clients and extension rules for clients that exceed the TANF/SFA sixty-month time limit. See also Summary above.

Proposal Changes the Following Existing Rules: These rule changes will establish new policies for clients who are still receiving TANF/SFA after sixty months, including the creation of the child safety net payments. There are also new participation and sanction policies for all TANF/SFA recipients.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules do not affect businesses.

RCW 34.05.328 does not apply to this rule adoption. These amendments are exempt under RCW 34.05.328 (5)(b)(vii).

Hearing Location: Office Building 2 Auditorium (DSHS Headquarters) (parking on 12th off Jefferson), 1115 Washington, Olympia, WA 98504, on May 21, 2002, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Andy Fernando, DSHS Rules Coordinator, by May 17, 2002, phone (360) 664-6094, TTY (360) 664-6178, e-mail fernaax@dshs.wa.gov.

Submit Written Comments to: Identify WAC Numbers, DSHS Rules Coordinator, Rules and Policies Assistance Unit, P.O. Box 45850, Olympia, WA 98504-5850, fax (360) 664-6185, e-mail fernaax@dshs.wa.gov, by 5:00 p.m., May 21, 2002.

Date of Intended Adoption: No earlier than May 22, 2002.

April 16, 2002

Brian H. Lindgren, Manager  
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 01-15-009, filed 7/6/01, effective 8/6/01)

**WAC 388-310-1000 WorkFirst—Vocational education. (1) What is vocational education?**

Vocational education is training that leads to a degree or certificate in a specific occupation and is offered by an accredited:

- (a) Public and private technical college or school;
- (b) Community college; or
- (c) Tribal college.

**(2) When can vocational education be included in my individual responsibility plan?**

We may add vocational education to your individual responsibility plan for up to twelve months if:

- (a) You are working twenty or more hours a week in paid unsubsidized work; or
- (b) You are working sixteen or more hours per week in a federal or state work-study position; or
- (c) You are working in a subsidized job, like a community jobs position, at least twenty hours per week; or

(d) Employment security department (ESD) has determined that you are a seasonal worker (that is, your ~~(normal way of life)~~ usual pattern of employment is based on a recurring cycle of seasonal employment). Under WorkFirst, seasonal workers qualify for full-time education and training during the off season; or

~~((e))~~ (e) You are in an internship or practicum for up to twelve months that is paid or unpaid and required to complete a course of vocational training or to obtain a license or certificate in a high demand field, as determined by the employment security department; or

(d) You have limited-English proficiency and you lack job skills that are in demand for entry level jobs in your area;

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and the vocational education program is the only way that you can acquire the job skills you need to qualify for entry level jobs in your area (because there is no available work experience, preemployment training or on-the-job training that can teach you these skills).

**(3) Can I get help with paying the costs of vocational education?**

WorkFirst ~~((will))~~ may pay for the costs of your vocational education, such as tuition or books, for up to twelve months, if vocational education is in your individual responsibility plan and there is no other way to pay them. You ~~((can))~~ may also get help with paying your child care costs through the working connections child care program. (See chapter 388-290 WAC for the working connections child care program rules.)

**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 01-15-009, filed 7/6/01, effective 8/6/01)

**WAC 388-310-1050 WorkFirst—Job skills training.**

**(1) What is job skills training?**

Job skills training is training in specific skills directly related to employment, but not tied to a specific occupation. Job skills training programs are generally short-term, but differ in ~~((how long the course lasts,))~~ what skills are taught and who provides the training. The training may be offered by the following types of organizations that meet the WorkFirst program's standards for service providers:

- (a) Community based organizations;
- (b) Businesses;
- (c) Tribal governments; or
- (d) Public and private community and technical colleges.

**(2) When can job skills training be included in my individual responsibility plan?**

We may add job skills training in your individual responsibility plan ~~((for the same reasons we would add vocational education. That is))~~ if:

- (a) You are working twenty or more hours a week in paid unsubsidized work; or
- (b) You are working sixteen or more hours per week in a federal or state work-study position; or
- (c) You are working in a subsidized job, like a community jobs position, at least twenty hours per week; or
- (d) Employment security department (ESD) has determined that you are a seasonal worker (that is, your ~~((normal way of life))~~ usual pattern of employment is based on a recurring cycle of seasonal employment). Under WorkFirst, seasonal workers qualify for full-time education and training during the off season; or

~~((e) You are in an internship or practicum for up to twelve months that is paid or unpaid and required to complete a course of vocational training or to obtain a license or certificate in a high demand field, as determined by the employment security department; or~~

~~((d))~~ (e) You lack job skills that are in demand for entry level jobs in your area~~((;)),~~ and

~~((e) The job skills training program is the only way you can acquire the job skills you need to qualify for entry level jobs in your area (because there is no available work experience, preemployment training, or on-the-job training that can teach you these skills))~~ the job skills training is short-term and is combined with job search.

**(3) Can I get help with paying the costs of job skills training?**

WorkFirst ~~((will))~~ may pay your costs, such as tuition or books, if job skills training is in your individual responsibility plan and there is no other way to pay them. You ~~((can))~~ may also get help with paying your child care costs through the working connections child care program. (See chapter 388-290 WAC for the working connections child care program rules.)

**AMENDATORY SECTION** (Amending WSR 99-10-027, filed 4/28/99, effective 5/29/99)

**WAC 388-310-1700 WorkFirst—Self-employment.**

**(1) What is self-employment?**

When you work for yourself and do not have an employer, you are self-employed.

**(2) When can I be deferred from job search to pursue self-employment?**

(a) To be deferred from job search for self-employment, you must meet all the conditions below:

- (i) You must be working at least ~~((twenty))~~ thirty-two hours a week at your business;
- (ii) Your business must generate income for you that is equal to the minimum wage (state or federal, whichever is higher) times ~~((twenty))~~ thirty-two hours per week after your business expenses are subtracted.

(iii) Your case manager will refer you to a local business resource center, and they must approve your self-employment plan;

(b) If you do not meet all these conditions, you can still be self-employed, but you will also need to participate in job search or other WorkFirst activities.

**(3) What self-employment services can I get?**

If you are a mandatory participant and have an approved self-employment plan in your individual responsibility plan, you may get the following self-employment services:

- (a) A referral to community resources for technical assistance with your business plan.
- (b) Small business training courses through local community organizations or technical and community colleges.
- (c) Information on affordable credit, business training and ongoing technical support.

**(4) What support services may I receive?**

If you have an approved self-employment plan in your individual responsibility plan all support services are available.

**(5) Can I get childcare?**

Childcare is available if you have an approved self-employment plan in your individual responsibility plan. (See chapter 388-290 WAC for working connections child care rules.)

**AMENDATORY SECTION** (Amending WSR 00-16-055, filed 7/26/00, effective 8/1/00)

**WAC 388-310-1800 WorkFirst—Post employment services. (1) What is the purpose of post employment services?**

Post employment services help low-income parents who are working twenty hours or more a week keep and cope with their current jobs, look for better jobs, gain work skills for a career and become self sufficient.

**(2) How do I obtain post employment services?**

(a) You can obtain post employment services by:

(i) Asking for a referral from the local community service office;

(ii) Contacting community or technical colleges; or

(iii) Contacting the employment security department.

Employment security department staff may also telephone you if you got a job while you were on TANF or SFA to see if you are interested in receiving these services.

(b) You may qualify for different services (from various state or federal programs) depending on whether you:

(i) Are a mandatory participant (that is, you currently receive TANF(~~(;)~~) or SFA (~~(or GA-S)~~) benefits);

(ii) Used to receive TANF or SFA benefits; or

(iii) Have never been on TANF or SFA.

**(3) Who provides post employment services and what kind of services do they provide?**

~~(a) ((You may be assigned to a job success coach, or similar services. Job success services must be delivered in accordance with the equitable access to Indians requirements in state law (in RCW 74.08A.040). The job success coach is a person who will work with you to increase your success in the workplace. The purpose of the job success coach, or similar post employment services, is to:~~

~~(i) Help you resolve problems with your employer;~~

~~(ii) Help you adjust to your workplace;~~

~~(iii) Provide job coaching;~~

~~(iv) Provide mentoring;~~

~~(v) Increase your job skills;~~

~~(vi) Help you develop the skills you need to keep your job;~~

~~(vii) Create steps to help you increase your wages; and/or~~

~~(viii) Develop educational activities to promote wage progression.~~

~~(b))~~ The employment security department can help you increase your wages, increase your job skills or find a better job by providing you with:

(i) Employment and career counseling;

(ii) Labor market information;

(iii) Job leads for a better job (sometimes called job development);

(iv) On the job training;

(v) Help with finding a job that matches your interests, abilities and skills (sometimes called job matching); and

(vi) Help with finding a new job after job loss (sometimes called reemployment).

~~((e))~~ **(b)** Any Washington state technical and community college can approve a skill-training program for you that will help you advance up the career ladder. Their staff will

talk to you, help you decide what training would work best for you and then help you get enrolled in these programs. The college may approve the following types of training for you at any certified institution:

(i) High school/GED,

(ii) Vocational education training,

(iii) Job skills training,

(iv) Adult basic education,

(v) English-as-a-Second language training, or

(vi) Pre-employment training.

**(4) What other services are available while you receive post employment services?**

While you receive post employment services, you may qualify for:

(a) Working connections childcare if you meet the criteria for this program (described in chapter 388-290 WAC). ~~((To qualify, you must also be in an approved post employment service and your family's income cannot exceed one hundred seventy-five percent of the federal poverty level.))~~

(b) Other support services, such as help in paying for transportation or work expenses.

(c) Other types of assistance for low-income families such as food stamps, medical assistance or help with getting child support that is due to you and your children.

**(5) Who is eligible for post employment service, support services and childcare?**

You may qualify for post-employment services, support services and child care if you are working twenty hours or more a week, and:

(a) You are current TANF or SFA recipient. You qualify for:

(i) All types of post employment services, unless you are in sanction status;

(ii) Tuition assistance from the community and technical college system;

(iii) WorkFirst support services; and

(iv) Working connections childcare.

(b) You are a former TANF or SFA recipient. You qualify for:

(i) Employment retention services (help with keeping a job) for up to twenty-four months after exiting TANF or SFA.

(ii) Wage and skill progression services (help with finding a better job and/or obtaining better wages) for up to twenty four months after exiting TANF or SFA.

(iii) Tuition assistance or pre-employment training from the community and technical college system;

(iv) Working connections childcare assistance; and/or

(v) WorkFirst support services for up to twelve months after exiting TANF or SFA.

(c) You are a low wage earner (that is, your family income does not exceed one hundred seventy-five percent of the federal poverty level) who has never received TANF or SFA benefits, and are in a community or technical college-approved skill training program. You may qualify for:

(i) Tuition assistance or pre-employment training from the community and technical college system; or

(ii) Working connections child care while you are in training or school for up to a total of thirty six months.

**(6) What if I lose my job while I am receiving post employment services?**

If you now receive or used to receive TANF or SFA, help is available to you for up to four weeks so that you can find another job and continue in your approved post employment.

(a) The employment security department will provide you with re-employment services.

(b) At the same time, your case manager can approve up to four weeks of support services and childcare for you.

**AMENDATORY SECTION** (Amending WSR 02-01-135, filed 12/19/01, effective 1/19/02)

**WAC 388-290-0255 When can the WCCC program establish a protective payee to pay my in-home/relative provider?** The WCCC program establishes a protective payee to pay your in/home-relative provider when:

(1) You do not pay your in-home/relative child care provider your copayment and/or the entire amount the department sends you for in-home/relative child care;

(2) We issued a child care warrant to the correct address and twelve or more working days have passed since the issuance date, and you have not reported the WCCC warrant lost, stolen, or destroyed;

(3) You have a history of failing to pay your in-home/relative provider(s); or

(4) You have a protective payee for your TANF grant or for a Child SafetyNet Payment.

**WSR 02-09-079****PROPOSED RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Medical Assistance Administration)

[Filed April 17, 2002, 8:38 a.m.]

**Original Notice.**

Preproposal statement of inquiry was filed as WSR 02-01-076.

Title of Rule: WAC 388-502-0160 Billing a client.

Purpose: To discourage clients from seeking treatment for nonemergency medical conditions at hospital emergency rooms when less costly alternatives, e.g., doctor's office or medical clinic, are available.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.055, ESSB 6153 - Washington State Omnibus Operating Budget 2001-2003 (chapter 7, Part II, Laws of 2001).

Statute Being Implemented: ESSB 6153 - Washington State Omnibus Operating Budget 2001-2003 (chapter 7, Part II, Laws of 2001).

Summary: This rule amendment will allow hospitals to impose a \$3 copayment on a MAA client who is treated in a hospital emergency room for a nonemergency condition when other reasonable alternatives (e.g., doctor's office, medical clinic) are available to the client. Clients who are indigent, eighteen years of age and under, pregnant, American Indian or Alaskan Native, enrolled in a MAA managed care

plan, or receiving long-term care services will be exempt from the copayment requirement.

Reasons Supporting Proposal: It is more cost effective to treat clients in a clinic or doctor's office than in a hospital emergency room.

Name of Agency Personnel Responsible for Drafting: Kevin Sullivan, P.O. Box 45533, Olympia, WA 98504-5533, (360) 725-1344; Implementation and Enforcement: Judy Maginnis, P.O. Box 45534, Olympia, WA 98504-5534, (360) 725-1320.

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

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

Explanation of Rule, its Purpose, and Anticipated Effects: This rule amendment will allow hospitals to impose a \$3 copayment on a MAA client who is treated in a hospital emergency room for a nonemergency condition when other reasonable alternatives (e.g., doctor's office, medical clinic) are available to the client. Clients who are indigent, eighteen years of age and under, pregnant, American Indian or Alaskan Native, enrolled in a MAA managed care plan, or receiving long-term care services will be exempt from the copayment requirement.

The purpose of this rule is to discourage clients from seeking treatment for nonemergency medical conditions at hospital emergency rooms when less costly alternatives, e.g., doctor's office or medical clinics, are available.

It is anticipated that this rule amendment will result in fewer clients using hospital emergency rooms for treatment of nonemergency conditions.

Proposal Changes the Following Existing Rules: This rule amendment will allow hospitals to impose a \$3 copayment on a MAA client who is treated in a hospital emergency room for a nonemergency condition when other reasonable alternatives (e.g., doctor's office, medical clinic) are available to the client.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This amendment will not place more than a minor economic impact on small businesses.

RCW 34.05.328 applies to this rule adoption. The department has analyzed the proposed rule and determined that it meets the definition of a "significant legislative rule." A determination of the probable costs and benefits is available from the person listed above.

Hearing Location: Office Building-2 Auditorium (DSHS Headquarters) (parking available on 12th off Jefferson), 1115 Washington, Olympia, WA 98504, on May 21, 2002, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Andy Fernando, DSHS Rules Coordinator, by May 17, 2002, phone (360) 664-6094, TTY (360) 664-6178, e-mail fernaax@dshs.wa.gov.

Submit Written Comments to: Identify WAC Numbers, DSHS Rules Coordinator, Rules and Policies Assistance Unit, P.O. Box 45850, Olympia, WA 98504-5850, fax (360) 664-6185, e-mail fernaax@dshs.wa.gov, by 5 p.m., May 21, 2002.

Date of Intended Adoption: Not sooner than May 22, 2002.

April 11, 2002

Brian H. Lindgren, Manager  
Rules and Policies Assistance Unit

**AMENDATORY SECTION** (Amending WSR 01-21-023, filed 10/8/01, effective 11/8/01)

**WAC 388-502-0160 Billing a client.** (1) A provider may not bill, demand, collect, or accept payment from a client or anyone on the client's behalf for a covered service. The client is not responsible to pay for a covered service even if MAA does not pay the provider because the provider failed to satisfy the conditions of payment in MAA billing instructions, this chapter, and other chapters regulating the specific type of service provided.

(2) The provider is responsible for verifying whether the client has medical coverage for the date of service and to check the limitations of the client's medical program.

(3) A provider may bill a client only if one of the following situations apply:

(a) The client is enrolled in medical assistance managed care and the client and provider comply with the requirements in WAC 388-538-095;

(b) The client is not enrolled in medical assistance managed care, and the client and provider sign an agreement regarding payment for the service. The agreement must be translated or interpreted into the client's primary language and signed before the service is rendered. The provider must give the client a copy and maintain the original in the client's file for department review upon request. The agreement must include each of the following elements to be valid:

(i) A statement listing the specific service to be provided;

(ii) A statement that the service is not covered by MAA;

(iii) A statement that the client chooses to receive and pay for the specific service; and

(iv) The client is not obligated to pay for the service if it is later found that the service was covered by MAA at the time it was provided, even if MAA did not pay the provider for the service because the provider did not satisfy MAA's billing requirements.

(c) The client or the client's legal guardian was reimbursed for the service directly by a third party (see WAC 388-501-0200);

(d) The client refuses to complete and sign insurance forms, billing documents, or other forms necessary for the provider to bill insurance for the service. This provision does not apply to coverage provided by MAA;

(e) The provider has documentation that the client represented himself/herself as a private pay client and not receiving medical assistance when the client was already eligible for and receiving benefits under a MAA medical program. This documentation must be signed and dated by the client or the client's representative. The provider must give a copy to the client and maintain the original documentation in the client's file for department review upon request. In this case, the provider may bill the client without fulfilling the requirements in subsection (3)(b) of this section regarding the agree-

ment to pay. However, if the patient later becomes eligible for MAA coverage of a provided service, the provider must comply with subsection (4) of this section for that service; ((e))

(f) The bill counts toward a spenddown liability, emergency medical expense requirement, deductible, or copayment required by MAA; or

(g) The client received medical services in a hospital emergency room for a condition that was not an emergency medical condition. In such cases, a three-dollar copayment may be imposed on the client by the hospital, except when:

(i) Reasonable alternative access to care was not available;

(ii) The "indigent person" criteria in WAC 246-453-040(1) applies;

(iii) The client was eighteen years of age or younger;

(iv) The client was pregnant or within sixty days post-pregnancy;

(v) The client is an American Indian or Alaska Native;

(vi) The client was enrolled in a MAA managed care plan, including primary care case management (PCCM);

(vii) The client was in an institution such as a nursing facility or residing in an alternative living facility such as an adult family home, assisted living facility, or boarding home;  
or

(viii) The client receives waived services such as community options program entry system (COPES) and community alternatives program (CAP).

(4) If a client becomes eligible for a covered service that has already been provided because the client:

(a) Applied to the department for medical services later in the same month the service was provided (and is made eligible from the first day of the month), the provider must:

(i) Not bill, demand, collect, or accept payment from the client or anyone on the client's behalf for the service; and

(ii) Promptly refund the total payment received from the client or anyone on the client's behalf, and then bill MAA for the service;

(b) Receives a delayed certification as defined in WAC 388-500-0005, the provider must:

(i) Not bill, demand, collect, or accept payment from the client or anyone on the client's behalf for the service; and

(ii) Promptly refund the total payment received from the client or anyone on the client's behalf, and then bill MAA for the service; or

(c) Receives a retroactive certification as defined in WAC 388-500-0005, the provider:

(i) Must not bill, demand, collect, or accept payment from the client or anyone on the client's behalf for any unpaid charges for the service; and

(ii) May refund any payment received from the client or anyone on the client's behalf, and after refunding the payment, the provider may bill MAA for the service.

(5) Hospitals may not bill, demand, collect, or accept payment from a medically indigent, GA-U, or ADATSA client, or anyone on the client's behalf, for inpatient or outpatient hospital services during a period of eligibility, except for spenddown and under the circumstance described in subsection (3)(g) of this section.

PROPOSED

(6) A provider may not bill, demand, collect, or accept payment from a client, anyone on the client's behalf, or MAA for copying or otherwise transferring health care information, as that term is defined in chapter 70.02 RCW, to another health care provider. This includes, but is not limited to:

- (a) Medical charts;
- (b) Radiological or imaging films; and
- (c) Laboratory or other diagnostic test results.

**WSR 02-09-080**

**PROPOSED RULES**

**PUBLIC DISCLOSURE COMMISSION**

[Filed April 17, 2002, 9:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 02-04-049.

Title of Rule: Title 390 WAC, rules relating to independent expenditures, sample ballots and slate cards, reports filed by nonreporting committees, exempt activities and the definition of caucus of the state legislature.

Purpose: To clarify and implement changes to chapter 42.17 RCW and to simplify and streamline the campaign reporting process for candidates and political committees.

Statutory Authority for Adoption: RCW 42.17.370(1).

Statute Being Implemented: RCW 42.17.103 and [42.17].370(1).

Summary: The proposed rule changes would repeal one rule, amend the form and reporting requirements for nonreporting committees, implement RCW 42.17.103, clarify definitions of exempt activities and sample ballots and slate cards, and simplify reporting of independent expenditure political advertising.

Reasons Supporting Proposal: The proposed new rule and rule amendments conform to statutory changes under RCW 42.17.103, clarify requirements of nonreporting committees, provide guidance to political party committees on the use of exempt funds, and define "top five contributors" for the purpose of political advertising by independent expenditure committees.

Name of Agency Personnel Responsible for Drafting and Implementation: Doug Ellis, Public Disclosure Commission, 711 Capitol Way, Room 206, Olympia, (360) 664-2735; and Enforcement: Phil Stutzman, Public Disclosure Commission, 711 Capitol Way, Room 206, Olympia, (360) 664-8853.

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: The proposed rule changes would conform with statutory changes under RCW 42.17.103 which requires the reporting of independent expenditures within twenty-four hours of first being published or presented to the public during the twenty-one days before an election and would also specify the requirements and the kinds of committees that file PDC form C-5. The rule amendments define "top five con-

tributors" under RCW 42.17.510(2) and allow political committees to identify the top five contributors giving to the committee to underwrite political advertising for a specific independent expenditure. The definition of caucus of the state legislature is repealed.

The proposed rule changes also reference the Washington state supreme court's decision regarding issue advocacy and the use of exempt funds, allows generic get-out-the-vote activity, regardless of the number of candidates benefitted, to be funded with the exempt contributions, and clarifies that at least three candidates must be listed on sample ballots and slate cards and that the distribution of sample ballots and slate cards must be within a geographical area where voters are eligible to vote for at least three candidates listed.

The proposed rule changes provide guidance and clarification to candidates and political committees on current statutory requirements.

Proposal Changes the Following Existing Rules: The proposed changes clarify, simplify and streamline the campaign reporting process for candidates and political committees.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The implementation of these rules does not impact small businesses.

RCW 34.05.328 does not apply to this rule adoption. The Public Disclosure Commission (PDC) is not an agency listed in subsection (5)(a)(i) of section 201. Further, the PDC does not voluntarily make section 201 applicable to this rule adoption pursuant to subsection (5)(a)(i)[(ii)] of section 201, and to date the Joint Administrative Rules Review Committee has not made section 201 applicable to this rule adoption.

Hearing Location: Commission Hearing Room, Evergreen Plaza Building, 711 Capitol Way, Room 206, Olympia, WA, on May 21, 2002, at 9:00 a.m.

Assistance for Persons with Disabilities: Contact Ruthann Bryant by phone (360) 753-1111.

Submit Written Comments to: Doug Ellis, Public Disclosure Commission, P.O. Box 40908, Olympia, WA 98504-0908, fax (360) 753-1112, dellis@pdc.wa.gov, by May 17, 2002.

Date of Intended Adoption: May 21, 2002.

April 16, 2002

Susan Harris

Assistant Director

NEW SECTION

**WAC 390-18-025 Political advertising—Identification of "top five contributors."** (1) For purposes of RCW 42.17.510(2), "top five contributors" means the five persons, as defined in RCW 42.17.020, giving the largest aggregate contributions during the twelve-month period preceding the date on which the political advertisement is published or otherwise presented to the public. If more than five contributors give an amount equal to the largest aggregate contribution received during the relevant twelve-month period, the political committee sponsoring the advertisement shall select five of these contributors to identify as the top five contributors.

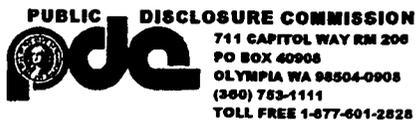
(2) The "top five contributors" identification requirement applies to all political committees that make independent expenditures, including continuing political committees, required to register and report under chapter 42.17 RCW other than a bona fide political party committee.

(3) If a political committee keeps records necessary to track contributions according to the use intended by contributors, and the committee subsequently makes independent expenditures supporting or opposing a candidate or slate of candidates, that committee may identify the top five contributors giving for that purpose, as opposed to identifying the overall top five contributors to the committee as is otherwise required by RCW 42.17.510(2) and this section.

However, a contributor's contributions earmarked for independent expenditures supporting or opposing a specific candidate or slate of candidates shall not be used to support or oppose a different candidate or slate of candidates without the contributor being identified as one of the top five contributors for the actual expenditure if that contributor is one of the top five contributors for that expenditure.

AMENDATORY SECTION (Amending WSR 02-03-018, filed 1/4/02, effective 2/4/02)

**WAC 390-16-050 Forms for contributions and expenditures of out-of-state or federal political committees (~~not domiciled in Washington state~~).** The official form for the report of contributions and expenditures of political committees (a) registered with the Federal Election Commission, (b) not domiciled in Washington state, or (c) otherwise not required to report under RCW 42.17.040, 42.17.065, or 42.17.080 is designated "C-5," revised ((1/02)) 6/02. Copies of this form are available at the Commission Office, Room 206, Evergreen Plaza Building, Olympia, Washington 98504-0908. Any paper attachments shall be on 8 1/2" x 11" white paper.



FORM  
**C5**  
1/02

PDC OFFICE USE  
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**OUT OF STATE OR FEDERAL COMMITTEE CONTRIBUTION TO WASHINGTON CANDIDATES OR COMMITTEES**

PROPOSED

1. Name and address of committee making contribution

2. Check appropriate box

- This is the first report submitted during 19\_\_
- This shows new expenditures, contributions or information changed from reports submitted previously this calendar year.

3. Explain briefly the purpose or affiliation of the committee. (e.g., A PAC of employees of XYZ Trade Assn., or the election committee of US Senator John Doe, or a PAC of members of the United Worker's Union.)

4. Officers or responsible leaders of committee

Name and address

Title

5. Candidate contributions: List each Washington candidate for state or local office to whom you have made a contribution of more than \$50.00.

Candidate's name	Office sought	Political party	Date	Amount given

6. Ballot measure committee contributions: List each Washington committee supporting or opposing a ballot measure to whom you have made a contribution of more than \$50.00.

Committee name and address	Ballot number	For or against?	Date	Amount given

7. Other contributions and expenditures: List each other contribution or expenditure of more than \$50.00 made to or on behalf of any Washington state or local candidate, ballot measure or political committee.

Recipient's name and address	Purpose	Date	Amount given

Check here  if continued on attached sheet

8. Total contributions and expenditures (Add parts 5, 6, 7) .....

**CAUTION: Failure to report transactions within ten days will cause the funds to forfeit to Washington State.**

PROPOSED

Contributions received from Washington residents:		List all contributions of more than \$25.00 in aggregate to this out of state, federal or other committee during the current calendar year from Washington residents or corporations with a place of business in Washington.	
Name and address	Date	Amount	
Check here <input type="checkbox"/> if continued on attached sheet			

0. **Eligibility to Give to State Office Candidates:** During the six months prior to making a contribution to a legislative or statewide executive candidate, your committee must have received contributions of \$10 or more from at least ten persons registered to vote in Washington State.

A check here indicates your awareness of and pledge to comply with this provision. Absence of a check mark means your committee does not qualify to give to legislative and statewide executive office candidates.

1. **Certification:** I certify the information contained in this report is true, complete and correct to the best of my knowledge.

Signature of Committee Official

Name - Typed or Printed

Title

Daytime Telephone No.: ( )

Be sure to notify each contribution recipient that you have filed this report, in order that they are aware they may spend the contribution on them.)

**INSTRUCTIONS**

(Statutory reference: RCW 42.17.090 (1)(K))

**WHO MUST REPORT**

A political committee not domiciled in the State of Washington, a federal committee or other committee not required to register under Washington law, which has made contributions to a state or local candidate or political committee in Washington state.

**WHEN TO REPORT**

A C-5 report is due within ten days of a Washington state candidate or political committee receiving a contribution of more than \$50 from an out-of-state or federal PAC. After filing an initial C-5 report, subsequent reports during the same calendar year may be filed by letter updating or amending the information previously reported. These follow-up reports are also due within ten days of the contribution's receipt.

**SEND REPORT TO**

Public Disclosure Commission  
711 Capitol Way, Room 206  
PO Box 40908  
Olympia, WA 98504-0908

**VIOLATIONS AND PENALTIES**

- Candidates for legislative office have a contribution limit of \$500 per election. Candidates for statewide executive office have a limit of \$1,000 per election. Each primary and general is a separate election.
- It is a violation of law for any person to make, or for any political committee or any local or judicial candidate to accept from any one person, contributions in the aggregate exceeding \$5,000 within 21 days of a general election
- Failure to report contributions and file the information required by this report within 10 days after the Washington candidate or committee receives the funds will cause the funds to be returned or forfeited to the state.



<b>FORM C5 6/02</b>	PDC OFFICE USE
	P O S T  R E C E I V E D

**OUT OF STATE OR FEDERAL COMMITTEE CONTRIBUTION  
TO WASHINGTON CANDIDATES OR COMMITTEES**

1. Name and address of committee making contribution

2. Check appropriate box

- This is the first report submitted during 20\_\_
- This shows new expenditures, contributions or information changed from reports submitted previously this calendar year.

3. Explain briefly the purpose or affiliation of the committee. (e.g., A PAC of employees of XYZ Trade Assn., or the election committee of US Senator John Doe, or a PAC of members of the United Worker's Union.)

4. Officers or responsible leaders of committee  
Name and address

Title

5. Candidate contributions: List each Washington candidate for state or local office to whom you have made a contribution of more than \$50.00.

Candidate's name	Office sought	Political party	Date	Amount given

6. Ballot measure committee contributions: List each Washington committee supporting or opposing a ballot measure to whom you have made a contribution of more than \$50.00.

Committee name and address	Ballot number	For or against?	Date	Amount given

7. Other contributions and expenditures: List each other contribution or expenditure of more than \$50.00 made to or on behalf of any Washington state or local candidate, ballot measure or political committee.

Recipient's name and address	Purpose	Date	Amount given

Check here  if continued on attached sheet

8. Total contributions and expenditures (Add parts 5, 6, 7) .....

**CAUTION: Failure to report transactions within ten days will cause the funds to forfeit to Washington State.**

PROPOSED

PROPOSED

9. Contributions received from Washington residents:

List all contributions of more than \$25.00 in aggregate to this out of state, federal or other committee during the current calendar year from Washington residents or corporations with a place of business in Washington.

Name and address	Date	Amount

Check here  if continued on attached sheet

2. **Eligibility to Give to State Office Candidates:** During the six months prior to making a contribution to a legislative or statewide executive candidate, your committee must have received contributions of \$10 or more from at least ten persons registered to vote in Washington State.

A check here indicates your awareness of and pledge to comply with this provision. Absence of a check mark means your committee does not qualify to give to legislative and statewide executive office candidates.

**Certification:** I certify the information contained in this report is true, complete and correct to the best of my knowledge.

\_\_\_\_\_  
Signature of Committee Official

\_\_\_\_\_  
Name - Typed or Printed

\_\_\_\_\_  
Title

Home Telephone No.: ( ) \_\_\_\_\_

Be sure to notify each contribution recipient that you have filed this report, in order that they are aware they may spend the contribution on to them.)

**INSTRUCTIONS**

(Statutory reference: RCW 42.17.090 (1)(K))

**WHO MUST REPORT**

A political committee not domiciled in the State of Washington, a federal committee or other committee not required to register under Washington law, which has made contributions to a state or local candidate or political committee in Washington state.

**WHEN TO REPORT**

A C-5 report is due within ten days of a Washington state candidate or political committee receiving a contribution of more than \$50 from an out-of-state or federal PAC. After filing an initial C-5 report, subsequent reports during the same calendar year may be filed by letter updating or amending the information previously reported. These follow-up reports are also due within ten days of the contribution's receipt.

**SEND REPORT TO**

Public Disclosure Commission  
711 Capitol Way, Room 206  
PO Box 40908  
Olympia, WA 98504-0908

**VIOLATIONS AND PENALTIES**

- Candidates for legislative office have a contribution limit of \$625 per election. Candidates for statewide executive office have a limit of \$1250 per election. Each primary and general is a separate election.
- It is a violation of law for any person to make, or for any political committee or any local or judicial candidate to accept from any one person, contributions in the aggregate exceeding \$5,000 within 21 days of a general election
- Failure to report contributions and file the information required by this report within 10 days after the Washington candidate or committee receives the funds will cause the funds to be returned or forfeited to the state.

AMENDATORY SECTION (Amending WSR 96-05-001, filed 2/7/96, effective 3/9/96)

**WAC 390-16-055** (~~(Filing reports for nonreporting)~~)

**Forfeiture of contributions received from out-of-state or federal political committees.** ~~((1))~~ Each candidate or political committee receiving funds from a nonreporting committee (out-of-state or federal political committee) as described in RCW 42.17.090 (1)(1), shall determine whether such committee has complied with that subsection. If the nonreporting committee has not filed the required report under WAC 390-16-050, the funds shall not be forfeited or reportable as having been received if they are returned to the nonreporting committee within ~~((three))~~ five business days after receipt. ~~((Any retention or other action taken with such funds, if there is not a complete and timely report on file, shall result in the forfeiture of such funds to the state of Washington and shall be deemed a violation of chapter 42.17 RCW.~~

~~(2) Any subsequent report by a nonreporting committee of its contributions which is required by RCW 42.17.090 (1)(1) during the same calendar year may update its initial report by letter showing, in addition to its name and address, only reportable information which is new or changed since its last report.)~~ If an out-of-state or federal political committee fails to file a complete and timely report, the recipient shall forfeit the contribution to the state of Washington.

AMENDATORY SECTION (Amending WSR 02-03-018, filed 1/4/02, effective 2/4/02)

**WAC 390-16-060 Forms for report of independent expenditures.** (1) The official form for reports of independent expenditures as required by RCW 42.17.100 and 42.17.103 is designated "C-6," revised ~~((1/02))~~ 6/02. Copies of this form are available at the Commission Office, Room 206, Evergreen Plaza Building, Olympia, Washington 98504. Any paper attachments shall be on 8 1/2" x 11" white paper.

(2) The C-6 report may be filed electronically consistent with WAC 390-19-040 by using an electronic filing alternative provided or approved by the commission.

PROPOSED

**PUBLIC DISCLOSURE COMMISSION**  
 711 CAPITOL WAY RM 206  
 PO BOX 40908  
 OLYMPIA WA 98504-0908  
 (360) 753-1111  
 TOLL FREE 1-877-601-2828

FORM  
**C6**  
 1/02

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**INDEPENDENT CAMPAIGN EXPENDITURES  
 \$100.00 OR MORE**

**PROPOSED**

Name and address of person making expenditure

2. Check appropriate box
- One time report. I do not expect to make other independent expenditures.
  - I do expect to make other independent expenditures (See instructions)
  - Final report.

Name of candidate or ballot proposition supported or opposed: check  support or  oppose

List the value of all independent expenditures made if aggregate is \$100 or more. Itemize expenditures of more than \$50 made in support or in opposition to any candidate or ballot proposition during an election campaign. Do not include monetary or in-kind contributions made directly to a candidate or political committee.

Date	Name and address of vendor or recipient	Description of expenditure (goods, services, or rights purchased or furnished)	Amount or value (*see below)
Expenditures \$50 or less not itemized above.			
Total this report period			\$ _____
Total independent expenditures made during this election campaign. Include expenditures shown in this report and previously submitted reports.			\$ _____

**INSTRUCTIONS**

**WHO MUST REPORT:**  
 Persons who make expenditures aggregating \$100 or more during any election campaign in support of or opposition to a candidate or ballot proposition if not made directly to or in coordination with the candidate or a political committee.

**WHEN TO REPORT:** When aggregate amount reaches:  
 less than \$100 — No report is required  
 \$100 or more (or value cannot be estimated) — Within 5 days  
 if additional expenditures made — \* 10th of month preceding election in which other reports are not required.  
 \* 21 days prior to election  
 \* 7 days prior to election  
 \* 10th day of month after election

\*Required only when expenditures have been made since last report was submitted.

**WHERE TO REPORT:**

Copy # 1 — Public Disclosure Commission,  
 Copy # 2 — County Elections Officer of candidate. For ballot propositions with County Elections Officer of person filing this report.

PDC form C-6

**AMOUNT OR VALUE**

\*If no reasonable estimate can be made of value, describe activity, services, property or right furnished precisely and attach copy of item produced or distributed.

**CERTIFICATION:** I hereby certify that the above is true, complete and correct to the best of my knowledge.

Signature of person making expenditures

Name

Title

Date



Form <b>C6</b> 6/02	This space for office use  P M O A S R T K  R E C E I V E D
---------------------------	---

Use this form for: (check one)

- INDEPENDENT EXPENDITURES (Occurring at any time) — \$100 or more
- INDEPENDENT EXPENDITURE ADS (Appearing within 21 Days of an Election) — \$1,000 or more

See instructions on Reverse

1. Name and address of person making expenditure:  
Name Mailing Address City / State / Zip Code

2. Candidate(s) or ballot proposition(s) supported or opposed.  
Candidate/Proposition Names Office/District/Proposition Number Party (If Partisan)

- Check
- Support or  Oppose
- Support or  Oppose
- Support or  Oppose

Continued on attached sheet.

3. Identify independent expenditures. Itemize expenditures of more than \$50 that are part of an independent expenditure supporting or opposing any state or local office candidate or ballot proposition.

Date Made	Date first Published/ Presented	Name and Address of Vendor or Recipient	Description of Expenditure (E.g., direct mail, newspaper ad, TV or radio ad)	Amount or Value (*See Below)
Expenditures \$50 or less not itemized above				

<b>Amount or Value</b>	Total this report	\$
<small>*If no reasonable estimate can be made of value, describe activity, services, property or right furnished precisely and attach copy of item produced or distributed.</small>	Total independent expenditures made by filer during this election campaign. Include expenditures shown in this report and previously submitted reports.	\$

**Person responsible for making Independent Expenditure:**

I certify (or declare) under penalty of perjury under the laws of the State of Washington that this expenditure was not made in cooperation, consultation, or concert with, or at the request or suggestion of, the above mentioned candidate, the candidate's authorized committee, or an agent of the candidate. I further certify that the above information is true, complete, and correct to the best of my knowledge.

Signature	Printed name
Street address	
City/State/Zip	
Date Signed	Place signed (city and county)

\*RCW 9A.72.040 provides that: "(1) A person is guilty of false swearing if he makes a false statement, which he knows to be false, under an oath required or authorized by law. (2) False swearing is a misdemeanor."

PROPOSED

PROPOSED

# INSTRUCTIONS – C6 REPORT Rev. 6/02

## WHO MUST REPORT:

- (1) Persons who make independent expenditures aggregating \$100 or more anytime during an election campaign in support of or opposition to a candidate or ballot proposition.
- (2) Persons sponsoring independent expenditure political ads valued at \$1,000 or more that are mailed or presented to the public within twenty-one days of a primary, general or special election.

**DO NOT** report monetary or in-kind contributions made directly to or in coordination with a candidate or political committee.

## WHEN AND WHERE TO REPORT:

When aggregate amount reaches:

<b>Less than \$100</b>	—No report is required
<b>\$100 or more</b> (or value cannot be estimated)	—Postmark within 5 days of making the expenditure.
If additional expenditures are made:	—10 <sup>th</sup> of month preceding election in which other reports are not required* —21 days prior to election* —7 days prior to election* —10 <sup>th</sup> day of month after election*
<i>*Required only when expenditures have been made since last report was submitted.</i>	
Send <b>original to Public Disclosure Commission</b> . Send a <b>copy to the County Auditor</b> (county elections office) of the county of residence of the candidate supported or opposed. For ballot propositions, County Elections Officer of the county of residence of the person responsible for the independent expenditure. Persons making independent expenditures are advised to contact their City Clerk to learn if local filing is required by local ordinance.	

<b>\$1,000 or more and ads are presented to the public within 21 days of an election</b>	— <u>Deliver (electronic<sup>①</sup>, fax<sup>②</sup>, or paper format) to PDC within 24 hours</u> of, or on the first working day after, the date the advertisement was first published, mailed, or otherwise presented to the public.
Additional independent expenditures of <u>any amount</u> following the expenditure listed on the initial filing must be reported within 24 hours of, or on the first working day after, the date the new advertisement is first published, mailed, or otherwise presented to the public.	
<i>① Fill out and sign electronic filing signature card, fax a copy of the signature card to the PDC, complete and file the electronic C6 report. Mail the original signature card to PDC within 24 hours.</i>	
<i>② Fax a copy of the signed C6 report to the PDC and mail the original within 24 hours.</i>	
Send <b>original to Public Disclosure Commission</b> . County filing is <b>NOT</b> required for reports due within 24 hours. Persons making independent expenditures are advised to contact their City Clerk to learn if local filing is required by local ordinance.	

**AMENDATORY SECTION** (Amending WSR 99-12-066, filed 5/27/99, effective 6/27/99)

**WAC 390-17-030 Sample ballots and slate cards.** (1)

**Intent.** The commission finds that, under certain conditions, expenditures for slate cards and other candidate listings fall within the scope of RCW 42.17.640 (14)(a) and are, therefore, exempt from contribution limits and eligible for payment with a bona fide political party's exempt funds. Slate cards and other candidate listings remain reportable under chapter 42.17 RCW and subject to the political advertising provisions of the law.

The purpose of this exemption from the contribution limits is to allow political parties and other sponsors to tell the general public which candidates they support. The exemption is not intended as a device to circumvent the contribution limits and full reporting requirements by undertaking any degree of significant campaigning on behalf of candidates.

(2) For purposes of RCW 42.17.640 (14)(a), "**sample ballots**" means slate cards, or other candidate listings, whether written or oral, that satisfy the qualifying criteria specified in subsection (10) of this section.

(3) Sample ballots constitute political advertising for a slate or list of candidates and must be properly identified and otherwise in compliance with the political advertising provisions, RCW 42.17.505 through 42.17.550.

(4)(a) **A bona fide political party** may use contributions it receives pursuant to RCW 42.17.640(14) to ~~((design-~~ produce and distribute sample ballots.

(b) Expenditures for sample ballots do not count against a bona fide political party's contribution limit to the candidates listed on the sample ballot. Further, when reporting sample ballot expenditures, a bona fide political party is not required to attribute a portion of the expenditure to each of the candidates listed on the sample ballot, but the names of the candidates must be reported along with the other information required by chapter 42.17 RCW and chapter 390-17 WAC.

(5) **Any person**, as defined by RCW 42.17.020, who makes an expenditure for sample ballots has made an expenditure that does not count against that person's contribution limit to the candidates listed.

(6) **An in-state political committee**, when disclosing expenditures for sample ballots as part of its C-4 report, is not required to attribute a portion of the expenditure to the candidates listed on the sample ballot, but the names of the candidates and their respective party affiliations must be reported along with other information required by chapter 42.17 RCW and chapter 390-17 WAC.

(7) **An out-of-state or federal committee**, when disclosing expenditures for sample ballots on a C-5 report, is not required to allocate a portion of the expenditure to the candidates listed on the sample ballot, but must report that an expenditure for sample ballots was made, the name and address of the person to whom the expenditure was made, the full amount of the expenditure, and the name, office sought and party affiliation of each candidate listed on the sample ballot. The report is due within ten days of the date the sample ballot is received by recipients.

(8) If a **lobbyist or lobbyist employer** makes expenditures for sample ballots, those expenditures are required to be reported in detail on the lobbyist's monthly L-2 report. Itemization of these expenditures must include the names and respective party affiliations of the candidates listed on the sample ballot, but no portion of the expenditure need be allocated to individual candidates listed on the sample ballot.

(9) **The candidates listed on a sample ballot** are not required to report any portion of the expenditure as an in-kind contribution to their campaigns.

(10) **Qualifying criteria for sample ballots, slate cards and other candidate listings.** In order not to count against a person's contribution limit to the candidates listed on a sample ballot and, in the case of a bona fide political party, in order to be eligible for payment with contributions received pursuant to RCW 42.17.640(14), a sample ballot must satisfy **all** of the criteria in (a) through (d) of this subsection.

(a) The sample ballot must list the names of at least three candidates for election to public office in Washington state ~~((That is, identify))~~ and be distributed in a geographical area where voters are eligible to vote for at least three candidates listed. The candidate listing may include any combination of three or more candidates, whether the candidates are seeking federal, state or local office in Washington.

(b) The sample ballot must not be distributed through public political advertising; for example, through broadcast media, newspapers, magazines, billboards or the like. The sample ballot may be distributed through direct mail, telephone, electronic mail, Web sites, electronic bulletin boards, electronic billboards or personal delivery by volunteers.

(c) The content of a sample ballot is limited to:

- The identification of each candidate (pictures may be used);
- The office or position currently held;
- The office sought;
- Party affiliation; and
- Information about voting hours and locations.

Therefore, the sample ballot must exclude any additional biographical data on candidates and their positions on issues as well as statements about the sponsor's philosophy, goals or accomplishments. The list must also exclude any statements, check marks or other indications showing support of or opposition to ballot propositions.

(d) The sample ballot is a stand-alone political advertisement. It must not be a portion of a more comprehensive message or combined in the same mailing or packet with any other information, including get-out-the-vote material, candidate brochures, or statements about the sponsor's philosophy, goals or accomplishments. On Web sites, electronic bulletin boards or electronic billboards, the sample ballot must be a separate document.

**AMENDATORY SECTION** (Amending WSR 02-03-018, filed 1/4/02, effective 2/4/02)

**WAC 390-17-060 Exempt activities—Definitions, reporting.** (1)(a) "Exempt contributions" are contributions made to a political committee which are earmarked for exempt activities as described in RCW 42.17.640 (14)(a) and

(b). Such contributions are required to be reported under RCW 42.17.090, are subject to the restrictions in RCW 42.17.105(8), but are not subject to the contribution limits in RCW 42.17.640. Any written solicitation for exempt contributions must be so designated. Suggested designations are "not for individual candidates" or "for exempt activities."

(b) Contributions made to a caucus (~~(of the state legislature)~~) political committee, to a candidate or candidate's authorized committee which are earmarked for voter registration, absentee ballot information, get-out-the-vote campaigns, sample ballots are presumed to be for the purpose of promoting individual candidates and are subject to the contribution limits in RCW 42.17.640.

(c) Contributions made to a caucus (~~(of the state legislature)~~) political committee, to a candidate or candidate's authorized committee which are earmarked for internal organization expenditures or fundraising are presumed to be with direct association with individual candidates and are subject to the contribution limits in RCW 42.17.640.

(2) "Exempt contributions account" is the separate bank account into which only exempt contributions are deposited and out of which only expenditures for exempt activities shall be made.

(3) "Exempt activities" are those activities (~~(described)~~) referenced in RCW 42.17.640(14)(~~), expenditures for which are exempt from the contribution limits of RCW 42.17.640. However, only those activities described in RCW 42.17.640(14) as further defined in subsections (4) and (5) of this rule~~) as further clarified by subsections (4), (5), (6), and (7) of this section and by the Washington state supreme court's decision regarding issue advocacy in Washington State Republican Party v. Washington State Public Disclosure Commission et al., 141 Wn.2d 245, 4 P.3d 808 (2000). Only exempt activities are eligible for payment with exempt contributions.

(4)(a) (~~If activities described in RCW 42.17.640 (14)(a) promote clearly identified candidate(s), the activities are a contribution to those candidate(s). Expenditures for these activities may not be made with exempt contributions. If more than one clearly identified candidate is promoted, the amount expended shall be allocated proportionally among those candidates. The amount expended for such activities shall be reported as a contribution to that candidate(s). Candidate(s) shall be notified in writing of the contribution within five business days of the expenditure.~~) Except as permitted by WAC 390-17-030, Sample ballots and slate cards, activities referenced in RCW 42.17.640 (14)(a) that promote or constitute political advertising for one or more clearly identified candidates do not qualify as exempt activities.

(b) A candidate is deemed to be clearly identified if(~~;~~) the name of the candidate is used(~~;~~), a photograph or (~~drawing~~) likeness of the candidate appears(~~;~~), or the identity of the candidate is apparent by unambiguous reference.

(~~(c) An activity that benefits or opposes fewer than three individual candidates shall be presumed to be for the purpose of promoting individual candidates whether or not they are clearly identified. Such an activity does not constitute a contribution to any candidate who is not clearly identified, but the activity shall not be paid with exempt funds.~~)

(5) Activities referenced in RCW 42.17.640 (14)(a) that do not promote, or constitute political advertising for, one or more clearly identified candidates qualify as exempt activities. For example, get-out-the-vote telephone bank activity that only encourages persons called to "vote republican" or "vote democratic" in the upcoming election may be paid for with exempt contributions regardless of the number of candidates who are benefited by this message.

(6)(a) "Internal organization expenditures" (~~(described)~~) referenced in RCW 42.17.640 (14)(b) are expenditures for organization purposes, including legal and accounting services, rental and purchase of equipment and office space, utilities and telephones, postage and printing of newsletters for the organization's members or contributors or staff when engaged in organizational activities such as those previously listed, all without direct association with individual candidates.

(b) "Fundraising expenditures" (~~(described)~~) referenced in RCW 42.17.640 (14)(b) are expenditures for fundraising purposes, including(~~;~~) facilities for fundraisers, consumables furnished at the event and the cost of holding social events and party conventions, all without direct association with individual candidates.

(c) If expenditures made pursuant to subsections (a) and (b) above are made in direct association with individual candidates, they shall not be paid with exempt contributions.

(~~(6)~~) (7) For purposes of RCW 42.17.640 (14)(a) and this section, activities that oppose one or more clearly identified candidates are presumed to promote the opponent(s) of the candidate(s) opposed.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 390-17-011

Caucus of the state legislature—Definition.

WSR 02-09-082  
PROPOSED RULES  
PUGET SOUND  
CLEAN AIR AGENCY  
[Filed April 17, 2002, 9:53 a.m.]

Original Notice.

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

Title of Rule: Amend Regulation III, Section 4.03.

Purpose: To add an asbestos demolition surcharge and increase the emergency fees to help cover program costs. There will also be a decrease in the amendment fees.

Other Identifying Information: Regulation III, Section 4.03 pertains to Asbestos Notification Requirements.

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

Summary: The addition of an asbestos demolition surcharge and an increase in the emergency fees will help cover

the costs of implementing the program. The decrease in the amendment fees more closely reflects the amount of work involved.

Reasons Supporting Proposal: The asbestos fees need to cover the cost of implementing the program.

Name of Agency Personnel Responsible for Drafting and Implementation: Teri Story, 110 Union Street, #500, Seattle, WA 98101, (206) 689-4090; and Enforcement: Jim Nolan, 110 Union Street, #500, Seattle, WA 98101, (206) 689-4053.

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

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

Explanation of Rule, its Purpose, and Anticipated Effects: This proposal will add an asbestos demolition surcharge and increase the emergency fees to help cover the program costs. There will also be a decrease in the asbestos amendment fees to more closely reflect the amount of work being done.

Proposal Changes the Following Existing Rules: A demolition surcharge will be added to the asbestos fees.

Emergency fees are being increased.

The fee for an amendment will be decreased by half.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the small business economic impact provision of the Administrative Procedure Act.

RCW 34.05.328 does not apply to this rule adoption. Pursuant to RCW 70.94.141(1), RCW 34.05.328 does not apply to this rule adoption.

Hearing Location: Puget Sound Clean Air Agency, 110 Union Street, Suite 500, Seattle, WA 98101, on May 23, 2002, at 9:15 a.m.

Assistance for Persons with Disabilities: Contact Agency Receptionist, (206) 689-4010, by May 16, 2002, TDD (800) 833-6388, or (800) 833-6385 (Braille).

Submit Written Comments to: Dennis McLerran, Puget Sound Clean Air Agency, 110 Union Street, Suite 500, Seattle, WA 98101, fax (206) 343-7522, by May 13, 2002.

Date of Intended Adoption: May 23, 2002.

April 16, 2002

James Nolan

Director - Compliance

## **AMENDATORY SECTION**

### **REGULATION III SECTION 4.03 ASBESTOS NOTIFICATION REQUIREMENTS**

#### **(a) General Requirements**

It shall be unlawful for any person to cause or allow any work on an asbestos project or demolition unless a complete notification, including the required fee and any additional information requested by the Control Officer, has been submitted to the Agency on approved forms, in accordance with the advance notification period requirements contained in Section 4.03(d) of this Regulation.

(1) The duration of an asbestos project shall be commensurate with the amount of work involved.

(2) Notification is not required for asbestos projects involving less than 10 linear feet of friable, asbestos-containing material on pipes or 48 square feet of friable, asbestos-containing material on other components (per structure, building, or vessel, per calendar year).

(3) Notification is not required for removal and disposal of nonfriable, asbestos-containing material.

(4) Notification is required for all demolitions involving structures with a projected roof area greater than 120 square feet, even if no asbestos-containing material is present.

(5) The written notification shall be accompanied by the appropriate nonrefundable fee as set forth in Section 4.03(d) of this Regulation unless prior arrangements for payment have been made with the Agency.

(6) A copy of the notification, all amendments to the notification, and the asbestos survey shall be available for inspection at all times at the asbestos project or demolition site.

(7) A property owner may file notification for multiple asbestos projects or demolitions on one form if all the following criteria are met:

(A) The work will be performed continuously by the same contractor; and

(B) A work plan is submitted that includes: a map of the structures involved in the project including the site address for each structure; the amount and type of friable, asbestos-containing material in each structure; and the schedule for performing asbestos project and demolition work. For projects where a detailed work schedule cannot be provided, the asbestos contractor and/or the demolition contractor shall participate in the Agency's work schedule fax program and will continue to participate in the program throughout the duration of the project.

#### **(8) Annual Notification**

A property owner may file one annual notification for asbestos projects to be conducted on one or more structures, vessels, or buildings during each calendar year if all of the following conditions are met:

(A) The annual notification shall be filed with the Agency before commencing work on any asbestos project included in an annual notification;

(B) The total amount of asbestos-containing material for all asbestos projects from each structure, vessel, or building in a calendar year under this section is less than 260 linear feet on pipes or less than 160 square feet on other components; and

(C) The property owner submits quarterly written reports to the Control Officer on Agency-approved forms within 15 days after the end of each calendar quarter.

#### **(b) Amendments**

##### **(1) Mandatory Amendments**

An amendment shall be submitted to the Control Officer for the following changes in a notification and shall be accompanied by the appropriate nonrefundable fee as set forth in Section 4.03(d) of this Regulation unless prior arrangements for payment have been made with the Agency:

(A) Increases in the project type or job size category that increase the fee;

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(B) Changes in the type of friable, asbestos-containing material that will be removed; or

(C) Changes in the start date, completion date, or work schedule, including hours of work. Asbestos contractors or property owners participating in the Agency work schedule fax program are not required to submit amendments for work schedule changes occurring between the start and completion dates.

(2) Optional Amendments

(A) An amendment may be submitted to the Control Officer for any other change in a notification and shall be accompanied by the appropriate nonrefundable fee as set forth in Section 4.03(d) of this Regulation unless prior arrangements for payment have been made with the Agency.

(B) Contractors and property owners participating in the Agency work schedule fax program may, within 45 days after the last completion date on record, submit an amendment to the Control Officer for the removal of additional, friable, asbestos-containing material not identified during the asbestos survey. If more than 45 days have lapsed since the last

completion date on record, the requirements of Section 4.03(a), including notification periods and fees, shall apply.

(c) Emergencies

The Control Officer may waive the advance notification period, if the property owner submits a written request that demonstrates to the Control Officer that an asbestos project or demolition must be conducted immediately because of any of the following:

- (1) There was a sudden, unexpected event that resulted in a public health or safety hazard;
- (2) The project must proceed immediately to protect equipment, ensure continuous vital utilities, or minimize property damage;
- (3) Asbestos-containing materials were encountered that were not identified during the asbestos survey; or
- (4) The project must proceed to avoid imposing an unreasonable burden.

(d) Notification Period and Fees

(Project	Size or Type	Notification Period	Fee
<del>Single Family Residence:</del>			
<del>Asbestos Project*</del>	All	Prior Notice	\$25
<del>Demolition*</del>	All	10 days	\$25
<del>All Other Demolitions with no asbestos project</del>	All	10 Days	\$150
<del>Asbestos Project includes demolition fee*</del>	10—259 linear ft		
	48—159 square ft	10 Days	\$150
<del>Asbestos Project includes demolition fee</del>	260—999 linear ft		
	160—4,999 square ft	10 Days	\$300
<del>Asbestos Project includes demolition fee</del>	1,000—9,999 linear ft		
	5,000—49,999 square ft	10 Days	\$750
<del>Asbestos Project includes demolition fee</del>	10,000 + linear ft		
	50,000 + square ft	10 Days	\$2,000
<del>Emergency</del>	4.03(e)	Prior Notice	Add fee equal to project fee
<del>Amendment</del>	4.03(b)	Prior Notice	\$50
<del>Annual</del>	4.03 (a)(8)	Prior Notice	No Fee))

<u>Project</u>	<u>Notification Period</u>	<u>Non-Refundable Fee</u>	<u>Demolition Sur-charge**</u>
<u>Single-Family Residence</u>			
<u>Asbestos Project*</u>	<u>prior notice</u>	<u>\$25</u>	
<u>Demolition (with or without asbestos project)</u>	<u>10 days</u>	<u>\$50</u>	
<u>All Other Demolitions (without asbestos project)</u>	<u>10 days</u>	<u>\$200</u>	
<u>All Other Asbestos Projects</u>			
<u>10 - 259 linear ft* and/or</u>			
<u>48 - 159 square ft</u>	<u>prior notice</u>	<u>\$150</u>	<u>\$50</u>
<u>260 - 999 linear ft and/or</u>			
<u>160 - 4,999 square ft</u>	<u>10 days</u>	<u>\$300</u>	<u>\$100</u>

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<u>Project</u>	<u>Notification Period</u>	<u>Non-Refundable Fee</u>	<u>Demolition Sur-charge**'</u>
<u>1,000 - 9,999 linear ft and/or</u> <u>5,000 - 49,999 square ft</u>	<u>10 days</u>	<u>\$750</u>	<u>\$250</u>
<u>10,000 + linear ft and/or</u> <u>50,000 + square ft</u>	<u>10 Days</u>	<u>\$2,000</u>	<u>\$1,000</u>
<u>Emergency - 4.03(c)***</u>	<u>prior notice</u>	<u>twice the applicable fees</u>	
<u>Amendment - 4.03(b)</u>	<u>prior notice</u>	<u>\$25</u>	
<u>Annual Notice - 4.03 (a)(8)</u>	<u>prior notice</u>	<u>no fee</u>	

\* Contractors participating in the Agency work schedule fax program are not (~~shall only be~~) required to file a Notice of Intent (~~provide prior notification~~) for this project (size) category and no fee will be assessed.

\*\* Additional fee for demolitions. All demolitions require a Notice of Intent and a 10-day notification period unless waived per Section 4.03(c).

\*\*\* The 10-day notification period may be waived per Section 4.03(c) and with payment of twice the applicable fees. Single-family residences are exempt from the emergency fee; however, property owners must still provide a written request per Section 4.03(c).

**The Control Officer may waive the asbestos project fee and notification period, by written authorization, for disposal of unused and intact or abandoned (without the knowledge or consent of the property owner) friable, asbestos-containing material.**

**(e) Repeal of Fees**

The repeal of fees for alternate means of compliance requests and annual notifications as formerly set forth in Section 4.03(d) of these regulations shall be applied retroactively and take effect as of March 9, 2000.

**WSR 02-09-083  
PROPOSED RULES  
PUGET SOUND  
CLEAN AIR AGENCY  
[Filed April 17, 2002, 9:55 a.m.]**

Original Notice.

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

Title of Rule: Amend Regulation I, Section 5.07.

Purpose: To increase the registration fees to cover the cost of the program and to add a 25% delinquency fee to any registration fees that are over ninety days past due.

Other Identifying Information: Regulation I, Section 5.07 pertains to Registration Fees.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: RCW 70.94.141.

Summary: Increases the registration fees to cover the cost of the program; and adds a 25% delinquency fee to any registration fees that are over 90 days past due.

Reasons Supporting Proposal: Registration fees need to cover the cost of the program.

Name of Agency Personnel Responsible for Drafting and Enforcement: Jim Nolan, 110 Union Street, #500, Seattle, WA 98101, (206) 689-4053; and Implementation: Tina Laing, 110 Union Street, #500, Seattle, WA 98101, (206) 689-4013.

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

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

Explanation of Rule, its Purpose, and Anticipated Effects: This proposal would increase the registration fees to cover the cost of the program; and add a 25% delinquency fee to any registration fees that are over ninety days past due.

Proposal Changes the Following Existing Rules: Registration fees would increase to cover program costs, and a 25% delinquency fee would be added to any registration fee charges that are over ninety days past due.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the small business economic impact provision of the Administrative Procedure Act.

RCW 34.05.328 does not apply to this rule adoption. Pursuant to RCW 70.94.141(1), RCW 34.05.328 does not apply to this rule adoption.

Hearing Location: Puget Sound Clean Air Agency, 110 Union Street, Suite 500, Seattle, WA 98101, on May 23, 2002, at 9:15 a.m.

Assistance for Persons with Disabilities: Contact Agency Receptionist, (206) 689-4010, by May 16, 2002, TDD (800) 833-6388, or (800) 833-6385 (Braille).

Submit Written Comments to: Dennis McLerran, Puget Sound Clean Air Agency, 110 Union Street, Suite 500, Seattle, WA 98101, fax (206) 343-7522, by May 13, 2002.

Date of Intended Adoption: May 23, 2002.

April 16, 2002

James Nolan

Director - Compliance

**AMENDATORY SECTION**  
**REGULATION I SECTION 5.07 REGISTRATION FEES**

(a) The Agency shall levy annual fees as set forth in Section 5.07(c) below for services provided in administering the registration program. Fees received under the registration program shall not exceed the cost of administering the program. Registration fees do not apply to sources subject to Article 7 of Regulation I.

(b) Upon assessment by the Agency, registration fees are due and payable within 30 days. They shall be deemed delin-

quent if not fully paid within 90 days and will be subject to an additional delinquent fee equal to 25% of the original fee, not to exceed \$1,000.

(c) Annual registration fees are assessed either by the emission reporting thresholds or, if below emission thresholds, by the primary North American Industry Classification System (NAICS) codes (*North American Industry Classification System Manual*, U.S. Executive Office of the President, Office of Management and Budget, 1997) or Standard Industrial Classification (SIC) codes (*Standard Industrial Classification Manual*, Executive Office of the President, Office of Management and Budget, 1987):

(1) Emission reporting sources under Section 5.05(d) that equal or exceed any of the emission thresholds in ~~((this))~~ that paragraph shall be charged an annual registration fee of ~~(\$1,200)~~ \$1,750 plus an additional emission rate fee of:

~~\$(20)~~ 22 for each ton of CO ~~((when the CO emissions are equal to or exceed 25 tons))~~ reported in the previous calendar year, and

~~\$(40)~~ 44 for each ton of NOx ~~((when the NOx emissions are equal to or exceed 25 tons))~~ reported in the previous calendar year, and

~~\$(40)~~ 44 for each ton of PM<sub>10</sub> ~~((when the PM<sub>10</sub> emissions are equal to or exceed 25 tons))~~ reported in the previous calendar year, and

~~\$(40)~~ 44 for each ton of SOx ~~((when the SOx emissions are equal to or exceed 25 tons))~~ reported in the previous calendar year, and

~~\$(40)~~ 44 for each ton of VOC ~~((when the VOC emissions are equal to or exceed 25 tons))~~ reported in the previous calendar year, and

~~\$(40)~~ 44 for each ton of HAP ~~((when the facility total HAP emissions are equal to or exceed 6 tons in the previous calendar year or when any single individual HAP emissions are equal to or exceed 2 tons))~~ reported in the previous calendar year.

(2) Emission reporting sources under Section 5.05(d) that equal or exceed twice any of the emission thresholds in ~~((this))~~ that paragraph shall be charged the annual registration fee of ~~(\$2,500)~~ \$3,500 plus an additional emission rate fee of:

~~\$(20)~~ 22 for each ton of CO ~~((when the CO emissions are equal to or exceed 50 tons))~~ reported in the previous calendar year, and

~~\$(40)~~ 44 for each ton of NOx ~~((when the NOx emissions are equal to or exceed 50 tons))~~ reported in the previous calendar year, and

~~\$(40)~~ 44 for each ton of PM<sub>10</sub> ~~((when the PM<sub>10</sub> emissions are equal to or exceed 50 tons))~~ reported in the previous calendar year, and

~~\$(40)~~ 44 for each ton of SOx ~~((when the SOx emissions are equal to or exceed 50 tons))~~ reported in the previous calendar year, and

~~\$(40)~~ 44 for each ton of VOC ~~((when the VOC emissions are equal to or exceed 50 tons))~~ reported in the previous calendar year, and

~~\$(40)~~ 44 for each ton of HAP ~~((when the facility total HAP emissions are equal to or exceed 12 tons in the previous calendar year or when any single individual HAP~~

~~emissions are equal to or exceed 5 tons))~~ reported in the previous calendar year.

(3) Automobile body repair and painting (SIC = 7532, NAICS = 81121)

without EnviroStar rating of 3, 4, or 5 stars . . . ~~\$(250)~~ 300

with EnviroStar rating of 3, 4, or 5 stars . . . . . \$50

(4) Perchloroethylene dry-cleaning plants, except rug cleaning (SIC = 7216, NAICS = 81232)

vented . . . . . \$500

unvented . . . . . \$50

(5) Gasoline service stations with gasoline annual throughput during the last calendar year (as certified at the time of annual fee payment) of:

(i) more than 6,000,000 ~~((1,200,000))~~ gallons . . . . . ~~\$(400)~~ subject to Section 5.07 (c)(1) above

(ii) 3,600,001 to 6,000,000 ~~((840,001 to 1,200,000))~~ gallons

~~((in Kitsap County))~~ . . . . . ~~\$(250)~~ 1,000

(iii) 1,200,001 to 3,600,000 ~~((600,001 to 1,200,000))~~ gallons

~~((in King, Pierce, or Snohomish County))~~ . . . . . ~~\$(250)~~ 600

(iv) 840,001 to 1,200,000 ~~((600,001 to 840,000))~~ gallons

~~((in Kitsap County))~~ . . . . . ~~\$(150)~~ 400

(v) 200,000 to 840,000 ~~((600,000))~~ gallons . . . . . ~~\$(150)~~ 200

(vi) less than 200,000 gallons . . . . . \$100

(6) Sources ~~((having 10 or more full-time employees at the facility site (as certified at the time of annual fee payment) and))~~ requiring registration under Section 5.03 in the following NAICS or SIC codes, or as subsequently assigned to Section 5.07 (c)(6) by the Control Officer, shall be charged an annual registration fee of ~~(\$1,200)~~ \$1,600:

NAICS	SIC	NAICS Description
212312	1422	Crushed and Broken Limestone Mining and Quarrying
212319	1429	Other Crushed and Broken Stone Mining and Quarrying
212321	1442	Construction Sand and Gravel Mining
212322	1446	Industrial Sand Mining
221122	4911	Electric Power Distribution
22132	4952	Sewage Treatment Facilities
23411	1611	Highway and Street Construction
<u>311111</u>	<u>2047</u>	<u>Dog and Cat Food Manufacturing</u>
<u>311119</u>	<u>2048</u>	<u>Other Animal Food Manufacturing</u>
<del>((311421</del>	<u>2035</u>	<u>Fruit and Vegetable Canning))</u>
<u>311612</u>	<u>2013</u>	<u>Meat Processed from Carcasses</u>
311613	2077	Rendering and Meat Byproduct Processing
311999	2099	All Other Miscellaneous Food Manufacturing
321114	2491	Wood Preservation

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NAICS	SIC	NAICS Description	NAICS	SIC	NAICS Description
324121	2951	Asphalt Paving Mixture and Block Manufacturing	333414	3433	Heating Equipment (except Warm Air Furnaces) Manufacturing
324122	2952	Asphalt Shingle and Coating Materials Manufacturing	333999	3599	All Other Miscellaneous General Purpose Machinery Manufacturing
325311	2873	Nitrogenous Fertilizer Manufacturing	<u>334412</u>	<u>3672</u>	<u>Bare Printed Circuit Board Manufacturing</u>
325314	2875	Fertilizer (Mixing Only) Manufacturing	334413	3674	Semiconductor and Related Device Manufacturing
325412	2834	Pharmaceutical Preparation Manufacturing	334418	3679	Printed Circuit Assembly (Electronic Assembly) Manufacturing
325612	2842	Polish and Other Sanitation Good Manufacturing	<u>335129</u>	<u>3648</u>	<u>Other Lighting Equipment Manufacturing</u>
32591	2893	Printing Ink Manufacturing	335312	7694	Motor and Generator Manufacturing
<u>326199</u>	<u>3089</u>	<u>All Other Plastics Product Manufacturing</u>	<u>335911</u>	<u>3691</u>	<u>Storage Battery Manufacturing</u>
326291	3061	Rubber Product Manufacturing for Mechanical Use	<u>336411</u>	<u>3721</u>	<u>Aircraft Manufacturing</u>
327211	3211	Flat Glass Manufacturing	<u>336413</u>	<u>3728</u>	<u>Other Aircraft Parts and Auxiliary Equipment Manufacturing</u>
32731	3241	Cement Manufacturing	336611	3731	Ship Building and Repairing
32732	3273	Ready-Mix Concrete Manufacturing	42251	5153	Grain and Field Bean Wholesalers
32739	3272	Other Concrete Product Manufacturing	((42269	<u>5169</u>	<del>Other Chemical and Allied Products-Wholesalers))</del>
32742	3275	Gypsum Product Manufacturing	<u>42271</u>	<u>5171</u>	<u>Petroleum Bulk Stations and Terminals</u>
32791	3291	Abrasive Product Manufacturing	<u>422720</u>	<u>5172</u>	<u>Petroleum and Petroleum Products Wholesalers (except Bulk Stations and Terminals)</u>
327992	3295	Ground or Treated Mineral and Earth Manufacturing	<u>481111</u>	<u>4512</u>	<u>Scheduled Passenger Air Transportation</u>
327999	3292, 3299	All Other Miscellaneous Nonmetallic Mineral Product Manufacturing	48691	4613	Pipeline Transportation of Refined Petroleum Products
331111	3312	Iron and Steel Mills	<u>48819</u>	<u>4581</u>	<u>Other Support Activities for Air Transportation</u>
331222	3315	Steel Wire Drawing	48821	4013	Support Activities for Rail Transportation
331312	3334	Primary Aluminum Production	<u>48849</u>	<u>4173</u>	<u>Other Support Activities for Road Transportation</u>
331492	3341	Secondary Smelting, Refining, and Alloying of Nonferrous Metal (except Copper and Aluminum)	562111	4953	Solid Waste Collection
331511	3321	Iron Foundries	<u>62211</u>	<u>8062</u>	<u>General Medical and Surgical Hospitals</u>
331512	3324	Steel Investment Foundries	62221	8063	Psychiatric and Substance Abuse Hospitals
331513	3325	Steel Foundries (except Investment)	62231	8069	Specialty (except Psychiatric and Substance Abuse) Hospitals
331524	3365	Aluminum Foundries (except Die-Casting)	<u>81221</u>	<u>7261</u>	<u>Funeral Homes and Funeral Services</u>
331525	3366	Copper Foundries (except Die-Casting)	<u>81222</u>	<u>7261</u>	<u>Cemeteries and Crematories</u>
331528	3369	Other Nonferrous Foundries (except Die-Casting)	81391	8611	Business Associations
332811	3398	Metal Heat Treating	<u>92214</u>	<u>9223</u>	<u>Correctional Institutions</u>
332812	3479	Metal Coating, Engraving (except Jewelry and Silverware), and Allied Services to Manufacturers			
332813	3471	Electroplating, Plating, Polishing, Anodizing, and Coloring			

(7) ((Other sources having 10 or more full-time employees at the facility site (as certified at the time of annual fee

payment) and requiring registration under Section 5.03 in the following North American Industry Classification System (NAICS) codes or Standard Industrial Classification (SIC) codes shall be charged an annual registration fee of \$600:))

All other sources requiring registration under Section 5.03 and not listed in Sections 5.07 (c)(1) through 5.07 (c)(6) or Section 5.07 (c)(8), shall be charged an annual registration fee of \$800.

((NAICS	SIC	NAICS Description	((NAICS	SIC	NAICS Description
			322212	2657	Folding Paperboard Box Manufacturing
			322213	2652	Setup Paperboard Box Manufacturing
			322231	2675	Die-Cut Paper and Paperboard-Office Supplies Manufacturing
			32311	2759	Printing
			323110	2752	Commercial Lithographic Printing
115112	0711	Soil Preparation, Planting, and Cultivating	325188	2819	All Other Basic Inorganic Chemical Manufacturing
212325	1459	Clay and Ceramic and Refractory Minerals Mining	325199	2869	All Other Basic Organic Chemical Manufacturing
22132	4952	Sewage Treatment Facilities	325211	2821	Plastics Material and Resin Manufacturing
22133	4961	Steam and Air Conditioning Supply	32551	2851	Paint and Coating Manufacturing
23321	1521	Single-Family Housing Construction	326112	2671	Unsupported Plastics Packaging-Film and Sheet Manufacturing
23499	1629	All Other Heavy Construction	326199	3089	All Other Plastics Product Manufacturing
23531	1731	Electrical Contractors			
311111	2047	Dog and Cat Food Manufacturing	326212	7534	Tire Retreading
311119	2048	Other Animal Food Manufacturing	327331	3271	Concrete Block and Brick Manufacturing
311211	2041	Flour Milling			
311422	2032	Specialty Canning	332112	3463	Nonferrous Forging
311612	2013	Meat Processed from Carcasses	332116	3469	Metal Stamping
311711	2091	Seafood Canning	332312	3441,	Fabricated Structural Metal Manufacturing
311821	2052	Cookie and Cracker Manufacturing		3449	
311822	2045	Flour Mixes and Dough Manufacturing from Purchased Flour	332322	3444	Sheet Metal Work Manufacturing
			332323	3446	Ornamental and Architectural Metal Work Manufacturing
311823	2098	Dry Pasta Manufacturing			
311919	2096	Other Snack Food Manufacturing	33242	3443	Metal Tank (Heavy Gauge) Manufacturing
31192	2095	Coffee and Tea Manufacturing			
312111	2086	Soft Drink Manufacturing	332618	3496	Other Fabricated Wire Product Manufacturing
31212	2082	Breweries			
321113	2421,	Sawmills	332993	3483	Ammunition (except Small Arms) Manufacturing
	2429				
321213	2439	Engineered Wood Member (except Truss) Manufacturing	332996	3498	Fabricated Pipe and Pipe Fitting Manufacturing
321219	2493	Reconstituted Wood Product Manufacturing	332999	3499	All Other Miscellaneous Fabricated Metal Product Manufacturing
32191	2431	Millwork			
321912	2426	Cut Stock, Resawing Lumber, and Planing	333294	3556	Food Product Machinery Manufacturing
32192	2441,	Wood Container and Pallet Manufacturing	333515	3545	Cutting Tool and Machine Tool Accessory Manufacturing
	2448				
321992	2452	Prefabricated Wood Building Manufacturing	333994	3567	Industrial Process Furnace and Oven Manufacturing
32213	2631	Paperboard Mills	334111	3571	Electronic Computer Manufacturing
322211	2653	Corrugated and Solid Fiber Box Manufacturing			

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((NAICS	SIC	NAICS Description	((NAICS	SIC	NAICS Description
33422	3663	Radio and Television Broadcasting and Wireless Communications-Equipment Manufacturing	48411	4212	General Freight Trucking, Local
334412	3672	Bare Printed Circuit Board Manufacturing	48819	4581	Other Support Activities for Air Transportation
334513	3823	Instruments and Related Products-Manufacturing for Measuring, Displaying, and Controlling Industrial-Process Variables	48832	4491	Marine Cargo Handling
334518	3873	Watch, Clock, and Part Manufacturing	48833	4492	Navigational Services to Shipping
335129	3648	Other Lighting Equipment Manufacturing	48849	4173	Other Support Activities for Road Transportation
335228	3639	Other Major Household Appliance Manufacturing	49312	4222	Refrigerated Warehousing and Storage
335911	3691	Storage Battery Manufacturing	51111	2711	Newspaper Publishers
335999	3629	All Other Miscellaneous Electrical Equipment and Component Manufacturing	51112	2721	Periodical Publishers
336211	3713	Motor Vehicle Body Manufacturing	51113	2731	Book Publishers
336411	3721	Aircraft Manufacturing	51421	7374	Data Processing Services
336413	3728	Other Aircraft Parts and Auxiliary Equipment Manufacturing	53111	6513	Lessors of Residential Buildings and Dwellings
33651	3743	Railroad Rolling Stock Manufacturing	54171	8731	Research and Development in the Physical, Engineering, and Life Sciences
33711	2434	Wood Kitchen Cabinet and Countertop Manufacturing	56121	8744	Facilities Support Services
337122	5712	Nonupholstered Wood Household Furniture Manufacturing	61131	8221	Colleges, Universities, and Professional Schools
42132	5032	Brick, Stone, and Related Construction Material Wholesalers	62211	8062	General Medical and Surgical Hospitals
42151	5051	Metal Service Centers and Offices	62431	8331	Vocational Rehabilitation Services
42169	5065	Other Electronic Parts and Equipment Wholesalers	712190	8422	Nature Parks and Other Similar Institutions
42193	5093	Recyclable Material Wholesalers	81221	7261	Funeral Homes and Funeral Services
42261	5162	Plastics Materials and Basic Forms and Shapes Wholesalers	81222	7261	Cemeteries and Crematories
42271	5171	Petroleum Bulk Stations and Terminals	812331	7219	Linen Supply
422720	5172	Petroleum and Petroleum Products Wholesalers (except Bulk Stations and Terminals)	812332	7218	Industrial Launderers
42299	5199	Other Miscellaneous Nondurable Goods Wholesalers	922120	9221	Police Protection
44419	5039	Other Building Material Dealers	92214	9223	Correctional Institutions
454312	5984	Liquefied Petroleum Gas (Bottled Gas) Dealers	92811	9711	National Security))
481111	4512	Scheduled Passenger Air Transportation			

((8) All other sources, not listed above in Sections (1) through (7), requiring registration under Section 5.03, shall be charged an annual registration fee of \$300.)

(8) All sources required to be registered by Section 5.07 (c)(7) that certify (using the procedures in WAC 296-27-00103: Partial Exemption for Employers With 10 or Fewer Employees) they did not employ more than 10 persons at any time during the previous calendar year, shall be charged an annual registration fee of \$400.

WSR 02-09-084
PROPOSED RULES
PUGET SOUND
CLEAN AIR AGENCY

[Filed April 17, 2002, 9:56 a.m.]

AMENDATORY SECTION
REGULATION I SECTION 6.04 NOTICE OF CONSTRUCTION FEES

(a) A Notice of Construction (NOC) application is incomplete until the Agency has received ((a)) fees as shown below:

Table listing various fees: Notice of Construction Filing Fee (\$750), Emission-Generating Equipment (\$500), Control Equipment (\$500), Composting Facility (\$5,000), Landfill Gas System (\$2,500), Refuse Burning Equipment (\$5,000-\$20,000), Commercial Solid Waste Handling Facility (\$5,000), Hot Mix Asphalt Batch Plants (\$7,000), etc.

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Original Notice. Exempt from preproposal statement of inquiry under RCW 70.94.141(1). Title of Rule: Amend Regulation I, Section 6.04. Purpose: To adjust the fees for notice of construction to cover program costs. Other Identifying Information: Regulation I, Section 6.04 pertains to Notice of Construction Fees. Statutory Authority for Adoption: Chapter 70.94 RCW. Statute Being Implemented: RCW 70.94.141. Summary: The increases in the Notice of Construction fees will help recover the cost of implementing the program. Reasons Supporting Proposal: The Notice of Construction fees need to cover the cost of implementing the program. Name of Agency Personnel Responsible for Drafting and Implementation: Steve Van Slyke, 110 Union Street, #500, Seattle, WA 98101, (206) 689-4052; and Enforcement: Jim Nolan, 110 Union Street, #500, Seattle, WA 98101, (206) 689-4053. Name of Proponent: Puget Sound Clean Air Agency, governmental. Rule is not necessitated by federal law, federal or state court decision. Explanation of Rule, its Purpose, and Anticipated Effects: This proposal will increase the notice of construction fees to cover the program costs. Proposal Changes the Following Existing Rules: The Notice of Construction fees will be adjusted to recover the costs of implementing the program. A Notice of Construction filing fee \$750 to be paid before application review will also be added.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the small business economic impact provision of the Administrative Procedure Act.

RCW 34.05.328 does not apply to this rule adoption. Pursuant to RCW 70.94.141(1), RCW 34.05.328 does not apply to this rule adoption.

Hearing Location: Puget Sound Clean Air Agency, 110 Union Street, Suite 500, Seattle, WA 98101, on May 23, 2002, at 9:15 a.m.

Assistance for Persons with Disabilities: Contact Agency Receptionist, (206) 689-4010, by May 16, 2002, TDD (800) 833-6388, or (800) 833-6385 (Braille).

Submit Written Comments to: Dennis McLerran, Puget Sound Clean Air Agency, 110 Union Street, Suite 500, Seattle, WA 98101, fax (206) 343-7522, by May 13, 2002.

Date of Intended Adoption: May 23, 2002.

April 16, 2002
Steven M. Van Slyke
Supervisory Engineer

PROPOSED

Emissions Units Subject to an NSPS or NESHAP (except residential wood heaters, asbestos renovation or demolition, and perchloroethylene dry cleaning) . . . . . \$1,000  
Public Notice (plus publication fees) . . . . . \$500

(b) A notification under Section 6.03 (b)(1) through Section 6.03 (b)(9) of this regulation is incomplete until the Agency has received a fee of \$100. A notification processed as a Notice of Construction exemption under Section 6.03 (b)(10) requires payment of the Notice of Construction filing fee.

(c) The Control Officer is authorized to enter into a written cost-reimbursement agreement with an applicant for review of complex projects, which require an environmental impact statement, as provided in RCW 70.94.085.

**WSR 02-09-085  
PROPOSED RULES  
PUGET SOUND  
CLEAN AIR AGENCY**  
[Filed April 17, 2002, 9:58 a.m.]

Original Notice.

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

Title of Rule: Amend Regulation I, Section 7.07.

Purpose: To adjust the fees for operating permits to cover program costs and to establish a fee for delinquent invoices to cover the cost of rebilling those facilities.

Other Identifying Information: Regulation I, Section 7.07 pertains to Operating Permit Fees.

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

Summary: The increases in the Operating Permit fees will help recover the cost of implementing the program. The addition of a delinquent fee will cover the cost of rebilling those facilities.

Reasons Supporting Proposal: The Operating Permit fees need to cover the cost of implementing the program.

Name of Agency Personnel Responsible for Drafting and Enforcement: Jim Nolan, 110 Union Street, #500, Seattle, WA 98101, (206) 689-4053; and Implementation: Tina Laing, 110 Union Street, #500, Seattle, WA 98101, (206) 689-4013.

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

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

Explanation of Rule, its Purpose, and Anticipated Effects: This proposal will increase the operating permit fees to cover the program costs and will establish a fee for delinquent invoices to cover the cost of having to rebill those facilities.

Proposal Changes the Following Existing Rules: Operating Permit base fees will be increased by 25% and emission fees by 10%. Also, a delinquent fee of 25% not to exceed \$5,000 will be established.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the small business economic impact provision of the Administrative Procedure Act.

RCW 34.05.328 does not apply to this rule adoption. Pursuant to RCW 70.94.141(1), RCW 34.05.328 does not apply to this rule adoption.

Hearing Location: Puget Sound Clean Air Agency, 110 Union Street, Suite 500, Seattle, WA 98101, on May 23, 2002, at 9:15 a.m.

Assistance for Persons with Disabilities: Contact Agency Receptionist, (206) 689-4010, by May 16, 2002, TDD (800) 833-6388, or (800) 833-6385 (Braille).

Submit Written Comments to: Dennis McLerran, Puget Sound Clean Air Agency, 110 Union Street, Suite 500, Seattle, WA 98101, fax (206) 343-7522, by May 13, 2002.

Date of Intended Adoption: May 23, 2002.

April 16, 2002

James Nolan

Director - Compliance

**AMENDATORY SECTION**

**REGULATION I SECTION 7.07 OPERATING PERMIT FEES**

(a) The Agency shall levy annual operating permit fees as set forth in Section 7.07(b) below to cover the cost of administering the operating permit program.

(b) Upon assessment by the Agency, the following operating permit fees are due and payable within 30 days. They shall be deemed delinquent if not fully paid within 90 days and will be subject to an additional delinquent fee equal to 25% of the original fee, not to exceed \$5,000.

(1) (~~Facility Fees:~~) Sources in the following North American Industry Classification System (NAICS) codes (North American Industry Classification System Manual, U.S. Executive Office of the President, Office of Management and Budget, 1997) or Standard Industrial Classification (SIC) codes, or sources subsequently determined by the control officer to be assigned to either Section 7.07 (b)(1)(i) or 7.07 (b)(1)(ii) shall be subject to the following facility fees:

(i) (~~Operating permit sources with the following North American Industry Classification System (NAICS) codes (North American Industry Classification System Manual, U.S. Executive Office of the President, Office of Management and Budget, 1997) or Standard Industrial Classification (SIC) codes:~~) Operating permit sources with the following NAICS/SIC codes:

NAICS	SIC	NAICS Description
32411	2911	Petroleum Refineries
32731	3241	Cement Manufacturing
331111	3312	Iron and Steel Mills
336411	3721	Aircraft Manufacturing
336413	3728	Other Aircraft Parts and Auxiliary Equipment Manufacturing
92811	9711	National Security

.....\$((25,000)) 30,000

(ii) Operating permit sources with the following NAICS/SIC codes:

NAICS	SIC	NAICS Description
23521	1721	Painting and Wall Covering Contractors
311812	2051	Commercial Bakeries
321114	2491	Wood Preservation
32191	2431	Millwork
321999	2499	All Other Miscellaneous Wood Product Manufacturing
322222	2672	Coated and Laminated Paper Manufacturing
32614	3086	Polystyrene Foam Product Manufacturing
32615	3086	Urethane and Other Foam Product (except Polystyrene) Manufacturing
327121	3251	Brick and Structural Clay Tile Manufacturing
332313	3443	Plate Work Manufacturing
332996	3498	Fabricated Pipe and Pipe Fitting Manufacturing
333415	3585	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing
33711	2434	Wood Kitchen Cabinet and Counter-top Manufacturing
81142	7641	Reupholstery and Furniture Repair

.....\$((5,000)) 7,500

(iii) Operating permit sources with NAICS/SIC codes other than listed above .....\$((10,000)) 15,000

(2) Additional emission rate fees shall be paid in addition to the annual operating permit fees of Section 7.07 (b)(1):

\$((20)) 22 for each ton of CO reported (~~when the CO emissions are equal to or exceed 25 tons~~) in the previous calendar year, and

\$((40)) 44 for each ton of NOx reported (~~when the NOx emissions are equal to or exceed 25 tons~~) in the previous calendar year, and

\$((40)) 44 for each ton of PM<sub>10</sub> reported (~~when the PM<sub>10</sub> emissions are equal to or exceed 25 tons~~) in the previous calendar year, and

\$((40)) 44 for each ton of SOx reported (~~when the SOx emissions are equal to or exceed 25 tons~~) in the previous calendar year, and

\$((40)) 44 for each ton of VOC reported (~~when the VOC emissions are equal to or exceed 25 tons~~) in the previous calendar year, and

\$((40)) 44 for each ton of HAP reported (~~when the facility total HAP emissions are equal to or exceed 6 tons~~) in the previous calendar year (~~or when any single individ-~~

ual HAP emissions are equal to or exceed 2 tons in the previous calendar year)).

(c) In addition to the fees under Sections 7.07 (b)(1) and (b)(2) above, the Agency shall, on a source-by-source basis, levy the following fees:

(1) \$250 for administrative permit amendments, and

(2) for minor permit modifications, a fee equal to 10% of the annual operating permit fee, not to exceed \$5,000, and

(3) for the issuance, significant modification, or renewal of an operating permit, a fee equal to 20% of the annual operating permit fee, not to exceed \$10,000, and

(4) to cover the cost of public involvement under WAC 173-401-800, and

(5) to cover the cost incurred by the Washington State Department of Health in enforcing 40 CFR Part 61, Subpart I and Chapter 246-247 WAC.

(d) In addition to the fees described under Sections 7.07 (b) and (c) above, the Agency shall collect and transfer to the Washington State Department of Ecology a surcharge established by the Department of Ecology under Chapter ((WAC)) 173-401 WAC to cover the Department of Ecology's program development and oversight costs.

(e) Continued payment to the Agency of the annual operating permit fee maintains the operating permit and the status of the source as an operating facility.

**WSR 02-09-092  
PROPOSED RULES  
DEPARTMENT OF  
LABOR AND INDUSTRIES**

[Filed April 17, 2002, 10:37 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 02-04-107 on February 6, 2002.

Title of Rule: Safety and health core rules, chapter 296-800 WAC and General occupational health standards, chapter 296-62 WAC.

Purpose: In November 2001 we made certain housekeeping changes to chapter 296-800 WAC, the safety and health core rules. We now need to incorporate all the editing and other suggested changes into the rules. Changes proposed here are strictly clarification, editing and housekeeping changes. In general we are proposing to:

- Move the emergency washing requirements from chapter 296-62 WAC, General occupational health standards to the first-aid section (WAC 296-800-150) in chapter 296-800 WAC, the safety and health core rules.
- Rewrite the safety committees and safety meetings section (WAC 296-800-130) for clarity.

**WAC 296-62-130 Emergency washing facilities.**

- Move these requirements to the first-aid section (WAC 296-800-150) in chapter 296-800 WAC, the safety and health core rules.
- A note will be added to WAC 296-62-130 stating that requirements relating to emergency washing facilities

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have been moved and the requirements left in WAC 296-62-130 only apply to agriculture.

**WAC 296-62-060 Control requirements in addition to those specified.**

- WAC 296-62-052 Access to records, already covers requirements in this section so they are being repealed.
- A note will be added to this section stating that these requirements only apply to agriculture.

**WAC 296-62-070 Chemical agents (airborne or contact).**

- A note will be added to this section stating that the requirements in WAC 296-62-070 through 296-62-07005 only apply to agriculture.

**WAC 296-62-080 Biological agents.**

- Move the definition of "biological agents" to the definitions section (WAC 296-800-370) in chapter 296-800 WAC, Safety and health core rules.
- Move the requirement relating to protecting employees from biological agents to the employer responsibility section (WAC 296-800-110) in chapter 296-800 WAC, Safety and health core rules.
- A note will be added to this section stating that these requirements only apply to agriculture.

**WAC 296-800-110 Employer responsibilities: Safe workplace—Summary.**

- Add two new sections that exist currently in chapter 296-62 WAC, General occupational health standards, and incorporate into this section.
- Reformat the note.

**WAC 296-800-11040 Control chemical agents.**

- Create this new section and incorporate current requirements relating to controlling chemical agents from WAC 296-62-07005.

**WAC 296-800-11045 Protect employees from biological agents.**

- Create this new section and incorporate current requirements relating to protecting employees from biological agents from WAC 296-62-080.

**WAC 296-800-130 Safety committees and safety meetings—Summary.**

- Change the title of this section to "safety committees/meetings."
- Change the titles and section numbers of all the sections located in WAC 296-800-130.
- Clarify language relating to the differences between a safety committee and a safety meeting.

**WAC 296-800-13005 Establish a safety committee or have safety meetings.**

- Incorporate language from this section into WAC 296-800-13020, 296-800-13025, 296-800-13030, 296-800-13035, and 296-800-13040.
- Repeal this section.

**WAC 296-800-13010 Make sure that each meeting includes a discussion of established safety topics.**

- Incorporate language from this section into WAC 296-800-13020, 296-800-13025, 296-800-13030, 296-800-13035, and 296-800-13040.
- Repeal this section.

**WAC 296-800-13015 Make sure that safety committee meeting minutes are recorded and preserved.**

- Incorporate language from this section into WAC 296-800-13020, 296-800-13025, 296-800-13030, 296-800-13035, and 296-800-13040.
- Repeal this section.

**WAC 296-800-13020 Decide whether you need to establish a safety committee or hold safety meetings.**

- Create this new section and incorporate language from WAC 296-800-13005, 296-800-13010, and 296-800-13015 for clarity.

**WAC 296-800-13025 Establish and conduct safety committees.**

- Create this new section and incorporate language from WAC 296-800-13005, 296-800-13010, and 296-800-13015 for clarity.

**WAC 296-800-13030 Follow these rules to conduct safety meetings.**

- Create this new section and incorporate language from WAC 296-800-13005, 296-800-13010, and 296-800-13015 for clarity.

**WAC 296-800-13035 Cover these topics during safety committees and safety meetings.**

- Create this new section and incorporate language from WAC 296-800-13005, 296-800-13010, and 296-800-13015 for clarity.

**WAC 296-800-13040 Record safety committee minutes and preserve them.**

- Create this new section and incorporate language from WAC 296-800-13005, 296-800-13010, and 296-800-13015 for clarity.

**WAC 296-800-150 First-aid—Summary.**

- Add three new sections that exist currently in chapter 296-62 WAC relating to requirements for emergency washing facilities.
- Change the note to a reference.

**WAC 296-800-15030 Make sure emergency washing facilities are functional and readily accessible.**

- Create this new section and incorporate current requirements relating to emergency washing facilities being functional and readily accessible from WAC 296-62-130.

**WAC 296-800-15035 Inspect and activate your emergency washing facilities.**

- Create this new section and incorporate current requirements relating to inspecting and activating emergency washing facilities from WAC 296-62-130.

**WAC 296-800-15040 Make sure supplemental flushing equipment provides sufficient water.**

- Create this new section and incorporate current requirements relating to the supplemental flushing equipment providing sufficient water from WAC 296-62-130.

**WAC 296-800-16050 Make sure your employees use appropriate eye and face protection.**

- Add the word "punctures" to the list of examples in the first bullet.
- Correct a reference.

**WAC 296-800-16070 Make sure your employees are protected from drowning.**

- Clarify language.
- Delete language relating to the prohibition of ski belts or inflatable type PFDs.
- Delete first bullet in the note to address a "not-at-least-as-effective-as" issue.
- Add clarifying language in the chart relating to Type V PFDs.
- Add a note relating to what a Type IV PFD is.

**WAC 296-800-170 Employer chemical hazard communication—Introduction.**

- Add language to the "Important" section relating to using safer chemicals.
- Change a note to a reference.

**WAC 296-800-17020 Make sure material safety data sheets (MSDSs) are readily accessible to your employees.**

- Clarify the language in the second bullet.

**WAC 296-800-17025 Label containers holding hazardous chemicals.**

- Add a note relating to labels.
- Clarify language relating to removing or defacing existing labels on incoming containers of hazardous chemicals.

**WAC 296-800-17030 Inform and train your employees about hazardous chemicals in your workplace.**

- Reformat this section for clarity.

**WAC 296-800-18010 Inform current employees of exposure records.**

- Clarify language.
- Add a note relating to toxic chemicals.

**WAC 296-800-18015 Provide access to exposure records.**

- Clarify language in the note.

**WAC 296-800-20005 Post and keep a WISHA poster in your workplace.**

- Clarify note by adding language indicating other posters may be required.

**WAC 296-800-23010 Clearly mark the water outlets that are not fit for drinking (nonpotable).**

- Add the words "except in emergencies" in subsection (1) as a result of the addition of the emergency washing facilities requirements being incorporated into chapter 296-800 WAC.
- Clarify language in subsection (2).

- Add a reference relating to where the emergency washing facilities requirements are located.

**WAC 296-800-23020 Provide bathrooms for your employees.**

- Clarify language.
- Add language relating to bathrooms being maintained in a clean and sanitary condition.

**WAC 296-800-25015 Provide handrails and stair railings.**

- Clarify language.
- Change the note to a reference and delete an incorrect reference.

**WAC 296-800-28040 Make sure electrical equipment is effectively grounded.**

- Clarify language.
- Correct the illustration.

**WAC 296-800-28045 Make sure electrical equipment has overcurrent protection.**

- Clarify language.

**WAC 296-800-32025 Document the investigation findings.**

- Change the title of this section to "document the preliminary investigation findings."
- Clarify language.

**WAC 296-800-35030 Base penalty adjustments.**

- Replace the word "employee's" with "employer's."

**WAC 296-800-35040 Reasons for increasing civil penalty amounts.**

- Add an example to the willful portion of this section.

**WAC 296-800-35056 You can request more time to comply.**

- Add language relating to the assistant director responding to requests received by telephone or personal conversation if timely.

**WAC 296-800-35076 Employers and employees can request an appeal of a citation and notice.**

- Reformat this section for clarity.

**WAC 296-800-370 Definitions.**

- Add the following definitions:
  - Biological agents
  - Chemical agents (airborne or contact)
  - Corrosive
  - Emergency washing facilities
  - Exposure record
  - Hand-held drench hoses
  - Personal eyewash units
  - Strong irritant
  - Toxic chemical
  - Work area
- Modified the following definitions:
  - Employee
  - Employer
  - Flammable
  - Oxidizer
  - Person

Statutory Authority for Adoption: RCW 49.17.010, [49.17].040, and [49.17].050.

Statute Being Implemented: Chapter 49.17 RCW.

Summary: See Purpose above.

Reasons Supporting Proposal: See Purpose above.

Name of Agency Personnel Responsible for Drafting: Tracy Spencer, Tumwater, (360) 902-5530; Implementation and Enforcement: Michael A. Silverstein, Tumwater, (360) 902-5495.

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: See Purpose above.

Proposal Changes the Following Existing Rules: See Purpose above.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The Regulatory Fairness Act (RFA), chapter 19.85 RCW, requires the agency to prepare a small business economic impact statement (SBEIS) if the proposed rule will have a disproportionate impact on the state's small businesses because of the size of those businesses.

In this case the agency is exempt from conducting an SBEIS under RCW 19.85.025(3) referencing RCW 34.05.310(4). This states that an SBEIS is not required for rules, which only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect. Here the proposed amendments to chapters 296-800 and 296-62 WAC only seek to make clarifying corrections such as formatting and language.

RCW 34.05.328 applies to this rule adoption. Significant rule-making criteria does apply to these rule amendments because they do not meet the exempt criteria outlined in RCW 34.05.328(5).

Hearing Location: Department of Labor and Industries Building, Room S117, 7273 Linderson Way S.W., Tumwater, WA, on May 23, 2002, at 1:30 p.m.

Assistance for Persons with Disabilities: Contact Sally Elliott by May 10, 2002, at (360) 902-5484.

Submit Written Comments to: Cindy Ireland, Project Manager, WISHA Services Division, P.O. Box 44620, Olympia, WA 98507-4620, by 5:00 p.m. on May 30, 2002. In addition to written comments, the department will accept comments submitted to fax (360) 902-5529 and via e-mail to mooc235@lni.wa.gov. Comments submitted by fax must be ten pages or less.

Date of Intended Adoption: July 1, 2002.

April 17, 2002

Gary Moore

Director

**AMENDATORY SECTION** (Amending WSR 01-23-060, filed 11/20/01, effective 12/1/01)

**WAC 296-800-110 Employer responsibilities: Safe workplace—Summary.** Your responsibility: To provide a safe and healthy workplace free from recognized hazards.

**Important: Use these rules where there are no specific rules applicable to the particular hazard.**

You must:

Provide a workplace free from recognized hazards.

WAC 296-800-11005.

Provide and use means to make your workplace safe.

WAC 296-800-11010.

Prohibit employees from entering, or being in, any workplace that is not safe.

WAC 296-800-11015.

Construct your workplace so it is safe.

WAC 296-800-11020.

Prohibit alcohol and narcotics from your workplace.

WAC 296-800-11025.

Prohibit employees from using equipment or materials that do not meet requirements.

WAC 296-800-11030.

Establish, supervise, and enforce rules that lead to a safe and healthy work environment that are effective in practice.

WAC 296-800-11035.

**Control chemical agents.**

**WAC 296-800-11040.**

**Protect employees from biological agents.**

**WAC 296-800-11045.**

Note: ~~((Use these rules where there are no specific rules applicable to the particular hazard.~~

→) Employees may discuss and participate in any WISHA safety and health related practice and may refuse to perform dangerous tasks without fear of discrimination. Discrimination includes: Dismissal, demotion, loss of seniority, denial of a promotion, harassment, etc. ((t))See chapter 296-360 WAC, Discrimination((t)) pursuant to RCW 49.17.160, for a complete description of discrimination and the department's responsibility to protect employees.

#### **NEW SECTION**

**WAC 296-800-11040 Control chemical agents.** You must:

- Control chemical agents in a manner that they will not present a hazard to your workers; or
- Protect workers from the hazard of contact with, or exposure to, chemical agents.

Note: Pesticides are considered to be chemical agents. As required by this rule, you must control them or provide protection to workers from exposure to pesticide hazards. Pesticide manufacturers supply precautionary statements in the information provided with the pesticide that tells you how to protect your workers from these hazards.

#### **NEW SECTION**

**WAC 296-800-11045 Protect employees from biological agents.** You must:

- Protect employees from exposure to hazardous concentrations of biological agents that may result from processing, handling or using materials or waste.

Note: Potential exposure to biological agents occurs during cleanup, or other tasks, where employees handle:

- Animals or animal waste
- Body fluids
- Biological agents in a medical research lab

- Mold or mildew

Check The Center of Disease Control website (www.cdc.gov) to find published guidelines and information on safe handling and protection from specific biological agents (examples: Hanta virus, TB).

**AMENDATORY SECTION** (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-130 Safety committees ((and))/safety meetings—Summary. Important:**

This rule requires you to have a method of communicating and evaluating safety and health issues raised by you or your employees in your workplace. Larger employers must establish a safety committee. Smaller employers have the choice of either establishing a safety committee or holding safety meetings with a management representative present.

There is a difference between a safety committee and a safety meeting.

• A safety committee is designed to allow an organizational structure where members represent a group. This gives everyone a voice but keeps the meeting size to an effective number of participants.

• A safety meeting includes all employees and a management person is there to ensure that issues are addressed. Typically, the safety committee is an effective safety management tool for a larger employer and safety meetings are more effective for a smaller employer.

The following rules give you what is specifically needed for each type of meeting. See the table in WAC 296-800-13020.

**Your responsibility:**

To establish a ((workplace)) safety committee((meeting to develop)) or hold safety meetings to create and maintain a safe and healthy workplace for all employees.

You must:

~~((Establish a safety committee or have safety meetings. WAC 296-800-13005.~~

~~Make sure that each meeting includes a discussion of established safety topics.~~

~~WAC 296-800-13010.~~

~~Make sure that safety committee meeting minutes are recorded and preserved.~~

~~WAC 296-800-13015.)) Decide whether you need to establish a safety committee or hold safety meetings.~~

~~WAC 296-800-13020.~~

~~Establish and conduct safety committees.~~

~~WAC 296-800-13025.~~

~~Follow these rules to conduct safety meetings.~~

~~WAC 296-800-13030.~~

~~Cover these topics during safety committees and safety meetings.~~

~~WAC 296-800-13035.~~

~~Record safety committee minutes and preserve them.~~

~~WAC 296-800-13040.~~

**NEW SECTION**

**WAC 296-800-13020 Decide whether you need to establish a safety committee or hold safety meetings. You must:**

If:	Then:	Comply with these sections of this chapter:
You employ 11 or more employees on the same shift at the same location	You must establish a safety committee	WAC 296-800-13025, 296-800-13035, and 296-800-13040
You have 10 or fewer employees	You may choose to hold a safety meeting instead of a safety committee	WAC 296-800-13030 and 296-800-13035
If you have 11 or more employees that <ul style="list-style-type: none"> <li>• Work on different shifts with 10 or fewer employees on each shift</li> <li>OR</li> <li>• Work in widely separate locations with 10 or fewer employees at each location</li> </ul>	You may choose to hold a safety meeting instead of a safety committee	WAC 296-800-13030 and 296-800-13035

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**NEW SECTION**

**WAC 296-800-13025 Establish and conduct safety committees. You must:**

• Make sure your safety committee:

- Has employee-elected and employer-selected members.
- The number of employee-elected members must equal or exceed the number of employer-selected members.

Note: Employees selected by the employees bargaining representative or union qualify as employee-elected.

• The term of employee-elected members must be a maximum of one year. (There is no limit to the number of terms a representative can serve.)

- If there is an employee-elected member vacancy, a new member must be elected prior to the next scheduled meeting.
  - Has an elected chairperson.
  - Determines how often, when, and where, the safety committee will meet.

Note: • Meetings should be one hour or less, unless extended by a majority vote of the committee.

• If the committee cannot agree on the frequency of meetings, the department of labor and industries regional safety consultation representative should be consulted for recommendations. (See the resources section of this book for contacts.)

**NEW SECTION**

**WAC 296-800-13030 Follow these rules to conduct safety meetings. You must:**

- Make sure your safety meetings:

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- Are held monthly. You may meet more often to discuss safety issues as they come up.
- Have at least one management representative.

**((Note:)) Reference:** Your workplace may be covered by separate first-aid rules. If you do any of the types of work listed below, you must follow separate industry specific rules:

**NEW SECTION**

**WAC 296-800-13035 Cover these topics during safety committees and safety meetings.** You must:

- Review safety and health inspection reports to help correct safety hazards.
- Evaluate the accident investigations conducted since the last meeting to determine if the cause(s) of the unsafe situation was identified and corrected.
- Evaluate your workplace accident and illness prevention program and discuss recommendations for improvement, if needed.
- Document attendance.
- Write down subjects discussed.

**Note:** There are no formal documentation requirements for safety meetings except for writing down who attended and the topics discussed.

**NEW SECTION**

**WAC 296-800-13040 Record safety committee minutes and preserve them.** You must:

- Prepare minutes from each safety committee and:
  - Preserve them for one year.
  - Make them available for review by safety and health consultation personnel of the department of labor and industries.

**AMENDATORY SECTION** (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-150 Rule summary.** Your responsibility: Make sure first-aid trained personnel are available to provide quick and effective first aid.

You must:

Make sure that first-aid trained personnel are available to provide quick and effective first aid.

WAC 246-800-15005.

Make sure first-aid training contains required subjects.

WAC 296-800-15010.

Keep current and document your first-aid training.

WAC 296-800-15015

Make sure appropriate first-aid supplies are readily available.

WAC 296-800-15020.

Provide a first-aid station when required.

WAC 296-800-15025.

Make sure emergency washing facilities are functional and readily accessible.

WAC 296-800-15030.

Inspect and activate your emergency washing facilities.

WAC 296-800-15035.

Make sure supplemental flushing equipment provides sufficient water.

WAC 296-800-15040.

<b>Industry</b>	<b>Chapter (WAC)</b>
Agriculture	296-307
Compressed air	296-36
Construction	296-155
Fire fighting	296-305
Logging	296-54
Sawmill	296-78
Ship building and repairing	296-304

You can get copies of these rules by calling 1-800-4BE SAFE (1-800-423-7233), or by going to <http://www.lni.wa.gov>.

**NEW SECTION**

**WAC 296-800-15030 Make sure emergency washing facilities are functional and readily accessible.** You must:

- Provide an emergency shower:
  - When there is potential for major portions of an employee's body to contact corrosives, strong irritants, or toxic chemicals.
  - That delivers water to cascade over the user's entire body at a minimum rate of 20 gallons (75 liters) per minute for fifteen minutes or more.
- Provide an emergency eyewash:
  - When there is potential for an employee's eyes to be exposed to corrosives, strong irritants, or toxic chemicals.
  - That irrigates and flushes both eyes simultaneously while the user holds their eyes open.
  - With an on-off valve that activates in one second or less and remains on without user assistance until intentionally turned off.
  - That delivers at least 0.4 gallons (1.5 liters) of water per minute for fifteen minutes or more.

**Note:** Chemicals that require emergency washing facilities:

- You can determine whether chemicals in your workplace require emergency washing facilities by looking at the material safety data sheet (MSDS) or similar documents. The MSDS contains information about first-aid requirements and emergency flushing of skin or eyes.
- For chemicals developed in the workplace, the following resources provide information about first-aid requirements:
  - NIOSH Pocket Guide to Chemical Hazards
  - \*DHHS (NIOSH) Publication No. 97-140
  - \*<http://www.cdc.gov/niosh/npg/ggdstart.html>
  - Threshold Limit Values for Chemical Substances and Physical Agents American Conference of Governmental Industrial Hygienists (ACGIH)

You must:

- Make sure emergency washing facilities:
  - Are located so that it takes no more than ten seconds to reach.
  - Are kept free of obstacles blocking their use.
  - Function correctly.
  - Provide the quality and quantity of water that is satisfactory for emergency washing purposes.

Note: • If water in emergency washing facilities is allowed to freeze, they will not function correctly. Precautions need to be taken to prevent this from happening.  
 • The travel distance to an emergency washing facility should be no more than fifty feet (15.25 meters).  
 • For further information on the design, installation, and maintenance of emergency washing facilities, see American National Standards Institute (ANSI) publication Z358.1 - 1998, *Emergency Eyewash and Shower Equipment*. Emergency washing facilities that are designed to meet ANSI Z358.1 - 1998 also meet the requirements of this standard. The ANSI standard can be obtained from the American National Standards Institute, 1430 Broadway, New York, New York 10018.

Reference: • Training in the location and use of your emergency washing facilities is required under the employer chemical hazard communication rule, WAC 296-800-170, and the accident prevention program rule, WAC 296-800-140.  
 • All emergency washing facilities using "not fit for drinking" (nonpotable) water must have signs stating the water is "not fit for drinking." See WAC 296-800-23010.

**NEW SECTION**

**WAC 296-800-15035 Inspect and activate your emergency washing facilities.** You must:

• Make sure all plumbed emergency washing facilities are inspected once a year to make sure they function correctly.

Note: Inspections should include:  
 • Examination of the piping  
 • Making sure that water is available at the appropriate temperature and quality  
 • Activation to check that the valves and other hardware work properly  
 • Checking the water flow rate.

You must:

• Make sure plumbed emergency eyewashes and hand-held drench hoses are activated weekly to check the proper functioning of the valves, hardware, and availability of water  
 • Make sure all self-contained eyewash equipment and personal eyewash units are inspected and maintained according to manufacturer instructions.  
 – Inspections to check proper operation must be done once a year  
 – Sealed personal eyewashes must be replaced after the manufacturer's expiration date.

Note: Most manufacturers recommend replacing fluid in open self-contained eyewashes every six months. The period for sealed containers is typically two years.

**NEW SECTION**

**WAC 296-800-15040 Make sure supplemental flushing equipment provides sufficient water.**

Note: Supplemental flushing equipment cannot be used in place of required emergency showers or eyewashes.

You must:

• Make sure hand-held drench hoses deliver at least 3.0 gallons (11.4 liters) of water per minute for fifteen minutes or more.

Note: Why use a drench hose? A drench hose is useful when:  
 • The spill is small and does not require an emergency shower

• Used with a shower for local rinsing, particularly on the lower extremities.

You must:

• Make sure personal eyewash equipment delivers only clean water or other medically approved eye flushing solutions.

**AMENDATORY SECTION** (Amending WSR 01-23-060, filed 11/20/01, effective 12/1/01)

**WAC 296-800-16050 Make sure your employees use appropriate eye and face protection.** You must:

• Make sure that employees exposed to hazards that could injure their eyes and/or face use appropriate protection. Examples of these hazards include:

- Flying particles.
- Molten metal.
- Liquid chemicals.
- Acids or caustic liquids.
- Chemical gases or vapors.
- Any light that could injure the eyes such as lasers, ultraviolet, or infrared light.
- Objects that puncture.

• Make sure employees exposed to hazards from flying objects have eye protection with side protection, such as safety glasses with clip-on or slide-on side shields.

• Make sure eye protection for employees who wear prescription lenses:  
 – Incorporates the prescription into the design of the eye protection; or  
 – Is large enough to be worn over the prescription lenses without disturbing them.

• Make sure PPE used to protect the eyes and face meet the following specific ANSI (American National Standards Institute) standards((+))<sub>2</sub> ((+))Most commercially available PPE is marked with the specific ANSI requirements.((+))

- PPE bought before February 20, 1995, must meet ANSI standard ((A87)) Z87.1-1968.
- PPE bought on or after February 20, 1995, must meet ANSI standard Z87.1-1989.

((-)) • If you use eye or face protection that does not meet these ANSI standards, you must show they are equally effective.

Note: ANSI is the American National Standards Institute that publishes nationally recognized safety and health requirements. Their address is:  
 ANSI (American National Standards Institute)  
 1819 L Street NW  
 Washington, DC 20036  
 Phone: (202) 293-8020  
 Fax: (202) 293-9287  
<http://www.ansi.org>

**AMENDATORY SECTION** (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-16070 Make sure your employees are protected from drowning.** You must:

(1) Provide and make sure your employees wear personal flotation devices (PFD).

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- When they work in areas where the danger of drowning exists, such as:
  - On the water.
  - Over the water.
  - Alongside the water.

Note: Employees are not exposed to the danger of drowning when:  
 ((~~The water is known to be less than chest high on the employee.~~)  
 – Employees are working behind standard height and strength guardrails.  
 – Employees are working inside operating cabs or stations that eliminate the possibility of accidentally falling into the water.  
 – Employees are wearing an approved safety belt with a lifeline attached that prevents the possibility of accidentally falling into the water.

You must:

- Provide your employees with PFDs approved by the United States Coast Guard ((PFDs—Ski belts or inflatable type PFDs are prohibited)) for use on commercial or merchant vessels. The following are appropriate or allowable United States Coast Guard-approved PFDs:

Type of PFD	General Description
Type I	Off-shore life jacket((;))_ effective for all waters or where rescue may be delayed.
Type II	Near-shore buoyant vest((;))_ intended for calm, inland water or where there is a good chance of quick rescue.
Type III	Flotation aid((;))_ good for calm, inland water, or where there is a good chance of rescue.
Type V	Flotation aids such as board-sailing vests, deck suits, ((and)) work vests <u>and inflatable PFDs marked for commercial use</u> .

Note: • Commercially available PFDs are marked or imprinted with the type of PFD.  
 • Type IV PFDs are throwable devices. They are used to aid persons who have fallen into the water.

You must:

- Inspect PFDs before and after each use for defects and make sure that defective PFDs are not used.  
 ((You must:))  
 (2) Provide approved life rings with an attached line on all docks, walkways, and fixed installations on or adjacent to water more than five feet deep.
  - Life rings must:
    - Be United States Coast Guard approved 30 inch size.
    - Have attached lines that are at least 90 feet in length.
    - Have attached lines at least 1/4 inch in diameter.

- Have attached lines with a minimum breaking strength of 500 pounds.
- Be spaced no more than 200 feet apart.
- Be kept in easily visible and readily accessible locations.

- Life rings and attached lines must:
  - Be maintained to retain at least 75 percent of their designed buoyancy and strength.
  - Be provided in the immediate vicinity when employees are assigned work at other casual locations where the risk of drowning exists.
  - Work assigned over water where the vertical drop from an accidental fall would be more than 50 feet, must be subject to specific procedures as approved by the department.

AMENDATORY SECTION (Amending WSR 01-23-060, filed 11/20/01, effective 12/1/01)

**WAC 296-800-170 Employer chemical hazard communication—Introduction.** Important:

Thousands of chemicals can be found in today's workplaces. These chemicals may have the capacity to cause health problems, from minor skin irritations to serious injuries or diseases like cancer. You should review the type of chemicals you use and consider using less hazardous chemicals (such as less toxic and nonflammable chemicals).

The Employer Chemical Hazard Communication rule was developed to make sure employers and employees are informed about chemical hazards in the workplace.

This rule applies to:

- Employers engaged in businesses where chemicals are used, distributed, or produced for use or distribution.
- Contractors or subcontractors that work for employers engaged in businesses where chemicals are used, distributed, or produced for use or distribution.

Exemptions: • Certain products, chemicals, or items are exempt from this rule. Below is a summarized list of these exemptions. See WAC 296-800-17055 at the end of this rule to get complete information about these exemptions:

- Any hazardous waste or substance
- Tobacco or tobacco products
- Wood or wood products that are not chemically treated and will not be processed, for example, by sawing and sanding
- Food or alcoholic beverages
- Some drugs, such as retail or prescription medications
- Retail cosmetics
- Ionizing and nonionizing radiation
- Biological hazards
- Any consumer product or hazardous substance when workplace exposure is the same as that of a consumer
- ◆ Retail products used in offices in the same manner and frequency used by consumers can be termed "consumer products", and include things such as: Correction fluid, glass cleaner, and dishwashing liquid.

Example: If you use a household cleaner in your workplace in the same manner and frequency that a consumer would use it when cleaning their house, your exposure should be the same as the consumer's, you are exempt. A janitor using a household cleaner,

such as bleach, throughout the day, is not considered to be a consumer, and is not exempt.

- Manufactured items that remain intact are exempt from this rule.
- Manufactured items that are fluids or in the form of particles are not exempt from this rule.

The following are examples:

Item	Covered by this rule	Not covered by this rule
Brick	Sawed or cut in half	Used whole or intact
Pipe	Cut by a torch	Bent with a tube bender
Nylon Rope	Burning the ends	Tying a knot

- ((Note:)) Reference:**
- If you produce, import, distribute and/or repackage chemicals, or choose not to rely on labels or material safety data sheets provided by the manufacturer or importer, you must comply with chemical hazard communication for manufacturers, importers and distributors, WAC 296-62-054.
  - You may withhold trade secret information under certain circumstances. See trade secrets, WAC 296-62-053, to find out what information may be withheld as a trade secret and what information must be released.

**Your responsibility:** To inform and train your employees about the hazards of chemicals they may be exposed to during normal working conditions, or in foreseeable emergencies by:

- Making a list of the hazardous chemicals present in your workplace
- Preparing a written Chemical Hazard Communication Program for your workplace
- Informing your employees about this rule and your program
- Providing training to your employees about working in the presence of hazardous chemicals
- Getting and keeping the material safety data sheets (MSDSs) for the hazardous chemicals
- Making sure that labels on containers of hazardous chemicals are in place and easy to read

You must:

Develop, implement, maintain, and make available a written Chemical Hazard Communication Program.

WAC 296-800-17005.

Identify and list all the hazardous chemicals present in your workplace.

WAC 296-800-17010.

Obtain and maintain material safety data sheets (MSDS) for each hazardous chemical used.

WAC 296-800-17015.

Make sure that material safety data sheets (MSDS) are readily accessible to your employees.

WAC 296-800-17020.

Label containers holding hazardous chemicals.

WAC 296-800-17025.

Inform and train your employees about hazardous chemicals in your workplace.

WAC 296-800-17030.

Follow these rules for laboratories using hazardous chemicals.

WAC 296-800-17035.

Follow these rules for handling chemicals in factory sealed containers.

WAC 296-800-17040.

The department must:

Translate certain chemical hazard communication documents upon request.

WAC 296-800-17045.

Attempt to obtain a material safety data sheet (MSDS) upon request.

WAC 296-800-17050.

Exemption:

Items or chemicals exempt from the rule, and exemptions from labeling.

WAC 296-800-17055.

**AMENDATORY SECTION** (Amending WSR 01-23-060, filed 11/20/01, effective 12/1/01)

**WAC 296-800-17020 Make sure material safety data sheets (MSDSs) are readily accessible to your employees.** You must:

- Make sure that MSDSs are readily accessible, easily obtained without delay during each work shift by employees when they are in their work area(s).

~~((Make sure that employees can immediately obtain the required MSDS information in an emergency.~~

~~Where employees must travel between workplaces during a work shift, such as when their work is carried out at more than one geographical location, the MSDSs may be kept at a central location at the primary workplace facility.~~

~~This can be done by means such as voice communication or laptop computer.))~~

• Make sure that employees, who must travel between workplaces during a work shift, such as when their work is carried out at more than one geographical location, can immediately obtain the required MSDS information in an emergency. (MSDSs may be kept at a central location at the primary workplace facility and accessed by means such as voice communication or laptop computer.)

Note: • Electronic access (such as computer or fax), microfiche, and other alternatives to maintaining paper copies of the MSDSs are permitted as long as they do not create barriers to immediate employee access in each workplace.

- Barriers to immediate access of electronic MSDSs may include:

- Power outages
- Equipment failure
- System delays
- Deficient user knowledge to operate equipment
- Location of equipment outside the work area.

Solutions to eliminating these and other possible barriers to access may require the availability of back-up systems, employee training, and providing access equipment in the work areas.

- MSDSs must also be made readily available, upon request, to the department in accordance with the requirements of material safety data sheets (MSDSs) as exposure records, WAC 296-800-180. NIOSH (National Institute for Occupational Safety and Health) must also be given access to MSDSs in the same manner.

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**AMENDATORY SECTION** (Amending WSR 01-23-060, filed 11/20/01, effective 12/1/01)

**WAC 296-800-17025 Label containers holding hazardous chemicals.**

- Exemptions:**
- The following is a summary of items that are exempt from this rule:
    - Pesticides, when labeled as required by the Environmental Protection Agency (EPA).
    - Food, food additives, color additives, drugs, cosmetics, or medical/veterinary devices or products.
    - Alcoholic beverages not intended for industrial use.
    - Consumer products labeled as required by the Consumer Product Safety Commission.
    - Agriculture or vegetable seeds treated and labeled as required by the Federal Seed Act.
- For complete information about each of these, see WAC 296-800-17055.

**Note:** You are not required to label portable containers into which hazardous chemicals are transferred from labeled containers, if the chemical is used and controlled by the same employee who performed the transfer within the same shift.

**You must:**

- Make sure that each container of hazardous chemicals in the workplace is labeled, tagged, or marked with the following information:

- The identity of the hazardous chemical(s) using either the chemical or common name.

- Appropriate hazard warnings which give general information about the relevant health and physical hazards of the chemicals. This includes health effects information, such as information about organs most likely to be affected by the chemicals.

- For individual stationary process containers, you may use alternate labeling methods such as:

- ◆ Signs
- ◆ Placards
- ◆ Process sheets
- ◆ Batch tickets
- ◆ Operating procedures or
- ◆ Other such written materials,

as long as the alternate method identifies the containers and conveys the required label information.

- Note:**
- You do not need to put on new labels if existing labels already provide the required information.
  - You are not required to list each component in a hazardous mixture on the label. If a mixture is referred to on ~~((a material safety data sheet-))~~ an MSDS((s)) by a product name, then the product name should be used as the identifier.
  - You may use words, pictures, symbols, or any combination of these, to communicate the hazards of the chemical.

**Sample Container Labels**

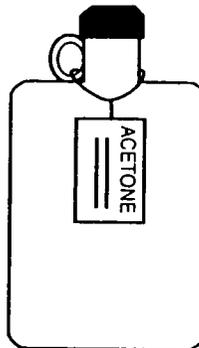


- Be sure to train your employees so they can demonstrate a knowledge of the labeling system you use.
- Some alternative labeling systems do no communicate target organ information, so the employee will have to rely on

training provided by the employer to obtain this information.

**You must:**

- Not remove or deface existing labels on incoming containers of hazardous chemicals ~~((such as those marked with the United States Department of Transportation (USDOT) markings, placards and labels,))~~ unless the container is immediately labeled with the required information. ~~((You do not need to put on new labels if existing labels already provide the required information. If the package or container is sufficiently cleaned of residue and purged of vapors to remove any potential health or physical hazard, existing labels can be removed.))~~



~~((Above))~~ This is an example of a labeled container. You may use a laminated or coated label, affixed to the container with a wire, to avoid deterioration of labels due to a solvent, such as acetone.

**You must:**

- Make sure that labels or other forms of warning are legible, in English, and prominently displayed on the container, or readily available in the work area throughout each work shift.

**Note:** Employers with non-English speaking employees may use other languages in the warning information in addition to the English language.

- Make sure if the hazardous chemical is regulated by WISHA or OSHA in a substance-specific health rule, that the labels or other warnings are used according to those rules.

**AMENDATORY SECTION** (Amending WSR 01-23-060, filed 11/20/01, effective 12/1/01)

**WAC 296-800-17030 Inform and train your employees about hazardous chemicals in your workplace.** You must:

- Provide employees with effective information on hazardous chemicals in their work area at the time of their initial job assignment. Whenever a new physical or health hazard related to chemical exposure is introduced into their employees' work areas, information must be provided.

– Inform employees of:

- ◆ The requirements of this rule
- ◆ Any operations in their work area where hazardous chemicals are present
- ◆ The location and availability of your written Chemical Hazard Communication Program, including the list(s) of

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hazardous chemicals and material safety data sheets (MSDSs) required by this rule.

• Provide employees with effective training about hazardous chemicals in their work area at the time of their initial job assignment. Whenever a new physical or health hazard related to chemical exposure is introduced, the employees must be trained.

• Make sure employee training includes:

– Methods and observations that may be used to detect the presence or release of a hazardous chemical in the work area. Examples of these methods and observations may include:

- ◆ Monitoring conducted by you
- ◆ Continuous monitoring devices
- ◆ Visual appearance or odor of hazardous chemicals when being released

((↔)) = Physical and health hazards of the chemicals in the work area, including the likely physical symptoms or effects of overexposure

((↔)) = Steps employees can take to protect themselves from the chemical hazards in your workplace, including specific procedures implemented by you to protect employees from exposure to hazardous chemicals. Specific procedures may include:

- Appropriate work practices
- Engineering controls
- Emergency procedures
- Personal protective equipment to be used

((■)) = Details of the chemical hazard communication program developed by you, including an explanation of the labeling system and the MSDS, and how employees can obtain and use the appropriate hazard information.

• Tailor information and training to the types of hazards to which employees will be exposed. The information and training may be designed to cover categories of hazards, such as flammability or cancer-causing potential, or it may address specific chemicals. Chemical-specific information must always be available through labels and MSDSs

• Make reasonable efforts to post notices in your employees' native languages (as provided by the department) if those employees have trouble communicating in English.

- Note:
- Interactive computer-based training or training videos can be used provided they are effective.
  - Your MSDSs may not have WISHA permissible exposure limits (PELs) listed. In some cases, WISHA PELs are stricter than the OSHA PELs and other exposure limits listed on the MSDSs you receive. If this is the case, you must refer to the WISHA PEL table, WAC 296-62-075, for the appropriate exposure limits to be covered during training.

**AMENDATORY SECTION** (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-18010 Inform current employees of exposure records.** You must:

• Inform current employees who are, or will be exposed to a toxic ((~~substance or harmful physical agents~~)) chemical of:

- Note:
- A chemical is toxic if:
  - The latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic

Effects of Chemical Substances (RTECS) lists the substance. This may be obtained on-line, CD-ROM, or on a computer tape.

• Testing by or known to the employer has shown positive evidence that the substance is an acute or chronic health hazard.

• A material safety data sheet (MSDS) kept by or known to the employer shows the material may be a hazard to human health.

– The existence, location, and availability of ((~~material safety data sheets~~))MSDSs((↔)) or alternative records, and any other records covered by this rule.

– The person responsible for maintaining and providing access to records.

– Exposure records when the employee first enters into employment and then once a year thereafter.

– Existence and their rights of access to these records.

((~~Exposure records when the employee first enters into employment and then once a year thereafter.~~))

Note: Informing employees of the availability of these records may be accomplished by posting, group discussion or by individual notifications.

You must:

- Keep a copy of this rule and make copies available upon request to employees.
- Distribute to employees any informational materials about this rule that are made available to the employer by the department.

**AMENDATORY SECTION** (Amending WSR 01-23-060, filed 11/20/01, effective 12/1/01)

**WAC 296-800-18015 Provide access to exposure records.** You must:

• Provide access, whenever requested by an employee or their designated representative, to a relevant exposure record:

– In a reasonable time, place, and manner.

– Within fifteen working days. If the employer cannot meet this requirement, they must inform the requesting party of the reason for the delay and the earliest date the record will be made available.

- Note:
- Employee means any current, former or transferred worker.
  - A relevant exposure record ((~~could be~~)) is an MSDS((s)) or ((~~their~~)) its alternative((s));
  - OR
  - ) or analysis using MSDSs or their alternative.

You must:

• Make sure ((~~the department~~)) labor and industries has prompt access to any exposure records and related analysis. This must be done without violation of any rights under the Constitution or the Washington Industrial Safety and Health Act that the employer chooses to exercise.

Note: Nothing in this rule is meant to prevent employees and collective bargaining agents from getting access to information beyond that is required by this rule.

You must:

• Make sure that whenever an employee or designated representative requests an initial copy of an exposure record, related analysis or new information added to the record:

– A copy of the record is provided without cost to the employee or their representative or

- The facilities are made available for copying without cost to the employee or their representative or
- The record is loaned to the employee or their representative for a reasonable time to enable a copy to be made.

Note: Whenever a record has been previously provided without cost to an employee or designated representative, and they request additional copies, the employer may charge reasonable, non-discriminatory administrative costs (e.g., search and copying expenses, but no overhead expenses).

**AMENDATORY SECTION** (Amending WSR 01-23-060, filed 11/20/01, effective 12/1/01)

**WAC 296-800-20005 Post and keep a WISHA poster in your workplace.** You must:

- Post it where it can easily be seen by employees and keep it in good condition.

Note: • Other programs within labor and industries may require other workplace posters. These are:  
 - Job safety and health protection  
AND  
 - Notice to employees—If a job injury occurs  
AND  
 - Your rights as a nonagricultural worker  
 • You can ((order)) obtain a free copy of ((the WISHA Poster (Form F416-081-000))) labor and industries posters from any labor and industries office or by printing it off our website (<http://www.lni.wa.gov/ipub/101-054-000.htm>). You can find the labor and industries office closest to you by:  
 ((Looking at <http://www.wa.gov/lni/pa/direct.htm> or  
 • Calling 1-800-4BE SAFE (1-800-423-7233) or))  
 • Checking the resource section of this book for regional offices.  
OR  
 - Calling 1-800-4BE SAFE (1-800-423-7233)  
OR  
 - <http://www.lni.wa.gov/wisha/question.htm#contact>.

**AMENDATORY SECTION** (Amending WSR 01-23-060, filed 11/20/01, effective 12/1/01)

**WAC 296-800-23010 Clearly mark the water outlets that are not fit for drinking (nonpotable).** You must:

(1) Mark nonpotable water outlets, such as those used for industrial processes or fire fighting, so that no one will use them for:

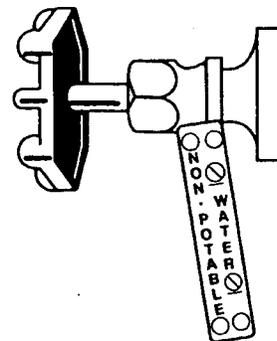
- Drinking
- Washing themselves, except in emergencies
- Cooking
- Washing food, eating utensils, or clothing.

(2) Prohibit the use of nonpotable water containing substances that could create unsafe conditions such as:

- Concentrations of chemicals, for example, lead or chlorine((~~γ~~))
- Fecal coliform bacteria((~~γ~~ or other substances)).

Note: As long as the water does not contain substances that could create unsafe conditions, then nonpotable water can be used for:  
 - Cleaning work premises that do not involve food preparation or food processing  
 - Cleaning personal service rooms, such as bathrooms.

Reference: For additional requirements for emergency washing facilities see WAC 296-800-150.



Outlets for water not fit to drink must be marked.

**AMENDATORY SECTION** (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-23020 Provide bathrooms for your employees.**

Exemption: You do not have to provide bathrooms ((~~for~~)):  
 • For mobile crews, if the employees ((working there)) have transportation immediately available to nearby bathrooms that meet the requirements of this ((rule)) section.  
 • At work locations not normally attended by employees, if they have transportation immediately available to nearby bathrooms meeting the requirements of this ((rule)) section.

You must:  
 (1) Provide bathrooms with the appropriate number of toilets for your employees at every workplace. ((See)) Use the chart below to determine how many toilets you need at your workplace.

Number of Employees*	Minimum Number of Toilets Required**
1 to 15	1
16 to 35	2
36 to 55	3
56 to 80	4
81 to 110	5
111 to 150	6
Over 150	One additional toilet for each additional 40 employees

\* The "number of employees" used in this table means the maximum number of employees present at any one time on a regular shift.  
 \*\* A shared bathroom (multiple toilets without enclosures) counts as one toilet no matter how many toilets it contains. In bathrooms used only by men, urinals may be substituted for up to one-third of the required toilets.

You must:  
 • Have the appropriate number of toilets for each ((sex)) gender, based on the number of male and female employees at your workplace. For example, if you have 37 men and 17

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women, you need to have three toilets for the men and two toilets for the women, based on the chart ((provided)) in this section.

– Separate bathrooms for men and women are not required if the bathroom:

◆ Will be occupied by no more than one person at a time

◆ Can be locked from the inside

◆ Contains at least one toilet

• Make sure each toilet is in a separate compartment with a door and walls, or partitions to assure privacy.

(2) Provide toilet paper ((with)) and a toilet paper holder for every toilet.

(3) Make sure the sewage disposal method does not endanger the health of employees.

(4) Make sure bathrooms are maintained in a clean and sanitary condition.

AMENDATORY SECTION (Amending WSR 01-23-060, filed 11/20/01, effective 12/1/01)

**WAC 296-800-25015 Provide handrails and stair railings.**

Exemption: Vehicle service pit stairways are exempt from the rules for stairway railing and guards, if they would prevent a vehicle from moving into a position over the pit.

Definition: • A handrail is a single bar or pipe on brackets from a wall or partition to provide a continuous handhold for persons using a stair.

• A stair railing is a vertical barrier attached to a stairway with an open side, to prevent falls. The top surface of the stair railing is used as a handrail.

You must:

• Make sure stairways less than forty-four inches wide have:

– At least one handrail, preferably on your right side as you go down the stairs, if both sides are enclosed.

OR

– At least one stair-railing on the open side, if one side is open.

OR

– One stair railing on each side, if both sides are open.

• Make sure stairways more than forty-four inches wide but less than eighty-eight inches wide have:

– One handrail on each enclosed side.

– One stair-railing on each open side.

• Make sure stairways at least eighty-eight inches wide have:

– One handrail on each enclosed side.

– One stair railing on each open side.

– One intermediate stair railing located approximately midway of the width.

• Equip winding stairs with a handrail, offset to prevent walking on all portions of the treads, less than six inches wide.

((Note:)) Reference: Railings must consist of a top rail, intermediate rail, and posts. To see all of the rules for building handrails and stairway railings, refer to WAC ((296-24-75009 and)) 296-24-75011, of the general safety and health standard.

AMENDATORY SECTION (Amending WSR 01-23-060, filed 11/20/01, effective 12/1/01)

**WAC 296-800-28040 Make sure electrical equipment is effectively grounded.** You must:

• Make sure the path to ground from circuits, equipment, and enclosures is permanent and continuous.

• Make sure equipment connected by cord and plug is grounded under these conditions:

– Equipment with exposed noncurrent carrying metal parts.

– Cord and plug connected equipment which may become energized.

– Equipment that operates at over 150 volts to ground.

– Equipment in hazardous locations. (WAC 296-24-95613)

Exemption: ((Except for)) This does not apply to guarded motors and metal frames of electrically heated appliances, if the appliance frames are permanently and effectively insulated from ground.

You must:

• Ground the following type of equipment:

– Hand-held motor-operated tools

– Refrigerators

– Freezers

– Air conditioners

– Clothes washers and dryers

– Dishwashers

– Electrical aquarium equipment

– Hedge clippers

– Electric lawn mowers

– Electric snow blowers

– Wet scrubbers

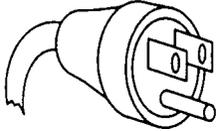
– Tools likely to be used in damp or wet locations

– Appliances used by employees standing on the ground, on metal floors or working inside of metal tanks or boilers

– Portable hand lamps

Note: Grounding can be achieved by: Using tools and appliances equipped with an equipment grounding conductor (three-prong plug and grounded electrical system).

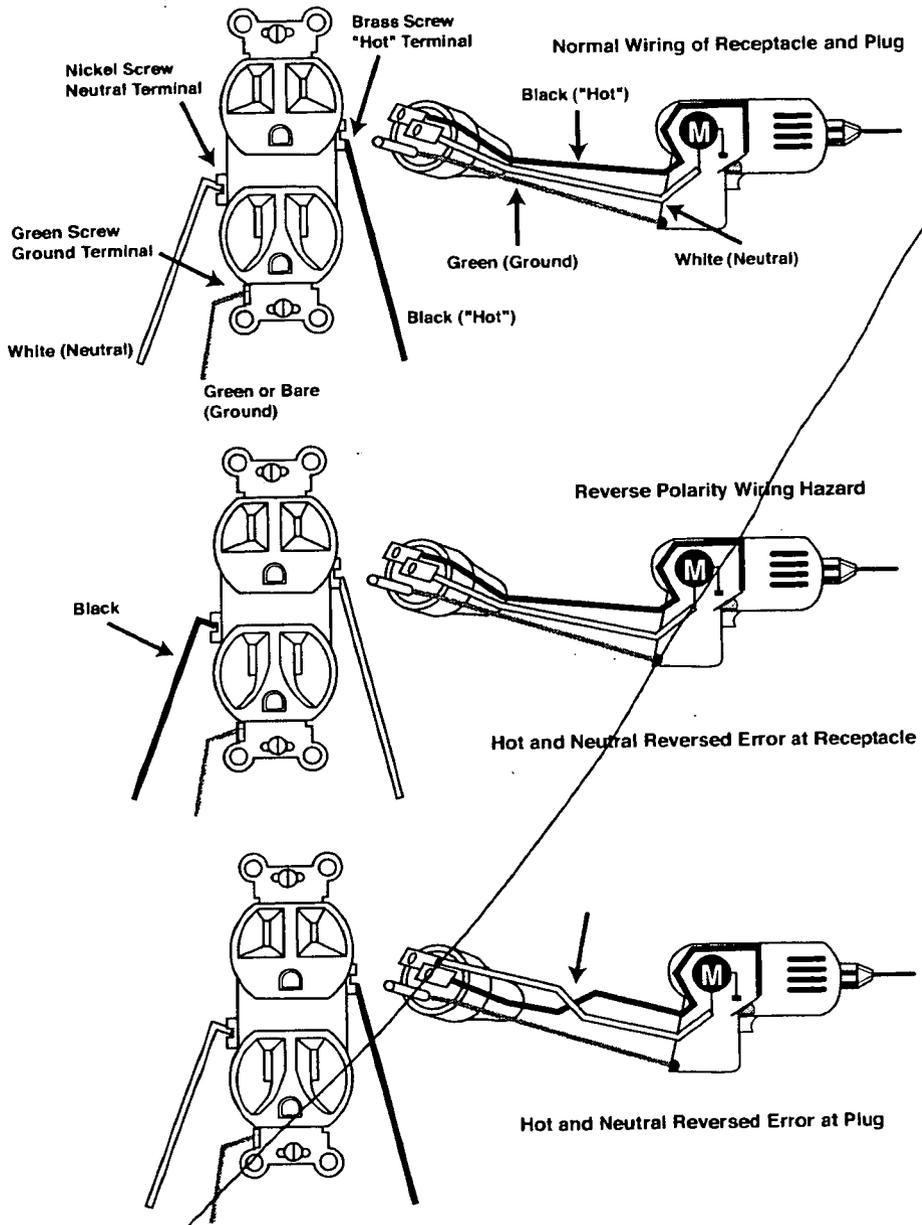
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Grounded Plug	Double Insulated
	<p data-bbox="681 250 893 285"><b>Double Insulated</b></p> 
<p data-bbox="397 375 1165 420">Hand held tools and some other types of equipment must use a 3-wire plug or the tool label must show the tool as insulated by words or symbol.</p>	

You must:

- Make sure exposed metal parts of fixed equipment that do not conduct electricity, but may become energized, are grounded if the equipment is in a wet or damp location and is not isolated.
- Make sure ground wires are identified and look different than the other conductors (wires).
- Make sure ((~~ground wires~~) grounded conductors) are not attached to any terminal or lead to reverse polarity of the electrical outlet or receptacle. See illustration - Examples of wiring.
- Make sure grounding terminals or grounding-type devices on receptacles, cords, connectors, or attachments plugs are not used for purposes other than grounding.

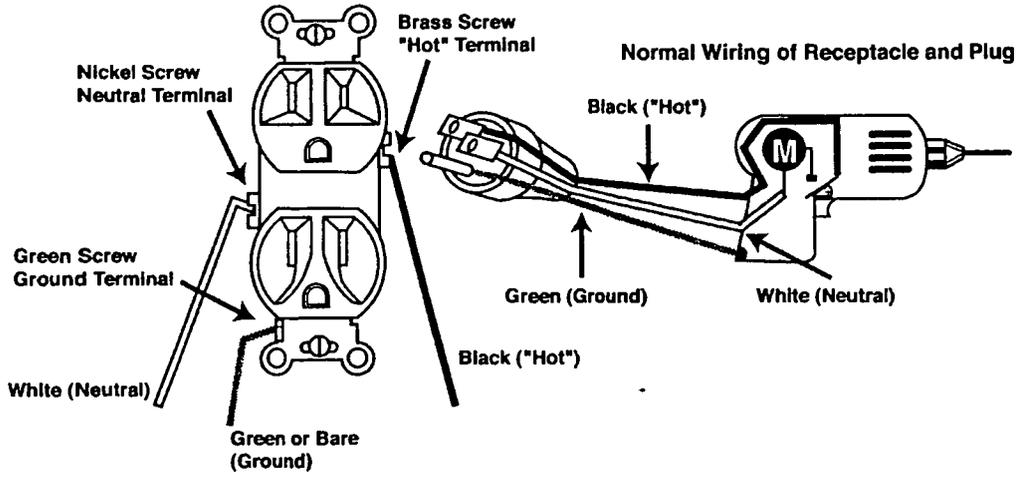
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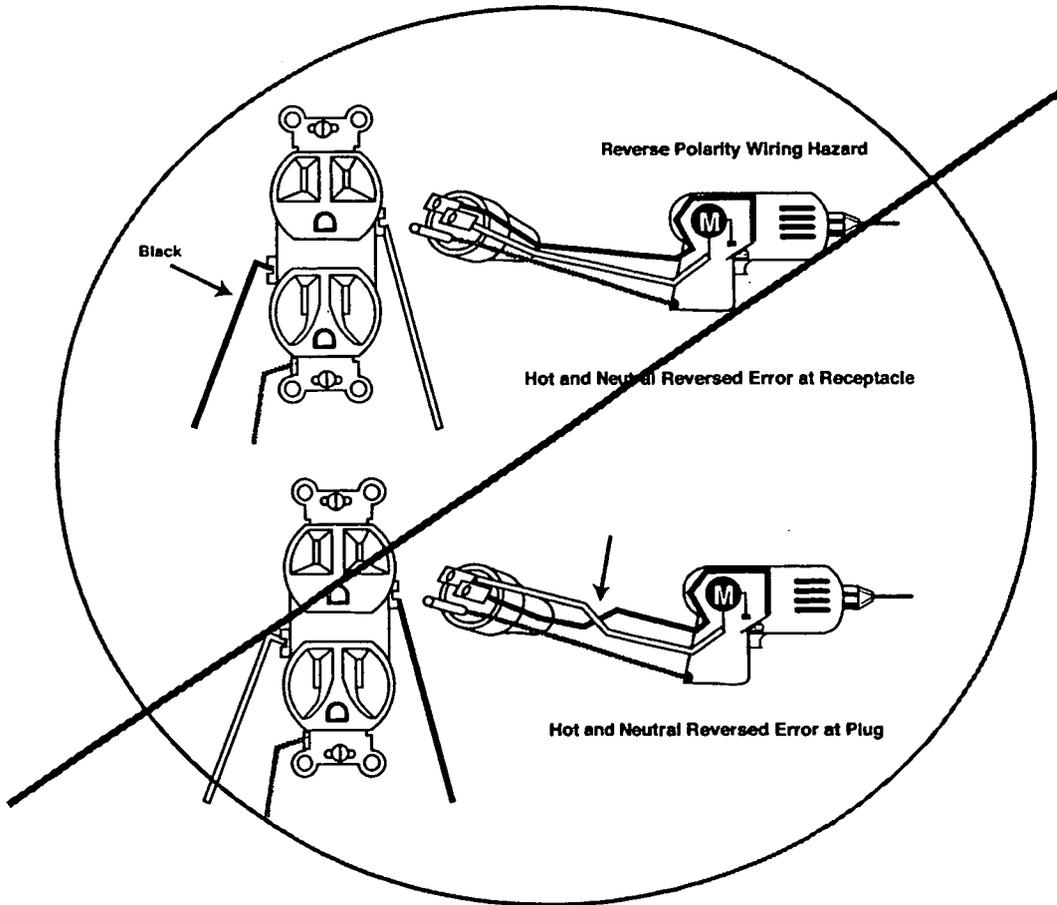
Reverse polarity wiring can cause a faulty tool to start as soon as it is plugged in or not stop when the switch is released. This could cause an injury. An extremely dangerous type of reverse polarity wiring switches the hot and ground wires. This causes the body of the tool or appliance to be "hot". Touching the tool and conductive surface can result in serious or even deadly shock.

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### EXAMPLES OF WIRING



### CORRECT WIRING



### INCORRECT WIRING

**AMENDATORY SECTION** (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-28045 Make sure electrical equipment has overcurrent protection.** You must:

- Make sure all electrical circuits that are rated at 600 volts or less have overcurrent protection.
- Protect conductors and equipment according to their ability to safely conduct electrical current.
- Make sure overcurrent devices do not interrupt the continuity of grounded conductors unless(=
  - ) all conductors are opened at the same time ((~~or~~ ~~You are using the overcurrent devices to protect from overload when running motors~~)), except for motor running overload protection.
    - ((~~You~~)) Protect employees from electrical arcing or suddenly moving electrical parts by locating fuses and circuit breakers in safe places. If this is not possible, install shields on fuses and circuit breakers.
- Make sure the following fuses and thermo cutouts have disconnecting mechanisms:
  - All cartridge fuses accessible to nonqualified persons
  - All fuses on circuits over 150 volts to ground
  - All thermal cutouts on circuits over 150 volts to ground(=)
    - The disconnecting mechanisms must be installed so you can disconnect the fuses or thermal cutouts without disrupting service to equipment and circuits unrelated to those protected by the overcurrent device.
- Provide easy access to overcurrent devices for each employee or authorized building management personnel.
- Protect the overcurrent devices by locating them away from easily ignitable material.
  - They must be placed to avoid exposure to physical damage.
- Make sure circuit breakers:
  - Clearly indicate when they are open (off) and closed (on)
    - That operate vertically are installed so the handle is in the "up" position when the breaker is closed (on). See WAC 296-24-95603 (2)(c) for more information
    - Used as switches in 120-volt, fluorescent lighting circuit must be approved for that purpose and marked "SWD." See WAC 296-24-95603 (2)(c) for more information(=)
      - That have arcing or suddenly moving parts, are shielded or located so employees will not get burned or injured by the operation of the circuit breaker.
        - ◆ ((~~Fuses must also be shielded in this way~~)) Make sure fuses that have arcing or suddenly moving parts, are shielded or located so employees will not get burned or injured by the operation of the fuses.

**AMENDATORY SECTION** (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-32025 Document the preliminary investigation findings.** You must:

- Document the preliminary investigation findings for ((reference following)) use at any formal investigation.

**AMENDATORY SECTION** (Amending WSR 01-23-060, filed 11/20/01, effective 12/1/01)

**WAC 296-800-35030 Base penalty adjustments.**

- WISHA may adjust an ((~~employee's~~)) employer's base penalty amount because of the good faith effort, size, and compliance history. No adjustments are made to penalty amounts specified by statute.

**AMENDATORY SECTION** (Amending WSR 01-23-060, filed 11/20/01, effective 12/1/01)

**WAC 296-800-35040 Reasons for increasing civil penalty amounts.**

- WISHA may increase civil penalties by applying a multiplier to an adjusted base penalty. Multipliers may be applied for the following reasons:

**Repeat violations:**

A repeat violation occurs when WISHA cites an employer more than once in the last 3 years for a substantially similar hazard.

- The 3-year period is measured from the date of the final order for each previous citation

- The adjusted base penalty will be multiplied by the total number of inspections with violations (including the current inspection with a violation) involving similar hazards

- The maximum penalty cannot exceed \$70,000 for each violation

**Willful violations:**

A willful violation is a voluntary action done either with an intentional disregard of, or plain indifference to, the requirements of the applicable WISHA rule(s):

- For all willful violations, the adjusted base penalty will be multiplied by 10

- All willful violations will receive at least the statutory minimum penalty of \$5,000

- The maximum penalty cannot exceed \$70,000 for each violation

For example: When management is aware that employees are resistant to following specific WAC rule(s); employee resistance results in imminent danger situation or a serious violation; and management fails to make efforts that are effective in practice to overcome the resistance, then WISHA will presume that the failure constitutes voluntary action.

**Egregious violations:**

An egregious violation may be issued for exceptionally flagrant cases involving willful violations. In these cases, WISHA will issue a separate penalty for each instance of an employer failing to comply with a particular rule

**Failure-to-abate violations:**

A failure-to-abate violation occurs when an employer who has been cited for a WISHA violation, fails to correct the violation on time (certifying corrected violations is covered in WAC 296-800-35200 through 296-800-35270)

- The maximum penalty cannot exceed \$7,000 for every day the violation is not corrected
- For a general violation with no initial penalty, the minimum failure-to-abate penalty is \$1,000, with a possible adjustment for the employer's effort to comply
- For violations with an initial penalty, WISHA, based on the facts at the time of reinspection:
  - ◆ Will multiply the adjusted base penalty by 5, but may possibly make adjustments for the employer's effort to comply
  - ◆ May multiply the adjusted base penalty by the number of days past the correction date if the employer does not make an effort to comply.

**AMENDATORY SECTION** (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-35056 You can request more time to comply.**

- You can request more time to comply if you:
  - Have made a good faith effort to comply with a citation's abatement requirements
  - Have not completed your abatement because of factors beyond your control
- Requests for more time must:
  - Be submitted in writing by you or your representative, and include:
    - The name of your business
    - The address of the workplace(s)
    - Identification of the citation and the abatement date(s) you want extended
    - The new abatement date and length of abatement period you are seeking
    - A description of the actions you have taken to comply with the abatement date(s) in the citation
    - Identification of the factors beyond your control that are preventing you from complying with the abatement date(s)
    - The means you will use to protect your employees during the time you are abating the violation.
    - Be received before midnight of the date you are asking to be extended
  - The department may accept late requests if they are:
    - Received within 5 days following the applicable correction date.
    - Accompanied by your written statement explaining the exceptional circumstances that caused the delay.
- The assistant director may respond to a request received by telephone or personal conversation if the request is timely.

Note: The department does not accept late requests when compliance activity related to the abatement starts before the request is received.

- The department accepts requests by:
  - First class mail postage prepaid. Mailed to: Department of Labor and Industries  
WISHA Appeals  
P.O. Box 44604  
Olympia, WA 98504-4604
  - Personal delivery

- Fax: (360) 902-5581

**AMENDATORY SECTION** (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-35076 Employers and employees can request an appeal of a citation and notice.**

**EMPLOYER REQUESTS**

- Any employer cited for a violation of WISHA safety and health rules may appeal a citation or corrective notice.
- Your request must include:
  - Business name, address, telephone number; and the name, address and telephone number of any person representing you.
  - Citation number.
  - What you think is wrong with the citation or corrective notice and any related facts.
  - What you think should be changed, and why.

**EMPLOYEE REQUESTS**

- Any employee or employee representative who could be affected by a citation or its correction may appeal the abatement date in the citation or corrective notice.
- Your request must include:
  - Your name, address, telephone number, and the name, address and telephone number of any person representing you
  - Citation number
  - What you think is wrong with the abatement date

**SUBMITTING APPEAL REQUESTS**

- All appeal requests must be in writing and submitted to the department within 15 working days after receiving the citation corrective notice. If you mail your request, the postmark is considered the submission date.
- **All requests must be:**
  - Mailed to:  
Department of Labor and Industries  
WISHA Appeals  
P.O. Box 44604  
Olympia, WA 98504-4604
  - or
  - Faxed to: (360) 902-5581
  - or
  - Brought to any department service location.

**AMENDATORY SECTION** (Amending WSR 01-23-060, filed 11/20/01, effective 12/1/01)

**WAC 296-800-370 Definitions.**

**Abatement Action Plans**

Refers to your written plans for correcting a WISHA violation.

**Abatement date**

The date on the citation when you must comply with specific safety and health standards listed on the citation and notice of assessment or the corrective notice of redetermination.

**Acceptable**

As used in **Electrical**, WAC 296-800-280 means an installation or equipment is acceptable to the director of labor and industries, and approved:

- If it is accepted, or certified, or listed, or labeled, or otherwise determined to be safe by a nationally recognized testing laboratory; or
- With respect to an installation or equipment of a kind which no nationally recognized testing laboratory accepts, certifies, lists, labels, or determines to be safe, if it is inspected or tested by another federal agency, or by a state, municipal, or other local authority responsible for enforcing occupational safety provisions of the National Electrical Code, and found in compliance with the provisions of the National Electrical Code as applied in this section;

OR

- With respect to custom-made equipment or related installations which are designed, fabricated for, and intended for use by a particular customer, if it is determined to be safe for its intended use by its manufacturer on the basis of test data which the employer keeps and makes available for inspection to the director and his/her authorized representatives. Refer to federal regulation 29 CFR 1910.7 for definition of nationally recognized testing laboratory.

**Accepted**

As used in **Electrical**, WAC 296-800-280 means an installation is accepted if it has been inspected and found by a nationally recognized testing laboratory to conform to specified plans or to procedures of applicable codes.

**Access**

As used in material safety data sheets (MSDSs) as Exposure Records, WAC 296-800-180 means the right and opportunity to examine and copy exposure records.

**Affected employees**

As used in WISHA appeals, penalties and other procedural rules, WAC 296-800-350 means employees exposed to hazards identified as violations in a citation.

**Analysis using exposure or medical records**

- An analysis using exposure records or medical records can be any collection of data or a statistical study. It can be based on either:
  - Partial or complete information from individual employee exposure or medical records or
  - Information collected from health insurance claim records
- The analysis is not final until it has been:
  - Reported to the employer or
  - Completed by the person responsible for the analysis

**ANSI**

This is an acronym for the American National Standards Institute.

**Approved means:**

- Approved by the director of the department of labor and industries or their authorized representative, or by an organization that is specifically named in a rule, such as Underwriters' Laboratories (UL), Mine Safety and Health Administration (MSHA), or the National Institute for Occupational Safety and Health (NIOSH).

- As used in **Electrical**, WAC 296-800-280 means acceptable to the authority enforcing this section. The authority enforcing this section is the director of labor and industries. The definition of acceptable indicates what is acceptable to the director and therefore approved.

**Assistant director**

The assistant director for the WISHA services division at the department of labor and industries.

**ASTM**

This is an acronym for American Society for Testing and Materials.

**Attachment plug or plug**

As used in the basic electrical rules, WAC 296-800-280 means the attachment at the end of a flexible cord or cable that is part of a piece of electrical equipment. When it is inserted into an outlet or receptacle, it connects the conductors supplying electrical power from the outlet to the flexible cable.

**Bare conductor**

A conductor that does not have any covering or insulation.

**Bathroom**

A room maintained within or on the premises of any place of employment, containing toilets that flush for use by employees.

**Biological agents**

Organisms or their by-products.

**Board**

As used in WISHA appeals, penalties and other procedural rules, WAC 296-800-350 means the board of industrial insurance appeals.

**Certification**

As used in WISHA appeals, penalties and other procedural rules, WAC 296-800-350 means refers to an employer's written statement describing when and how a citation violation was corrected.

**CFR**

This is an acronym for Code of Federal Regulations.

**Chemical**

Any element, chemical compound, or mixture of elements and/or compounds.

**Chemical agents (airborne or contact)**

A chemical agent is any of the following:

- Airborne chemical agent which is any of the following:
  - Dust - solid particles suspended in air, generated by handling, drilling, crushing, grinding, rapid impact, detonation, or decrepitation of organic or inorganic materials such as rock, ore, metal, coal, wood, grain, etc.
  - Fume - solid particles suspended in air, generated by condensation from the gaseous state, generally after volatilization from molten metals, etc., and often accompanied by a chemical reaction such as oxidation.
  - Gas - a normally formless fluid that can be changed to the liquid or solid state by the effect of increased pressure or decreased temperature or both.
  - Mist - liquid droplets suspended in air, generated by condensation from the gaseous to the liquid state or by break-

ing up a liquid into a dispersed state, such as by splashing, foaming or atomizing.

– Vapor - the gaseous form of a substance that is normally in the solid or liquid state.

• Contact chemical agent which is any of the following:

– Corrosives - substances that in contact with living tissue cause destruction of the tissue by chemical action.

– Irritants - substances that on immediate, prolonged, or repeated contact with normal living tissue will induce a local inflammatory reaction.

– Toxicants - substances that have the inherent capacity to produce personal injury or illness to individuals by absorption through any body surface.

#### **Chemical manufacturer**

An employer with a workplace where one or more chemicals are produced for use or distribution.

#### **Chemical name**

The scientific designation of a chemical in accordance with one of the following:

- The nomenclature system developed by the International Union of Pure and Applied Chemistry (IUPAC)
- The Chemical Abstracts Service (CAS) rules of nomenclature
- A name which will clearly identify the chemical for the purpose of conducting a hazard evaluation.

#### **Circuit breaker**

• Is a device used to manually open or close a circuit. This device will also open the circuit automatically and without damage to the breaker when a predetermined overcurrent is applied. (600 volts nominal or less)

• Is a switching device capable of making, carrying, and breaking currents under normal circuit conditions, and also making, carrying for a specified time, and breaking currents under specified abnormal circuit conditions, such as those of short circuit. (Over 600 volts nominal)

#### **Citation**

Refers to the citation and notice issued to an employer for any violation of WISHA safety and health rules. A citation and notice may be referred to as a citation and notice of assessment but is more commonly referred to as a citation.

#### **Combustible liquid**

A combustible liquid has a flashpoint of at least 100°F (37.8°C) and below 200°F (93.3°C). Mixtures with at least 99% of their components having flashpoints of 200°F (93.3°C) or higher are not considered combustible liquids.

#### **Commercial account**

As used in Employer Chemical Hazard Communication, WAC 296-800-170 means an arrangement in which a retail distributor sells hazardous chemical(s) to an employer, generally in large quantities over time, and/or at costs that are below the regular retail price.

#### **Common name**

As used in Employer Chemical Hazard Communication, WAC 296-800-170 means any designation or identification such as:

- Code name
- Code number
- Trade name

- Brand name
- Generic name used to identify a chemical other than by its chemical name.

#### **Compressed gas**

A gas or mixture of gases that, when in a container, has an absolute pressure exceeding:

- 40 psi at 70°F (21.1°C)

OR

- 104 psi at 130°F (54.4°C) regardless of the pressure at 70°F (21.1°C)

Compressed gas can also mean a liquid with a vapor pressure that exceeds 40 psi at 100°F (37.8°C)

#### **Conductor**

A wire that transfers electric power.

#### **Container**

As used in Employer Chemical Hazard Communication, WAC 296-800-170 means any container, except for pipes or piping systems, that contains a hazardous chemical. It can be any of the following:

- Bag
- Barrel
- Bottle
- Box
- Can
- Cylinder
- Drum
- Reaction vessel
- Storage tank

#### **Correction date**

The date by which a violation must be corrected. Final orders or extensions that give additional time to make corrections establish correction dates. A correction date established by an order of the board of industrial insurance appeals remains in effect during any court appeal unless the court suspends the date.

#### **Corrective notice**

Refers to a notice changing a citation and is issued by the department after a citation has been appealed.

#### **Corrosive**

As used in first aid, WAC 296-800-150, is a substance that causes destruction of living tissue by chemical action, including acids with a pH of 2.5 or below or caustics with a pH of 11.0 or above.

#### **Covered conductor**

A conductor that is covered by something else besides electrical insulation.

#### **Damp location**

As used in basic electrical rules, WAC 296-800-280 means partially protected areas that are exposed to moderate moisture. Outdoor examples include roofed open porches and marquees. Interior examples include basements and barns.

#### **Department**

Those portions of the department of labor and industries responsible for enforcing the Washington Industrial Safety Act (WISHA).

**Designated representative**

- Any individual or organization to which an employee gives written authorization.
- A recognized or certified collective bargaining agent without regard to written authorization.
- The legal representative of a deceased or legally incapacitated employee.

**Director**

The director means the director of the department of labor and industries or their designee.

**Distributor**

As used in Employer Chemical Hazard Communication, WAC 296-800-170 means a business, other than a chemical manufacturer or importer, that supplies hazardous chemicals to other distributors or to employers. See WAC 296-62-054 for requirements dealing with Manufacturers, Distributors and Importers - Hazard Communication.

**Documentation**

As used in WISHA appeals, penalties and other procedural rules, WAC 296-800-350 means material that you submit to prove that a correction is completed. Documentation includes, but is not limited to, photographs, receipts for materials and/or labor.

**Dry location**

As used in basic electrical rules, WAC 296-800-280 means areas not normally subjected to damp or wet conditions. Dry locations may become temporarily damp or wet, such as when constructing a building.

**Emergency washing facilities**

Emergency washing facilities are emergency showers, eyewashes, eye/face washes, hand-held drench hoses, or other similar units.

**Electrical outlets**

Places on an electric circuit where power is supplied to equipment through receptacles, sockets, and outlets for attachment plugs.

**Employee**

Based on chapter 49.17 RCW, the term employee and other terms of like meaning, unless the context of the provision containing such term indicates otherwise, means an employee of an employer who is employed in the business of his or her employer whether by way of manual labor or otherwise and every person in this state who is engaged in the employment of or who is working under an independent contract the essence of which is personal labor for an employer under this standard whether by way of manual labor or otherwise.

**Employee exposure record**

As used in material safety data sheets (MSDSs) as exposure records, WAC 296-800-180 means a record containing any of the following kinds of information:

- Environmental (workplace) monitoring or measuring of a toxic substance or harmful physical agent, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to interpretation of the results obtained;
- Biological monitoring results which directly assess the absorption of a toxic substance or harmful physical agent by

body systems (e.g., the level of a chemical in the blood, urine, breath, hair, fingernails, etc.) but not including results which assess the biological effect of a substance or agent or which assess an employee's use of alcohol or drugs;

- Material safety data sheets indicating that the material may pose a hazard to human health;

OR

- In the absence of the above, a chemical inventory or any other record which reveals where and when used and the identity (e.g., chemical, common or trade name) of a toxic substance or harmful physical agent.

**Employer**

Based on chapter 49.17 RCW, an employer is 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 must be considered both an employer and an employee.

**Exit**

Provides a way of travel out of the workplace.

**Exit route**

A continuous and unobstructed path of exit travel from any point within a workplace to safety outside.

**Explosive**

A chemical that causes a sudden, almost instant release of pressure, gas, and heat when exposed to a sudden shock, pressure, or high temperature.

**Exposed live parts**

Electrical parts that are:

- Not suitably guarded, isolated, or insulated

AND

- Capable of being accidentally touched or approached closer than a safe distance.

**Exposed wiring methods**

Involve working with electrical wires that are attached to surfaces or behind panels designed to allow access to the wires.

**Exposure or exposed**

As used in employer chemical hazard communication, WAC 296-800-170 and material safety data sheets (MSDSs) as exposure records, WAC 296-800-180. An employee has been, or may have possibly been, subjected to a hazardous chemical, toxic substance or harmful physical agent while working. An employee could have been exposed to hazardous chemicals, toxic substances, or harmful physical agents in any of the following ways:

- Inhalation
- Ingestion
- Skin contact
- Absorption
- Related means.

The terms exposure and exposed only cover workplace exposure involving a toxic substance or harmful physical agent in the workplace different from typical nonoccupational situations in the way it is:

- Used
- Handled
- Stored
- Generated
- Present

#### **Exposure record**

See definition for employee exposure record.

#### **Extension ladder**

A portable ladder with 2 or more sections and is not self-supporting. The 2 or more sections travel in guides or brackets that let you change the length. The size of a portable ladder is determined by adding together the length of each section.

#### **Failure-to-abate**

Any violation(s) resulting from not complying with an abatement date.

#### **Final order**

Any of the following (unless an employer or other party files a timely appeal):

- Citation and notice;
- Corrective notice;
- Decision and order from the board of industrial insurance appeals;
- Denial of petition for review from the board of industrial insurance appeals; or
- Decision from a Washington State superior court, court of appeals, or the state supreme court.

#### **Final order date**

The date a final order is issued.

#### **First aid**

The extent of treatment you would expect from a person trained in basic first aid, using supplies from a first-aid kit.

Tests, such as X rays, must not be confused with treatment.

#### **Flammable**

A chemical covered by one of the following categories:

- Aerosol flammable means an aerosol that, when tested by the method described in 16 CFR 1500.45 yields either a flame projection more than 18 inches at full valve opening or a flashback (a flame extending back to the valve) at any degree of valve opening;
  - Gas, flammable means:
    - A gas that, at temperature and pressure of the surrounding area, forms a flammable mixture with air at a concentration of 13% by volume or less or
    - A gas that, at temperature and pressure of the surrounding area, forms a range of flammable mixtures with air wider than 12% by volume, regardless of the lower limit.
  - Liquid, flammable means any liquid having a flashpoint below 100°F (37.8°C), except any mixture having components with flashpoints of 100°F (37.8°C) or higher, the total of which make up 99% or more of the total volume of the mixture.
  - Solid, flammable means a solid, other than a blasting agent or explosive as defined in ((~~WAC 296 52 417~~ or)) 29

CFR 1910.109(a), that is likely to cause fire through friction, moisture absorption, spontaneous chemical change, or retained heat from manufacturing or processing, or which can be ignited readily. Solid, inflammable also means that when the substance is ignited, it burns so powerfully and persistently that it creates a serious hazard. A chemical must be considered to be a flammable solid if, when tested by the method described in 16 CFR 1500.44, it ignites and burns with a self-sustained flame at a rate greater than one-tenth of an inch per second along its major axis.

#### **Flashpoint**

• The minimum temperature at which a liquid gives off a vapor in sufficient concentration to ignite when tested by any of the following measurement methods:

– Tagliabue closed tester: (See American National Standard Method of Test for Flash Point by Tag Closed Tester, Z11.24-1979 (ASTM D 56-79)) for liquids with a viscosity of less than 45 Saybolt Universal Seconds (SUS) at 100°F (37.8°C), that do not contain suspended solids and do not have a tendency to form a surface film under test; or

– Pensky-Martens closed tester: (See American National Standard Method of Test for Flash Point by Pensky-Martens Closed Tester, Z11.7-1979 (ASTM D 93-79)) for liquids with a viscosity equal to or greater than 45 SUS at 100°F (37.8°C), or that contain suspended solids, or that have a tendency to form a surface film under test; or

– Setaflash closed tester: (See American National Standard Method of Test for Flash Point by Setaflash Closed Tester (ASTM D 3278-78).)

Note: Organic peroxides, which undergo auto accelerating thermal decomposition, are excluded from any of the flashpoint measurement methods specified above.

#### **Flexible cords and cables**

Typically used to connect electrical equipment to an outlet or receptacle. These cords can have an attachment plug to connect to a power source or can be permanently wired into the power source. Flexible cords, extension cords, cables and electrical cords are all examples of flexible cord.

#### **Floor hole**

An opening in any floor, platform, pavement, or yard that measures at least one inch but less than 12 inches at its smallest dimension and through which materials and tools (but not people) can fall.

Examples of floor holes are:

- Belt holes
- Pipe openings
- Slot openings

#### **Floor opening**

An opening in any floor, platform, pavement, or yard that measures at least 12 inches in its smallest dimension and through which a person can fall.

Examples of floor openings are:

- Hatchways
- Stair or ladder openings
- Pits
- Large manholes

The following are NOT considered floor openings:

- Openings occupied by elevators
- Dumbwaiters

- Conveyors
- Machinery
- Containers

#### Foreseeable emergency

As used in Employer Chemical Hazard Communication, WAC 296-800-170 means any potential event that could result in an uncontrolled release of a hazardous chemical into the workplace. Examples of foreseeable emergencies include equipment failure, rupture of containers, or failure of control equipment.

#### Ground

As used in Electrical, WAC 296-800-280, a connection between an electrical circuit or equipment and the earth or other conducting body besides the earth. This connection can be intentional or accidental.

#### Grounded

A connection has been made between an electrical circuit or equipment and the earth or another conducting body besides the earth.

#### Grounded conductor

A system or circuit conductor that is intentionally grounded.

#### Ground-fault circuit-interrupter

A device whose function is to interrupt the electric circuit to the load when a fault current to ground exceeds some predetermined value that is less than that required to operate the overcurrent protective device of the supply circuit.

#### Grounding conductor

Is used to connect equipment or the grounded circuit of a wiring system to a grounding electrode or electrodes.

#### Grounding conductor, equipment

A conductor used to connect noncurrent-carrying metal parts of equipment, raceways, and other enclosures to the system grounded conductor and/or the grounding electrode conductor at the service equipment or at the source of a separately derived system.

#### Guarded

Covered, shielded, fenced, enclosed, or otherwise protected by means of suitable covers, casings, barriers, rails, screens, mats, or platforms to remove the likelihood of being accidentally touched or approached closer than a safe distance.

#### Hand-held drench hoses

Hand-held drench hoses are single-headed emergency washing devices connected to a flexible hose that can be used to irrigate and flush the face or other body parts.

#### Handrail

A single bar or pipe supported on brackets from a wall or partition to provide a continuous handhold for persons using a stair.

#### Harmful physical agent

Any chemical substance, biological agent (bacteria, virus, fungus, etc.), or physical stress (noise, heat, cold, vibration, repetitive motion, ionizing and nonionizing radiation, hypo- or hyperbaric pressure, etc.) which:

- Is listed in the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) *Regis-*

*try of Toxic Effects of Chemical Substances* (RTECS) (see Appendix B); or

- Has shown positive evidence of an acute or chronic health hazard in testing conducted by, or known to, the employer;

OR

- Is the subject of a material safety data sheet kept by or known to the employer showing that the material may pose a hazard to human health.

#### Hazard

Any condition, potential or inherent, which can cause injury, death, or occupational disease.

#### Hazard warning

As used in Employer Chemical Hazard Communication, WAC 296-800-170 can be a combination of words, pictures, symbols, or combination appearing on a label or other appropriate form of warning which shows the specific physical and health hazard(s), including target organ effects, of the chemical(s) in the container(s).

Note: See definition for physical hazard and health hazard to determine which hazards must be covered.

#### Hazardous chemical

Any chemical that is a physical or health hazard.

#### Health hazard

As used in Employer Chemical Hazard Communication, WAC 296-800-170 means any chemical with the potential to cause acute or chronic health effects in exposed employees. The potential must be statistically significant based on evidence from at least one study conducted under established scientific principles. Health hazards include:

- Chemicals which are carcinogens
- Toxic or highly toxic agents
- Reproductive toxins
- Irritants
- Corrosives
- Sensitizers
- Hepatotoxins
- Nephrotoxins
- Neurotoxins
- Agents which act on the hematopoietic system
- Agents which damage the lungs, skin, eyes, or mucous membranes

See WAC 296-62-054 for more definitions and explanations about the scope of health hazards covered by this part.

See WAC 296-62-054 for the criteria used for determining whether or not a chemical is considered hazardous for purposes of this rule.

#### Hospitalization

To be sent to, to go to, or be admitted to, a hospital or an equivalent medical facility and receive medical treatment beyond first-aid treatment, regardless of the length of stay in the hospital or medical facility.

#### Identity

As used in Employer Chemical Hazard Communication, WAC 296-800-170 means any chemical or common name listed on the material safety data sheet (MSDS) for the specific chemical. Each identity used must allow cross-references among the:

- Required list of hazardous chemicals

- Chemical label
- MSDSs

#### **Imminent danger violation**

Any violation(s) resulting from conditions or practices in any place of employment, which are such that a danger exists which could reasonably be expected to cause death or serious physical harm, immediately or before such danger can be eliminated through the enforcement procedures otherwise provided by the Washington Industrial Safety and Health Act.

#### **Importer**

As used in Employer Chemical Hazard Communication, WAC 296-800-170 means the first business within the Customs Territory of the USA that:

- Receives hazardous chemicals produced in other countries

AND

- Supplies them to distributors or employers within the USA

See WAC 296-62-054 for requirements dealing with Manufacturers, Importer and Distributors - Hazard Communication.

#### **Insulated**

A conductor has been completely covered by a material that is recognized as electrical insulation and is thick enough based on:

- The amount of voltage involved

AND

- The type of covering material

#### **Interim waiver**

An order granted by the department allowing an employer to vary from WISHA requirements until the department decides to grant a permanent or temporary waiver.

#### **Ladder**

Consists of 2 side rails joined at regular intervals by crosspieces called steps, rungs, or cleats. These steps are used to climb up or down.

#### **Listed**

Equipment is listed if it:

- Is listed in a publication by a nationally recognized laboratory (such as UL, underwriters laboratory) that inspects the production of that type of equipment,

AND

- States the equipment meets nationally recognized standards or has been tested and found safe to use in a specific manner.

#### **Material safety data sheet (MSDS)**

Written or printed material that tells you about the chemical(s), what it can do to and how to protect yourself, others, or the environment.

For requirements for developing MSDSs see WAC 296-62-054—Manufacturers, Importers, and Distributors - Hazard Communication.

#### **Medical treatment**

Treatment provided by a physician or by registered professional personnel under the standing orders of a physician. Medical treatment does not include first-aid treatment even if provided by a physician or registered professional personnel.

#### **Mixture**

As used in Employer Chemical Hazard Communication, WAC 296-800-170, any combination of 2 or more chemicals (if that combination did not result from a chemical reaction).

#### **Movable equipment**

As used in WAC 296-800-35052, a hand-held or non-hand-held machine or device;

- That is powered or nonpowered;

AND

- Can be moved within or between worksites

#### **Must**

Must means mandatory.

#### **NEMA**

These initials stand for National Electrical Manufacturing Association.

#### **NFPA**

This is an acronym for National Fire Protection Association.

#### **Nose**

The portion of the stair tread that projects over the face of the riser below it.

#### **Occupational Safety and Health Administration (OSHA)**

Passed in 1970 by the U.S. Congress, the Occupational Safety and Health Act (OSHA) provides safety on the job for working men and women. OSHA oversees states (such as Washington) that have elected to administer their own safety and health program. OSHA requires WISHA rules to be at least as effective as OSHA rules.

#### **Office work environment**

An indoor or enclosed occupied space where clerical work, administration, or business is carried out.

In addition, it includes:

- Other workplace spaces controlled by the employer and used by office workers, such as cafeterias, meeting rooms, and washrooms.

- Office areas of manufacturing and production facilities, not including process areas.

- Office areas of businesses such as food and beverage establishments, agricultural operations, construction, commercial trade, services, etc.

#### **Open riser**

A stair step with an air space between treads has an open riser.

#### **Organic peroxide**

This is an organic compound containing the bivalent-O-O-structure. It may be considered a structural derivative of hydrogen peroxide if one or both of the hydrogen atoms has been replaced by an organic radical.

#### **Outlet**

See definition for electrical outlets.

#### **Oxidizer**

A chemical other than a blasting agent or explosive as defined in WAC ((296-52-417)) 296-52-60130 or CFR 1910.109(a), that starts or promotes combustion in other materials, causing fire either of itself or through the release of oxygen or other gases.

**Permissible exposure limits (PELs)**

PELs are airborne concentrations of substances measured by their concentration in the air no matter what amount is breathed by the employee. The permissible exposure limits (PELs) must include the following four categories:

- Permissible exposure limits - Time-weighted average (PEL-TWA) is the time-weighted average airborne exposure to any 8-hour work shift of a 40-hour work week and must not be exceeded.

- Permissible exposure limits - Short-term exposure limit (PEL-STEL) is the employee's 15-minute time-weighted average exposure which must not be exceeded at any time during a work day unless another time limit is specified in a parenthetical notation below the limit. If another time period is specified, the time-weighted average exposure over that time period must not be exceeded at any time during the working day.

- Permissible exposure limits - Ceiling (PEL-C) is the employee's exposure which must not be exceeded during any part of the workday. If instantaneous monitoring is not feasible, then the ceiling must be assessed as a 15-minute time-weighted average exposure which must not be exceeded at any time over a working day.

- Skin notation is the potential contribution to the overall employee exposure by the cutaneous route including mucous membranes and eye, either by airborne, or more particularly, by direct contact with the substance. These substances are identified as having a skin notation in the OSHA and WISHA PEL tables (29 CFR Part 1910 Subpart Z and WAC 296-62-075, respectively).

**Person**

Based on chapter 49.17 RCW, one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any organized group of persons.

**Personal eyewash units**

Personal eyewash units are portable, supplementary units that support plumbed units or self-contained units, or both, by delivering immediate flushing for less than fifteen minutes.

**Personal service room**

Used for activities not directly connected with a business' production or service function such as:

- First-aid
- Medical services
- Dressing
- Showering
- Bathrooms
- Washing
- Eating

**Personnel**

See the definition for employees.

**Physical hazard**

As used in Employer Chemical Hazard Communication, WAC 296-800-170 means a chemical that has scientifically valid evidence to show it is one of the following:

- Combustible liquid
- Compressed gas
- Explosive
- Flammable

- Organic peroxide
- Oxidizer
- Pyrophoric
- Unstable (reactive)
- Water reactive

**Platform**

Platform means an extended step or landing that breaks a continuous run of stairs.

**Plug**

See definition for attachment plug.

**Potable water**

Water that you can safely drink. It meets specific safety standards prescribed by the United States Environmental Protection Agency's National Interim Primary Drinking Water Regulations, published in 40 CFR Part 141, and 40 CFR 147.2400.

**Predictable and regular basis**

Employee functions such as, but not limited to, inspection, service, repair and maintenance which are performed

- at least once every 2 weeks

OR

- 4 man-hours or more during any sequential 4-week period (to calculate man-hours multiply the number of employees by the number of hours during a 4-week period).

**Produce**

As used in Employer Chemical Hazard Communication, WAC 296-800-170, any one of the following:

- Manufacture
- Process
- Formulate
- Blend
- Extract
- Generate
- Emit
- Repackage

**Purchaser**

As used in Employer Chemical Hazard Communication, WAC 296-800-170, an employer who buys one or more hazardous chemicals to use in their workplace.

**Pyrophoric**

A chemical is pyrophoric if it will ignite spontaneously in the air when the temperature is 130°F (54.4°C) or below.

**Qualified**

A person is qualified if they have one of the following:

- Extensive knowledge, training and experience about the subject matter, work or project
- A recognized degree, certificate, or professional standing
- Successfully demonstrated problem solving skills about the subject, work, or project

**Railing or standard railing**

A vertical barrier erected along exposed edges of a floor opening, wall opening, ramp, platform, or runway to prevent falls of persons.

**Reassume jurisdiction**

The department has decided to take back its control over a citation and notice being appealed.

**Receptacle or receptacle outlet**

As used in basic electrical rules, WAC 296-800-280 means outlets that accept a plug to supply electric power to equipment through a cord or cable.

**Record**

A record is any item, collection, or grouping of information. Examples include:

- Paper document
- Microfiche
- Microfilm
- X-ray film
- Computer record

**Repeat violation**

A repeat violation occurs when WISHA cites an employer more than once in the last 3 years for a substantially similar hazard.

**Responsible party**

As used in employer chemical hazard communication, WAC 296-800-170. Someone who can provide appropriate information about the hazardous chemical and emergency procedures.

**Rise**

The vertical distance from the top of a tread to the top of the next higher tread.

**Riser**

The vertical part of the step at the back of a tread that rises to the front of the tread above.

**Rungs**

Rungs are the cross pieces on ladders that are used to climb up and down the ladder.

**Runway**

An elevated walkway above the surrounding floor or ground level. Examples of runways are footwalks along shafting or walkways between buildings.

**Safety factor**

The term safety factor means the ratio of when something will break versus the actual working stress or safe load when it is used.

**Serious violation**

Serious violation must be deemed to exist in a workplace if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use in such workplace, unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

**Should**

Should means recommended.

**Single ladder**

A type of portable ladder with one section. It is distinguished by all of the following:

- It has one section
- It cannot support itself
- Its length cannot be adjusted

**Smoking**

A person is smoking if they are:

- Lighting up

- Inhaling
- Exhaling
- Carrying a pipe, cigar or cigarette of any kind that is burning

**Specific chemical identity**

This term applies to chemical substances. It can mean the:

- Chemical name
- Chemical Abstracts Service (CAS) registry number
- Any other information that reveals the precise chemical designation of the substance.

**Stair railing**

A vertical barrier attached to a stairway with an open side to prevent falls. The top surface of the stair railing is used as a handrail

**Stairs or stairway**

A series of steps and landings:

- leading from one level or floor to another,
- leading to platforms, pits, boiler rooms, crossovers, or around machinery, tanks, and other equipment
- Used more or less continuously or routinely by employees, or only occasionally by specific individuals.
- With three or more risers

**Standard safeguard**

Safety devices that prevent hazards by their attachment to:

- Machinery
- Appliances
- Tools
- Buildings
- Equipment

These safeguards must be constructed of:

- Metal
- Wood
- Other suitable materials

The department makes the final determination about whether a safeguard is sufficient for its use.

**Step ladder**

A portable ladder with:

- Flat steps
- A hinge at the top allowing the ladder to fold out and support itself
- Its length that cannot be adjusted

**Strong irritant**

As used in first aid, WAC 296-800-150, is a chemical that is not corrosive, but causes a strong, temporary inflammatory effect on living tissue by chemical action at the site of contact.

**Toeboard**

A barrier at floor level along exposed edges of a floor opening, wall opening, platform, runway, or ramp, to prevent falls of materials.

**Toxic chemical**

As used in first aid, WAC 296-800-150, is a chemical that produces serious injury or illness when absorbed through any body surface.

**Toxic substance**

Any:

- Chemical substance

- Biological agent (such as bacteria, virus, or fungus)
- Physical stress (such as noise, vibration, or repetitive motion)

A substance is toxic if:

• The latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) *Registry of Toxic Effects of Chemical Substances* (RTECS) lists the substance

• Testing by or known to the employer has shown positive evidence that the substance is an acute or chronic health hazard

• A material safety data sheet kept by or known to the employer shows the material may be a hazard to human health

#### **Trade secret**

Any confidential:

- Formula
- Pattern
- Process
- Device
- Information
- Collection of information

The trade secret is used in an employer's business and gives an opportunity to gain an advantage over competitors who do not know or use it.

See WAC 296-62-053 for requirements dealing with trade secrets.

#### **Tread**

As used in stairs and stair railings, WAC 296-800-250 means the horizontal part of the stair step.

#### **Tread run**

As used in stairs and stair railings, WAC 296-800-250 means the distance from the front of one stair tread to the front of an adjacent tread.

#### **Tread width**

The distance from front to rear of the same tread including the nose, if used.

#### **UL (Underwriters' Laboratories, Inc.)**

You will find these initials on electrical cords and equipment. The initials mean the cord or equipment meets the standards set by the Underwriters' Laboratories, Inc.

#### **Unstable (reactive)**

As used in employer chemical hazard communication, WAC 296-800-170. An unstable or reactive chemical is one that in its pure state, or as produced or transported, will vigorously polymerize, decompose, condense, or will become self-reactive under conditions of shocks, pressure or temperature.

#### **Use**

As used in employer chemical hazard communication, WAC 296-800-170, means to:

- Package
- Handle
- React
- Emit
- Extract
- Generate as a by-product
- Transfer

#### **Voltage of a circuit**

The greatest effective potential difference between any two conductors or between a conductor and ground.

#### **Voltage to ground**

The voltage between a conductor and the point or conductor of the grounded circuit. For undergrounded circuits, it is the greatest voltage between the conductor and any other conductor of the circuit.

#### **Voltage, nominal**

Nominal voltage is a value assigned to a circuit or system to designate its voltage class (120/240, 480Y/277, 600, etc.). The actual circuit voltage can vary from the value if it is within a range that permits the equipment to continue operating in a satisfactory manner.

#### **WAC**

This is an acronym for **Washington Administrative Code**, which are rules developed to address state law.

#### **Water-reactive**

As used in Employer Chemical Hazard Communication, WAC 296-800-170, a water-reactive chemical reacts with water to release a gas that is either flammable or presents a health hazard.

#### **Watertight**

Constructed so that moisture will not enter the enclosure or container.

#### **Weatherproof**

Constructed or protected so that exposure to the weather will not interfere with successful operation. Rainproof, rain-tight, or watertight equipment can fulfill the requirements for weatherproof where varying weather conditions other than wetness, such as snow, ice, dust, or temperature extremes, are not a factor.

#### **Wet location**

As used in basic electrical rules, WAC 296-800-280 means:

- Underground installations or in concrete slabs or masonry that are in direct contact with the earth
- Locations that can be saturated by water or other liquids
- Unprotected locations exposed to the weather (like vehicle washing areas)

#### **WISHA**

This is an acronym for the Washington Industrial Safety and Health Act.

#### **Work area**

As used in employer chemical hazard communication, WAC 296-800-170, a room or defined space in a workplace where hazardous chemicals are produced or used, and where employees are present.

#### **Working days**

Means a calendar day, except Saturdays, Sundays, and legal holidays. Legal holidays include:

- New Year's Day - January 1
- Martin Luther King, Jr. Day
- Presidents' Day
- Memorial Day
- Independence Day - July 4
- Labor Day
- Veterans' Day - November 11

- Thanksgiving Day
- The day after Thanksgiving Day; and
- Christmas Day - December 25

The number of working days must be calculated by not counting the first working day and counting the last working day.

#### **Worker**

See the definition for employee.

#### **Workplace**

• The term workplace means:

- Any plant, yard, premises, room, or other place where an employee or employees are employed for the performance of labor or service over which the employer has the right of access or control, and includes, but is not limited to, all workplaces covered by industrial insurance under Title 51 RCW, as now or hereafter amended.

- As used in Employer Chemical Hazard Communication, WAC 296-800-170 means an establishment, job site, or project, at one geographical location containing one or more work areas.

#### **You**

See definition of employer.

#### **Your representative**

Your representative is the person selected to act in your behalf.

#### **REPEALER**

The following sections of the Washington Administrative Code are repealed:

WAC 296-800-13005	Establish a safety committee or have safety meetings.
WAC 296-800-13010	Make sure that each meeting includes a discussion of established safety topics.
WAC 296-800-13015	Make sure that safety committee meeting minutes are recorded and preserved.

#### **AMENDATORY SECTION** (Amending Order 80-14, filed 8/8/80)

#### **WAC 296-62-060 Control requirements in addition to those specified.**

Note: The requirements in this section only apply to agriculture. The requirements for general industry relating to control requirements have been moved to chapter 296-800 WAC, Safety and health core rules.

(1) In those cases where no acceptable standards have been derived for the control of hazardous conditions, every reasonable precaution shall be taken to safeguard the health of the worker whether provided herein or not.

(2) Preservation of records.

(a) Scope and application. This section applies to each employer who makes, maintains or has access to employee exposure records or employee medical records.

(b) Definitions.

(i) "Employee exposure record" - a record of monitoring or measuring which contains qualitative or quantitative information indicative of employee exposure to toxic materials or harmful physical agents. This includes both individual exposure records and general research or statistical studies based on information collected from exposure records.

(ii) "Employee medical record" - a record which contains information concerning the health status of an employee or employees exposed or potentially exposed to toxic materials or harmful physical agents. These records may include, but are not limited to:

(A) The results of medical examinations and tests;

(B) Any opinions or recommendations of a physician or other health professional concerning the health of an employee or employees; and

(C) Any employee medical complaints relating to workplace exposure. Employee medical records include both individual medical records and general research or statistical studies based on information collected from medical records.

(c) Preservation of records. Each employer who makes, maintains, or has access to employee exposure records or employee medical records shall preserve these records.

(d) Availability of records. The employer shall make available, upon request, to the director, department of labor and industries, or his designee, all employee exposure records and employee medical records for examination and copying.

(e) Effective date. This standard shall become effective thirty days after filing with the code reviser.

(3) Monitoring of employees. The department shall use industrial hygiene sampling methods and techniques including but not limited to personal monitoring devices and equipment approved by the director or his designee for the purpose of establishing compliance with chapter 296-62 WAC.

(a) The employer shall permit the director or his designee to monitor and evaluate any workplace or employee in accordance with all provisions of this subsection.

(b) The employer shall not prevent or discourage an employee from cooperating with the department by restricting or inhibiting his/her participation in the use of personal monitoring devices and equipment in accordance with all provisions of this subsection.

#### **AMENDATORY SECTION** (Amending Order 70-8, filed 7/31/70, effective 9/1/70)

#### **WAC 296-62-070 Chemical agents (airborne or contact).**

Note: The requirements in WAC 296-62-070 through 296-62-07005 only apply to agriculture. The requirements for general industry relating to chemical agents have been moved to chapter 296-800 WAC, Safety and health core rules.

#### **AMENDATORY SECTION** (Amending Order 73-3, filed 5/7/73)

#### **WAC 296-62-080 Biological agents.**

Note: The requirements in subsections (1) and (2) of this section only apply to agriculture. The requirements for general

industry relating to biological agents have been moved to chapter 296-800 WAC, Safety and health core rules.

(1) Definition. Biological agents are organisms or their by-products.

(2) Protection from exposure. Workmen shall be protected from exposure to hazardous concentrations of biological agents which may arise from processing, handling or using materials or waste.

**AMENDATORY SECTION** (Amending WSR 99-07-063, filed 3/17/99, effective 6/17/99)

**WAC 296-62-130 Emergency washing facilities.**

Note: The requirements in this section only apply to agriculture. The requirements for general industry relating to emergency washing facilities have been moved to chapter 296-800 WAC, Safety and health core rules.

(1) Definitions.

"Emergency washing facilities" means emergency showers, eyewashes, eye/face washes, hand-held drench hoses, or other similar units.

"Corrosive" is a substance that can cause destruction of living tissue by chemical action, including acids with a pH of 2.5 or below or caustics with a pH of 11.0 or above.

"Strong irritant" means a chemical that is not corrosive, but causes a strong temporary inflammatory effect on living tissue by chemical action at the site of contact.

"Toxic chemical" means a chemical that produces serious injury or illness by absorption through any body surface.

(2) Facilities required.

(a) What requirements apply to accessing emergency washing facilities?

- Emergency washing facilities must be readily available and accessible.
- To be readily available and accessible, emergency washing facilities must be free of obstruction and require no more than ten seconds to reach.
- The travel distance should be no farther than fifty feet (15.25 meters).

(b) What requirements apply to emergency showers?

- Emergency showers must be provided if there is a potential for substantial portions of the body to come into contact with corrosives, strong irritants, or toxic chemicals.
- The emergency showers must deliver water to cascade over the user's entire body at a minimum rate of twenty gallons (75.7 liters) per minute for fifteen minutes or more.

(c) What requirements apply to emergency eyewash?

- Emergency eyewash must be provided where there is the potential for an employee's eyes to be exposed to corrosives, strong irritants, or toxic chemicals.
- The emergency eyewash equipment must irrigate and flush both eyes simultaneously while the operator holds the eyes open.
- The on-off valve must be activated in one second or less and must remain on without the use of the operator's hands until intentionally turned off.

- The emergency eyewash equipment must deliver at least 0.4 gallons (1.5 liters) of water per minute for fifteen minutes or more.

(d) What requirements apply to personal eyewash equipment?

- Personal eyewash units are portable, supplementary units that support plumbed units or self-contained units, or both, by delivering immediate flushing for less than fifteen minutes.
- Such units must deliver potable water or other medically approved eye flushing solution.
- Personal eyewash equipment may be used to supplement emergency washing facilities, however, they must not be used as a substitute.

(e) What are the requirements for hand-held drench hoses?

- Hand-held drench hoses are single-headed emergency washing devices connected to a flexible hose and can be used to irrigate and flush the face or other parts of the body.
- Hand-held drench hoses may be used to supplement emergency washing facilities, however, they must not be used as a substitute.
- Hand-held drench hoses must deliver at least 3.0 gallons (11.4 liters) of water per minute for fifteen minutes or more.

(f) What periodic inspection requirements apply to plumbed and self-contained washing equipment?

- All plumbed emergency eyewash facilities and hand-held drench hoses must be activated weekly and inspected annually to ensure that they function correctly and that the quality and quantity of water is satisfactory for emergency washing purposes.
- Emergency showers must be activated and inspected annually to ensure that they function correctly and that the quality and quantity of water is satisfactory for emergency washing purposes.
- All self-contained eyewash equipment and personal eyewash equipment must be inspected and maintained according to manufacturer instructions. Inspections for proper operation must be done annually. Sealed personal eyewashes must be replaced after the manufacturer's expiration date.

Note: Most manufacturers recommend fluid replacement every six months in self-contained eyewashes. The ANSI Standard can be obtained from the American National Standards Institute, 1430 Broadway, New York, New York 10018.

(3) Potable water. All emergency washing facilities using nonpotable water must have signs stating the water is nonpotable.

Note: For further information on the design, installation, and maintenance of emergency washing facilities, see American National Standards Institute (ANSI) publication Z358.1 - 1998, Emergency Eyewash and Shower Equipment. Emergency washing facilities that are designed to meet ANSI Z358.1 - 1998 also meet the requirements of this standard. The ANSI Standard can be obtained from the American National Standards Institute, 1430 Broadway, New York, New York 10018.

PROPOSED

**WSR 02-09-094**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**  
 (Board of Boiler Rules)  
 [Filed April 17, 2002, 10:39 a.m.]

Date of Intended Adoption: May 28, 2002.

April 17, 2002

Craig Hopkins, Chair  
 Board of Boiler Rules

Original Notice.

Preproposal statement of inquiry was filed as WSR 02-04-105.

Title of Rule: General fee increase for the Board of Boiler Rules (chapter 296-104 WAC).

Purpose: The Board of Boiler Rules is proposing a 2.79% (rounded down to the nearest tenth of a dollar) general fee increase. The 2.79% rate is the Office of Financial Management's maximum allowable fiscal growth rate factor for fiscal year 2002. The general fee increase is necessary to help offset inflation and to maintain the financial health and operational effectiveness of the program.

Statutory Authority for Adoption: RCW 70.79.030, 70.79.040, 70.79.150, 70.79.290, 70.79.330, and 70.79.350.

Statute Being Implemented: Chapter 70.79 RCW.

Summary: See Purpose above.

Reasons Supporting Proposal: See Purpose above.

Name of Agency Personnel Responsible for Drafting: Board of Boiler Rules, Tumwater, (360) 902-5270; Implementation and Enforcement: Robb Marvin, Tumwater, (360) 902-5270.

Name of Proponent: Board of Boiler Rules, governmental.

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

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

Proposal Changes the Following Existing Rules: See Purpose above.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The Board of Boiler Rules has considered whether these proposed rules are subject to the Regulatory Fairness Act and has determined that they do not require a small business economic impact statement because the costs associated with the proposed rules will not place a more than minor impact on any business, contractor, or other entity.

RCW 34.05.328 does not apply to this rule adoption. Significant rule-making criteria does not apply to these rule changes because the exempt criteria outlined in RCW 34.05.328(5) was not met.

Hearing Location: Labor and Industries Building, 950 Broadway, Suite 200, Tacoma, WA 98402-4453, on May 21, 2002, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Josh Swanson, by May 20, 2002, at (360) 902-6411.

Submit Written Comments to: Josh Swanson, Specialty Compliance Services Division, P.O. Box 44400, Olympia, WA 98504-4400, swaj235@lni.wa.gov, fax (360) 902-5292, by May 21, 2001 [2002]. Comments submitted by fax must be ten pages or less.

**AMENDATORY SECTION** (Amending WSR 01-12-034, filed 5/29/01, effective 6/29/01)

**WAC 296-104-055 Administration—What are the examination fees?** A fee of ~~\$(61.70))~~ 63.40 will be charged for each applicant sitting for an inspection examination(s). If an applicant fails to pass the examination this fee shall be good for one year during which a reexamination may be taken. Checks for examination fees shall be made payable to the state treasurer.

**AMENDATORY SECTION** (Amending WSR 01-24-061, filed 11/30/01, effective 12/31/01)

**WAC 296-104-060 Administration—When shall inspectors' commissions be issued, suspended, or revoked?** The chief inspector shall issue a commission as a deputy or special inspector in accordance with RCW 70.79.120 and 70.79.130.

The fee for the special inspector commission is ~~((twenty-five dollars))~~ \$25.60. The special inspector commission shall be held at the home office of the employing company and shall be valid for one year and may be renewed annually at the request of the employing company for a fee of ~~((ten dollars))~~ \$10.20. The deputy inspector commission shall be held by the chief inspector. The deputy inspector commission shall be valid for one year and may be renewed annually at the request of the chief inspector. Inspectors shall carry identifying commission cards while they are inspecting. The state or employing company shall return the commission and the identifying commission card at once to the chief inspector when the inspector to whom the commission was issued is no longer in its employ, or at the request of the chief inspector.

The chief inspector may suspend or revoke a certificate of competency and commission issued to an inspector upon written notice to the inspector and to the inspector's employer for:

- Incompetency or untrustworthiness;
- Willful falsification of any matter or statement contained in the application, or in the report of any inspection; or
- For other sufficient reason.

The holder of a certificate of competency is entitled to a hearing before the board prior to the revocation or suspension of the certificate of competency. A person whose commission has been suspended, except for untrustworthiness, may apply to the board for reinstatement. A person whose commission has been revoked, except for untrustworthiness, may apply to the board to take a new examination for a commission after ninety days from the date of the revocation.

PROPOSED

**AMENDATORY SECTION** (Amending WSR 01-24-061, filed 11/30/01, effective 12/31/01)

**WAC 296-104-700 What are the inspection fees—Certificate fees—Expenses?** The following fees shall be paid by, or on behalf of, the owner or user upon the completion of the inspection. The inspection fees apply to inspections made by inspectors employed by the state.

Heating boilers:	Internal	External
Cast iron—All sizes	<del>((27.80))</del> <u>28.50</u>	<del>((22.20))</del> <u>22.80</u>
All other boilers less than 500 sq. ft.	<del>((33.40))</del> <u>34.30</u>	<del>((22.20))</del> <u>22.80</u>
500 sq. ft. to 2500 sq. ft.	<del>((55.70))</del> <u>57.20</u>	<del>((27.80))</del> <u>28.50</u>
Each additional 2500 sq. ft. of total heating surface, or any portion thereof	<del>((22.20))</del> <u>22.80</u>	<del>((11.10))</del> <u>11.40</u>
Power boilers:	Internal	External
Less than 100 sq. ft.	<del>((27.80))</del> <u>28.50</u>	<del>((22.20))</del> <u>22.80</u>
100 sq. ft. to less than 500 sq. ft.	<del>((33.40))</del> <u>34.30</u>	<del>((22.20))</del> <u>22.80</u>
500 sq. ft. to 2500 sq. ft.	<del>((55.70))</del> <u>57.20</u>	<del>((27.80))</del> <u>28.50</u>
Each additional 2500 sq. ft. of total heating surface, or any portion thereof	<del>((22.20))</del> <u>22.80</u>	<del>((11.10))</del> <u>11.40</u>
Pressure vessels:		
Automatic utility hot water supply heaters per RCW 70.79.090		<del>((5.50))</del> <u>5.60</u>
All other pressure vessels: Square feet shall be determined by multiplying the length of the shell by its diameter.	Internal	External
Less than 15 sq. ft.	<del>((22.20))</del> <u>22.80</u>	<del>((16.70))</del> <u>17.10</u>
15 sq. ft. to less than 50 sq. ft.	<del>((33.40))</del> <u>34.30</u>	<del>((16.70))</del> <u>17.10</u>
50 sq. ft. to 100 sq. ft.	<del>((38.90))</del> <u>39.90</u>	<del>((22.20))</del> <u>22.80</u>
For each additional 100 sq. ft. or any portion thereof	<del>((38.90))</del> <u>39.90</u>	<del>((11.10))</del> <u>11.40</u>
Certificate of inspection fees: For objects inspected, the certificate of inspection fee is <del>\$((16.70))</del> <u>17.10</u> per object.		
Boiler and pressure vessel installation/reinstallation permit (excludes inspection)		\$50.00

Nonnuclear shop inspections, field construction inspections, and special inspection services:

For each hour or part of an hour up to 8 hours ~~((33.40))~~ 34.30

For each hour or part of an hour in excess of 8 hours ~~((50.10))~~ 51.40

Nuclear shop inspections, nuclear field construction inspections, and nuclear triennial shop survey and audit:

For each hour or part of an hour up to 8 hours ~~((50.10))~~ 51.40

For each hour or part of an hour in excess of 8 hours ~~((77.90))~~ 80.00

Nonnuclear triennial shop survey and audit:

When state is authorized inspection agency:

For each hour or part of an hour up to 8 hours ~~((33.40))~~ 34.30

For each hour or part of an hour in excess of 8 hours ~~((50.10))~~ 51.40

When insurance company is authorized inspection agency:

For each hour or part of an hour up to 8 hours ~~((50.10))~~ 51.40

For each hour or part of an hour in excess of 8 hours ~~((77.90))~~ 80.00

Expenses shall include:

Travel time and mileage: The department shall charge for its inspectors' travel time from their offices to the inspection sites and return. The travel time shall be charged for at the same rate as that for the inspection, audit, or survey. The department shall also charge the current Washington office of financial management accepted mileage cost fees or the actual cost of purchased transportation. Hotel and meals: Actual cost not to exceed the office of financial management approved rate.

Reinspection fee: Same as the fee for the previous inspection during which discrepancies were reported. The fee will be charged only if the discrepancies are not corrected before the reinspection. The fee shall not exceed ~~\$((26.70))~~ 27.40. Washington state specials: For each vessel to be considered by the board for a Washington state special certificate, a fee of ~~\$((308.60))~~ 317.20 must be paid to the department before the board meets to consider the vessel. The board may, at its discretion, prorate the fee when a number of vessels that are essentially the same are to be considered.

PROPOSED

**WSR 02-09-095**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**  
 [Filed April 17, 2002, 10:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 02-04-106.

Title of Rule: Fees and other related changes for electrical (chapters 296-46A and 296-401B WAC); contractor registration (chapter 296-200A WAC); elevator (chapters 296-96 and 296-86A WAC); and factory assembled structures (chapters 296-150C, 296-150P, 296-150R, 296-150T, and 296-150V WAC).

Purpose: The department is proposing a 2.79% (rounded down to the nearest tenth of a dollar) general increase in fees for factory assembled structures (FAS), contractor registration, and electrical licensing and certification. The 2.79% rate is the Office of Financial Management's maximum allowable fiscal growth rate factor for fiscal year 2002. The general fee increases are necessary to help offset inflation and maintain the financial health and operational effectiveness of the programs.

In addition, elevator inspection fees have been added/restructured and several of the fees have been increased in excess of the fiscal growth factor in response to the passage of the 2001 Operating Budget (chapter 7, Laws of 2001 - ESSB 6153) to ensure the fees fully fund the costs of the elevator program. Section 217(3) of ESSB 6153 authorized these fee changes:

"It is the intent of the legislature that elevator inspection fees shall fully cover the cost of the elevator inspection program. Pursuant to RCW 43.135.055, during the 2001-03 fiscal biennium the department may increase fees in excess of the fiscal growth factor, if the increases are necessary to fully fund the cost of the elevator inspection program."

Lastly, minor clarification changes are being proposed to chapters 296-150C, 296-150T, 296-150V, and 296-200A WAC and chapter 296-86A WAC is being proposed for repeal. The changes to chapters 296-150C and 296-150V WAC are necessary because the Washington State Building Code Council adopted more recent versions of the Uniform Plumbing and Washington Energy Codes, which take effect on July 1, 2002. A change to chapter 296-150T WAC is necessary to eliminate the "Notification to Local Enforcement Agency (NLEA)" fee as this fee is unnecessary because the department only notifies the Department of Health and not all local jurisdictions - no cost is associated with this notification. The changes to the fees in chapter 296-200A WAC are necessary to eliminate the one-year renewal cycle to correct the \$10.00 fee and other clarification changes in WAC 296-200A-080 (see RCW 18.27.040 and 18.27.075). The repeal of chapter 296-86A WAC is necessary because it was inadvertently not repealed with the recent adoption of the comprehensive changes to the rules relating to elevators and other conveyances (chapter 296-96 WAC).

Statutory Authority for Adoption: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 18.27.040, 18.27.070, 18.27.075, 70.87.030, 19.28.041, 19.28.051, 19.28.101,

19.28.121, 19.28.161, 19.28.201, 19.28.211, 19.28.341, and chapter 7, Laws of 2001 (ESSB 6153).

Statute Being Implemented: Chapters 43.22, 18.27, 70.87, and 19.28 RCW.

Summary: See Purpose above.

Reasons Supporting Proposal: See Purpose above.

Name of Agency Personnel Responsible for Drafting: Josh Swanson, Tumwater, (360) 902-6411; Implementation and Enforcement: Patrick Woods, Tumwater, (360) 902-6348.

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: See Purpose above.

Proposal Changes the Following Existing Rules: See Purpose above.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has considered whether these proposed rules are subject to the Regulatory Fairness Act and has determined that they do not require a small business economic impact statement because the costs associated with the proposed rules will not place a more than minor impact on any business or contractor or are exempted by law (see RCW 19.85.025 referencing RCW 34.05.310 (4)) from the small business economic impact requirements.

RCW 34.05.328 does not apply to this rule adoption. Significant rule-making criteria does not apply to these rule changes because the exempt criteria outlined in RCW 34.05.328(5) was not met.

Hearing Location: Department of Labor and Industries Building, S119, 7273 Linderson Way S.W., Tumwater, WA, on May 21, 2002, at 4:00 p.m.; and at the Yakima School District (Administration Offices), 104 North 4th Avenue, Yakima, WA, on May 22, 2002, at 3:00 p.m.

Assistance for Persons with Disabilities: Contact Josh Swanson by May 20, 2002, at (360) 902-6411.

Submit Written Comments to: Josh Swanson, Specialty Compliance Services Division, P.O. Box 44400, Olympia, WA 98504-4400, swaj235@lni.wa.gov, fax (360) 902-5292, by May 22, 2002. Comments submitted by fax must be ten pages or less.

Date of Intended Adoption: May 28, 2002.

April 17, 2002

Gary Moore

Director

**AMENDATORY SECTION** (Amending WSR 01-12-035, filed 5/29/01, effective 6/29/01)

**WAC 296-46A-910 Inspection fees.** To calculate inspection fees, the amperage is based on the conductor ampacity or the overcurrent device rating. The total fee must not be less than the number of progress inspection (one-half hour) units times the progress inspection fee rate from subsection (8) PROGRESS INSPECTIONS below.

(1) RESIDENTIAL.

(a) Single and two-family residential (new construction).

- Notes:
- Square footage is the area included within the surrounding exterior walls of a building exclusive of any interior courts. (This includes any floor area in an attached garage, basement, or unfinished living space.)
  - "Inspected with the service" means that a separate service inspection fee is included on the same electrical work permit and "inspected at the same time" means all wiring is to be ready for inspection during the initial inspection trip.
  - An "outbuilding" is a structure that serves a direct accessory function to the residence, such as a pump house or storage building. Outbuilding does not include buildings used for commercial type occupancies or additional dwelling occupancies.

- (i) First 1300 sq. ft. \$ ~~((68.90))~~  
70.80
- Each additional 500 sq. ft. or portion of \$ ~~((22.10))~~  
22.70
- (ii) Each outbuilding or detached garage inspected at the same time as a dwelling unit on the property \$ ~~((28.80))~~  
29.60
- (iii) Each outbuilding or detached garage inspected separately \$ ~~((45.50))~~  
46.70
- (iv) Each swimming pool - inspected with the service \$ ~~((45.50))~~  
46.70
- (v) Each swimming pool - inspected separately \$ ~~((68.90))~~  
70.80
- (vi) Each hot tub, spa, or sauna - inspected with the service \$ ~~((28.80))~~  
29.60
- (vii) Each hot tub, spa, or sauna - inspected separately \$ ~~((45.50))~~  
46.70
- (viii) Each septic pumping system - inspected with the service \$ ~~((28.80))~~  
29.60
- (ix) Each septic pumping system - inspected separately \$ ~~((45.50))~~  
46.70
- (b) Multifamily residential and miscellaneous residential structures, services and feeders (new construction).
- (i) Each service and/or feeder

Ampacity	Service/Feeder	Additional Feeder
0 to 200	\$ <del>((74.30))</del> 76.37	\$ <del>((22.10))</del> 22.70
201 to 400	\$ <del>((92.30))</del> 94.80	\$ <del>((45.50))</del> 46.70
401 to 600	\$ <del>((126.70))</del> 130.20	\$ <del>((63.20))</del> 64.90
601 to 800	\$ <del>((162.50))</del> 167.00	\$ <del>((86.60))</del> 89.00
801 and over	\$ <del>((231.70))</del> 238.10	\$ <del>((173.80))</del> 178.60

- (c) Single-family or multi-family altered services including circuits.
- (i) Each altered service and/or altered feeder

Ampacity	Service or Feeder
0 to 200	\$ <del>((63.20))</del> 64.90
201 to 600	\$ <del>((92.30))</del> 94.80
601 and over	\$ <del>((139.10))</del> 142.90

- (ii) Maintenance or repair of meter or mast (no alterations \$ ~~((34.30))~~ to service or feeder) 35.20

(d) Single or multi-family residential circuits only (no service inspection).

Note: Altered or added circuit fees are calculated per panelboard. Total cost of the alterations in an individual panel should not exceed the cost of a complete altered service or feeder of the same rating, as shown in subsection (1) RESIDENTIAL (c) (table) above.

- (i) 1 to 4 circuits (see note) \$ ~~((45.50))~~  
46.70
- Except: Water heater load control devices installed in residences as part of an energy conservation program \$ ~~((27.70))~~  
28.40

Note: The \$ 27.70 permit fee for water heater load control devices will expire on December 31, 2001.

- (ii) Each additional circuit (see note) \$ ~~((5.10))~~  
5.20
- (e) Mobile homes, modular homes, mobile home parks, and RV parks.

- (i) Mobile home or modular home service or feeder only \$ ~~((45.50))~~  
46.70
- (ii) Mobile home service and feeder \$ ~~((74.30))~~  
76.30

(f) Mobile home park sites and RV park sites.

Note: For master service installations, see subsection (2).

- (i) First site service or site feeder \$ ~~((45.50))~~  
46.70
- (ii) Each additional site service; or additional site feeder inspected at the same time as the first service or feeder \$ ~~((28.80))~~  
29.60

(2) COMMERCIAL/INDUSTRIAL.

(a) New service or feeder and additional new feeders inspected at the same time (includes circuits).

Note: For large COMMERCIAL/INDUSTRIAL projects that include multiple feeders, "inspected at the same time" can be interpreted to include additional inspection trips for a single project. The additional inspections must be for electrical work specified on the permit at the time of purchase. The permit fee for such projects must be calculated from (2) (a) (i) (table) above. However, the total fee must not be less than the number of progress inspection (one-half hour) units times the progress inspection fee rate from subsection (8) PROGRESS INSPECTIONS below.

Ampacity	Service/Feeder	Additional Feeder
0 to 100	\$ <del>((74.30))</del> 76.30	\$ <del>((45.50))</del> 46.70
101 to 200	\$ <del>((92.30))</del> 94.80	\$ <del>((57.80))</del> 59.40
201 to 400	\$ <del>((173.80))</del> 178.60	\$ <del>((68.90))</del> 70.80
401 to 600	\$ <del>((202.60))</del> 208.20	\$ <del>((81.00))</del> 83.20
601 to 800	\$ <del>((261.80))</del> 269.10	\$ <del>((110.30))</del> 113.30
801 to 1000	\$ <del>((319.60))</del> 328.50	\$ <del>((133.40))</del> 137.10
1000 and over	\$ <del>((348.70))</del> 358.40	\$ <del>((186.10))</del> 191.20

(b) Altered services or feeders (no circuits).

(i) Service/feeders

Ampacity	Service or Feeder
0 to 200	\$ <del>((74.30))</del> 76.30

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Ampacity	Service or Feeder
201 to 600	\$ <del>((173.80))</del> <u>178.60</u>
601 to 1000	\$ <del>((261.80))</del> <u>269.10</u>
1000 and over	\$ <del>((290.80))</del> <u>298.90</u>

(ii) Maintenance or repair of meter or mast (no alteration to the service or feeder) \$ ~~((63.20))~~ 64.90

(c) Circuits only.

Note: Altered/added circuit fees are calculated per panelboard. Total cost of the alterations in a panel (or panels) should not exceed the cost of a new feeder (or feeders) of the same rating, as shown in subsection (2) COMMERCIAL/INDUSTRIAL (a)(i)(table) above.

- (i) First five circuits per branch circuit panel \$ ~~((57.80))~~ 59.40
- (ii) Each additional circuit per branch circuit panel \$ ~~((5.10))~~ 5.20
- (d) Over 600 volts surcharge per permit. \$ ~~((57.80))~~ 59.40

(3) TEMPORARY SERVICE(S).

Notes: • Temporary electrical power and lighting installations must be used during the period of construction, remodeling, maintenance, repair, or demolition of buildings, structures, equipment, or similar activities.

• Temporary electrical power and lighting installations are allowed during emergencies and for tests, experiments, and developmental work. Temporary electrical power and lighting installations are allowed for a period not to exceed 90 days for Christmas decorative lighting and similar purposes. Temporary wiring shall be removed immediately upon completion of construction or purpose for which the wiring was installed.

• Temporary stage or concert inspections requested outside of normal business hours will be subject to the portal-to-portal hourly fees in subsection (11) OTHER INSPECTIONS. The fee for such after hours inspections shall be the greater of the fee from (3) TEMPORARY SERVICES (a) or the portal-to-portal fee.

(a) Temporary services, temporary stage or concert productions.

Ampacity	Service/Feeder	Additional Feeder
0 to 60	\$ <del>((39.80))</del> <u>40.90</u>	\$ <del>((20.50))</del> <u>21.00</u>
0 to 100	\$ <del>((45.50))</del> <u>46.70</u>	\$ <del>((22.10))</del> <u>22.70</u>
101 to 200	\$ <del>((57.80))</del> <u>59.40</u>	\$ <del>((28.80))</del> <u>29.60</u>
201 to 400	\$ <del>((68.90))</del> <u>70.80</u>	\$ <del>((34.40))</del> <u>35.30</u>
401 to 600	\$ <del>((92.30))</del> <u>94.80</u>	\$ <del>((45.50))</del> <u>46.70</u>
601 and over	\$ <del>((104.60))</del> <u>107.50</u>	\$ <del>((52.20))</del> <u>53.60</u>

(4) IRRIGATION MACHINES, PUMPS AND EQUIPMENT.

(a) Irrigation machines.

- (i) Each tower when inspected at the same time as a service and feeder from (2) COMMERCIAL/INDUSTRIAL \$ ~~((5.10))~~ 5.20
- (ii) Towers - when not inspected at the same time as a service and feeders - one to six towers \$ ~~((68.90))~~ 70.80
- (iii) Each additional tower \$ ~~((5.10))~~ 5.20

(5) MISCELLANEOUS - commercial/industrial and residential.

- (a) Low-voltage thermostats.
  - (i) First thermostat \$ ~~((34.40))~~ 35.30
  - (ii) Each additional thermostat inspected at the same time as the first \$ ~~((10.80))~~ 11.10

(b) Low-voltage systems and telecommunications systems. Includes all telecommunications installations, fire alarm and burglar alarm nurse call, intercom, security systems, energy management control systems, HVAC/refrigeration control systems (other than thermostats above), industrial and automation control systems, lighting control systems, stand-alone sound systems, public address, and similar low-energy circuits and equipment.

- (i) First 2500 sq. ft. or less \$ ~~((39.80))~~ 40.90
- (ii) Each additional 2500 sq. ft. or portion of \$ ~~((10.80))~~ 11.10
- (c) Signs and outline lighting.
  - (i) First sign (no service included) \$ ~~((34.40))~~ 35.30
  - (ii) Each additional sign inspected at the same time on the same building or structure \$ ~~((16.40))~~ 16.80

(d) Berth at a marina or dock.

Note: Five berths or more shall be permitted to have the inspection fees based on appropriate service and feeder fees from section (2) COMMERCIAL/INDUSTRIAL (a)(i) above.

- (i) Berth at a marina or dock \$ ~~((45.50))~~ 46.70
- (ii) Each additional berth inspected at the same time \$ ~~((28.80))~~ 29.60
- (e) Yard pole, pedestal, or other meter loops only.
  - (i) Yard pole, pedestal, or other meter loops only \$ ~~((45.50))~~ 46.70
  - (ii) Meters installed remote from service equipment: Inspected at same time as service, temporary service or other installations \$ ~~((10.80))~~ 11.10
  - (f) Emergency inspections requested outside normal work hours. Regular fee plus surcharge of: \$ ~~((86.60))~~ 89.00

(g) Generators.

- (i) Portable generators: Permanently installed transfer equipment for portable generators \$ ~~((63.20))~~ 64.90
- (ii) Permanently installed generators: Refer to appropriate residential or commercial new service or feeder section
- (h) Annual permit fee for plant location employing regular electrical maintenance staff - each inspection two-hour maximum.

	Inspections	Fee
1 to 3 plant electricians	12	\$ <del>((1,664.40))</del> <u>1,710.80</u>
4 to 6 plant electricians	24	\$ <del>((3,330.40))</del> <u>3,423.30</u>
7 to 12 plant electricians	36	\$ <del>((4,995.30))</del> <u>5,134.60</u>
13 to 25 plant electricians	52	\$ <del>((6,661.30))</del> <u>6,847.10</u>
more than 25 plant electricians	52	\$ <del>((8,327.30))</del> <u>8,559.60</u>

(i) Telecommunications annual permit fee.

(i) For commercial/industrial location employing full-time telecommunications maintenance staff or having a yearly maintenance contract with a licensed electrical/telecommunications contractor. Annual inspection time required may be estimated by the purchaser at the rate for "Other inspections" in this section, charged portal-to-portal per hour - two-hour minimum. \$ ~~((137.80))~~ 141.60

PROPOSED

	Each additional hour, or portion thereof, of portal-to-portal inspection time	\$ <del>((68.90))</del> <u>70.80</u>
(6)	<b>CARNIVAL INSPECTIONS.</b>	
(a)	First carnival field inspection each year.	
(i)	Each ride and generator truck	\$ <del>((16.40))</del> <u>16.80</u>
(ii)	Each remote distribution equipment, concession or gaming show	\$ <del>((5.10))</del> <u>5.20</u>
(iii)	If the calculated fee for first field inspection of (a) and (b) above is less, the minimum inspection fee shall be:	\$ <del>((86.60))</del> <u>89.00</u>
(b)	Subsequent carnival inspections.	
(i)	First 10 rides, concessions, generators, remote distribution equipment or gaming show	\$ <del>((86.60))</del> <u>89.00</u>
(ii)	Each additional ride, concession, generator, remote distribution equipment or gaming show	\$ <del>((5.10))</del> <u>5.20</u>
(c)	Concession(s) or ride(s) not part of a carnival.	
(i)	First field inspection each year of a single concession or ride, not part of a carnival	\$ <del>((68.90))</del> <u>70.80</u>
(ii)	Subsequent inspection of a single concession or ride, not part of a carnival	\$ <del>((45.50))</del> <u>46.70</u>
(7)	<b>TRIP FEES.</b>	
(a)	Requests by property owners to inspect existing installations.	\$ <del>((68.90))</del> <u>70.80</u>
(b)	Submitter notifies the department that work is ready for inspection when it is not ready.	\$ <del>((34.40))</del> <u>35.30</u>
(c)	Additional inspection required because submitter has provided the wrong address.	\$ <del>((34.40))</del> <u>35.30</u>
(d)	More than one additional inspection required to inspect corrections; or for repeated neglect, carelessness, or improperly installed electrical work.	\$ <del>((34.40))</del> <u>35.30</u>
(e)	Each trip necessary to remove a noncompliance notice.	\$ <del>((34.40))</del> <u>35.30</u>
(f)	Corrections have not been made in the prescribed time, unless an exception has been requested and granted.	\$ <del>((34.40))</del> <u>35.30</u>
(g)	Installations that are covered or concealed before inspection.	\$ <del>((34.40))</del> <u>35.30</u>
(8)	<b>PROGRESS INSPECTIONS.</b>	
Note:	The fees calculated in subsections (1) through (6) must apply to all electrical work. This section must be applied to a permit where the permit holder has requested additional inspections beyond the number supported by the permit fee calculated at the rate in (1) through (6).	
(a)	On partial or progress inspections, each one-half hour.	\$ <del>((34.40))</del> <u>35.30</u>
(9)	<b>PLAN REVIEW FEE.</b>	
(a)	Fee is thirty-five percent of the electrical work permit fee as determined by WAC 296-46A-910, plus a plan review submission fee of:	\$ <del>((57.80))</del> <u>59.40</u>
(b)	Supplemental submissions of plans per hour or fraction of an hour.	\$ <del>((68.90))</del> <u>70.80</u>
(c)	Plan review shipping and handling fee.	\$ <del>((16.40))</del> <u>16.80</u>
(10)	<b>OUT-OF-STATE INSPECTIONS.</b>	
(a)	Permit fees will be charged according to the fees listed in this section.	
(b)	Travel expenses:	

(i)	All travel expenses and per diem for out-of-state inspections are billed following completion of each inspection(s). These expenses can include, but are not limited to: Inspector's travel time, travel cost and per diem at the state rate. Travel time is hourly based on the rate in subsection (11) of this section	
(11)	<b>OTHER INSPECTIONS.</b>	
(a)	Inspections not covered by above inspection fees must be charged portal-to-portal per hour:	\$ <del>((68.90))</del> <u>70.80</u>
(12)	<b>REFUND PROCESSING FEE.</b>	
(a)	All requests for permit fee refunds will be assessed a processing fee.	\$ <del>((10.80))</del> <u>11.10</u>
(13)	<b>VARIANCE REQUEST PROCESSING FEE.</b>	
(a)	Variance request processing fee. This fee is nonrefundable once the transaction has been made.	\$ <del>((68.90))</del> <u>70.80</u>

**AMENDATORY SECTION** (Amending WSR 01-12-035, filed 5/29/01, effective 6/29/01)

**WAC 296-46A-915 Electrical/telecommunications contractor license, administrator certificate and examination, and copy fees.**

(1)	<b>GENERAL OR SPECIALTY CONTRACTOR LICENSE</b> (per twenty-four month period)	\$ <del>((222.40))</del> <u>228.60</u>
(a)	Reinstatement of a general or specialty contractor's license after a suspension	\$ <del>((44.70))</del> <u>45.90</u>
(2)	<b>ADMINISTRATOR CERTIFICATE</b>	
Note:	Failure to appear for an examination results in forfeiture of the examination fee.	
(a)	Administrator certificate examination application (nonrefundable)	\$ <del>((27.70))</del> <u>28.40</u>
(b)	Administrator first-time examination fee	\$ <del>((66.60))</del> <u>68.40</u>
(c)	Administrator retest examination fee	\$ <del>((77.90))</del> <u>80.00</u>
(d)	Administrator original certificate (request for certificate submitted with application)	\$ <del>((66.30))</del> <u>68.10</u>
(e)	Administrator certificate renewal (per twenty-four month period)	\$ <del>((83.80))</del> <u>86.10</u>
(f)	Late renewal of administrator certificate (per twenty-four month period)	\$ <del>((166.90))</del> <u>171.50</u>
(g)	Transfer of administrator designation	\$ <del>((33.10))</del> <u>34.00</u>
(h)	Certified copy of each document (maximum per file):	\$ <del>((47.00))</del> <u>48.30</u>
	First document:	\$ <del>((21.30))</del> <u>21.80</u>
	Each additional document:	\$ 2.00
(i)	Reinstatement of an administrator's certificate after a suspension	\$ <del>((44.70))</del> <u>45.90</u>
(3)	<b>REFUND PROCESSING FEE</b>	\$ <del>((10.80))</del> <u>11.10</u>

**REPEALER**

The following chapter of the Washington Administrative Code is repealed:

WAC 296-86A-010

Do I need a permit to construct, alter or relocate a conveyance?

PROPOSED

WAC 296-86A-020	When I apply for my construction, alteration or relocation permit, what permit fees will I have to pay?	<table border="0"> <tr><td>\$15,001 to and including \$100,000</td><td></td></tr> <tr><td>For first \$15,001 .....</td><td>169.90</td></tr> <tr><td>For each additional \$1,000 or fraction thereof .....</td><td>5.60</td></tr> <tr><td>OVER \$100,001</td><td></td></tr> <tr><td>For the first \$100,001 .....</td><td>714.40</td></tr> <tr><td>For each additional \$1,000 or fraction thereof .....</td><td>4.60))</td></tr> <tr><td><u>\$1,001 to and including \$5,000 .....</u></td><td><u>75.00</u></td></tr> <tr><td><u>\$5,001 to and including \$7,000 .....</u></td><td><u>125.00</u></td></tr> <tr><td><u>\$7,001 to and including \$10,000 .....</u></td><td><u>150.00</u></td></tr> <tr><td><u>\$10,001 to and including \$15,000 .....</u></td><td><u>200.00</u></td></tr> <tr><td><u>OVER \$15,000 .....</u></td><td><u>280.00</u></td></tr> <tr><td>Each additional \$1,000 or fraction thereof .....</td><td>7.00</td></tr> </table>	\$15,001 to and including \$100,000		For first \$15,001 .....	169.90	For each additional \$1,000 or fraction thereof .....	5.60	OVER \$100,001		For the first \$100,001 .....	714.40	For each additional \$1,000 or fraction thereof .....	4.60))	<u>\$1,001 to and including \$5,000 .....</u>	<u>75.00</u>	<u>\$5,001 to and including \$7,000 .....</u>	<u>125.00</u>	<u>\$7,001 to and including \$10,000 .....</u>	<u>150.00</u>	<u>\$10,001 to and including \$15,000 .....</u>	<u>200.00</u>	<u>OVER \$15,000 .....</u>	<u>280.00</u>	Each additional \$1,000 or fraction thereof .....	7.00
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WAC 296-86A-025	When I apply for my material lift installation, alteration or relocation permit, what permit fees will I have to pay?																									
WAC 296-86A-028	Are the construction and alteration permit fees that I pay refundable?																									
WAC 296-86A-030	What installation permit fees will I have to pay for personnel and material hoists?																									
WAC 296-86A-040	Do I need to submit my plans for new installations and alterations to the department for approval?																									
WAC 296-86A-060	What annual operating permit fees will I have to pay?																									
WAC 296-86A-065	Can I replace annual operating permits that have been damaged, lost or stolen?																									
WAC 296-86A-070	Can I obtain a supplemental inspection from the department?																									
WAC 296-86A-073	Can I obtain technical services from the department's elevator section?																									
WAC 296-86A-074	Can I request an inspection outside of the department's normal work hours?																									
WAC 296-86A-075	Do I pay a fee when my conveyance is inspected?																									
WAC 296-86A-080	Is there a fee for inspecting regular elevators used as temporary personnel elevators?																									

NEW SECTION

**WAC 296-96-01012 What are the permit fees for alterations to conveyances, material lifts, and hoists and how are they calculated?** Permit fees are based on the total cost of the equipment, materials and labor to perform the alteration. The following permit fees apply to the alteration of all conveyances and material lifts:

TOTAL COST OF ALTERATION	FEE
\$0 to and including \$1,000 .....	\$50.00
\$1,001 to and including \$5,000 .....	75.00
\$5,001 to and including \$7,000 .....	125.00
\$7,001 to and including \$10,000 .....	150.00
\$10,001 to and including \$15,000 .....	200.00
OVER \$15,000 .....	200.00
Each additional \$1,000 or fraction thereof .....	\$7.00

AMENDATORY SECTION (Amending WSR 01-02-026, filed 12/22/00, effective 1/22/01)

**WAC 296-96-01025 What is the permit fee for personnel and material hoists?** The fee for each personnel hoist or material hoist installation is . . . . . ~~\$(101.75))~~ 200.00

Note: An operating permit is also required for these types of conveyances.

AMENDATORY SECTION (Amending WSR 01-12-035, filed 5/29/01, effective 6/29/01)

**WAC 296-96-01027 Are initial installation permit fees refundable?** Your initial installation permit fees are refundable minus a processing fee unless your permits have expired. No refunds will be issued for expired permits. All requests for refunds must be submitted in writing to the elevator section and must identify the specific permits for which the refunds are requested.

The processing fee for a refund is . . . . . ~~\$(26.70))~~ 30.00

AMENDATORY SECTION (Amending WSR 01-12-035, filed 5/29/01, effective 6/29/01)

**WAC 296-96-01030 What is the process for installation and alteration plan approval?** Prior to the start of construction, you must submit to the department for approval two copies of plans for new installations or major alterations.

AMENDATORY SECTION (Amending WSR 01-12-035, filed 5/29/01, effective 6/29/01)

**WAC 296-96-01010 What are the permit fees for conveyances (~~other than~~), material lifts, and hoists and how are they calculated?** Permit fees are based on the total cost of the conveyance and labor to install. The following permit fees apply to the construction(~~(, alteration,))~~ or relocation of all conveyances (~~(except for))~~ and material lifts:

TOTAL COST OF CONVEYANCE	FEE
<del>\$(250))</del> 0 to and including \$1,000 .....	<del>\$(31.30))</del>
	<u>50.00</u>
<del>((</del> \$1,001 to and including \$15,000	
For the first \$1,001 .....	44.20
Each additional \$1,000 or fraction thereof .....	8.70

To be approved, the plan must comply with the latest adopted edition of the American Society of Mechanical Engineers (ASME) A17.1, the National Electrical Code (NEC) and applicable Washington Administrative Codes (WAC). In addition, the plans must include all information necessary in determining whether each installation/alteration complies with all applicable codes. You must keep a copy of the approved plan on the job site until the department has witnessed all acceptance tests. Any alterations to the approved plan must be submitted to the department for approval before a final inspection will be conducted. The nonrefundable fees for reviewing your plans are:

For each installation/major alteration. . . . \$(~~22.80~~) 25.00  
If more than two sets of plans are submitted, the fee for each additional set . . . . \$(~~22.80~~) 10.00

**AMENDATORY SECTION** (Amending WSR 01-12-035, filed 5/29/01, effective 6/29/01)

**WAC 296-96-01035 Are there inspection fees? Yes.** The initial inspection of a conveyance or for the initial inspection of construction, alteration or relocation of a conveyance is included with your permit fee. Once the department has approved the conveyance you will be issued a permit that is valid for 30-days. Prior to the expiration of the 30-day permit the application for an annual operating permit and the appropriate fees must be paid to the department. Once the department has received the appropriate fees and application you will be issued your first annual operating permit. You are required to renew your annual operating permit yearly.

The following exceptions do require a fee:

**(1) Reinspection.** If a conveyance does not pass an initial inspection and an additional inspection is required, the fee for each reinspection of a conveyance is \$100.00 per conveyance plus \$50.00 per hour for each hour in addition to the first hour.

<del>(REINSPECTION</del>	<b>FEE</b>
<del>If a conveyance does not pass an initial inspection and a second inspection is required, the fee for each conveyance reinspected is</del>	<del>\$81.00</del>
<del>If any additional reinspections are required, the fee for each conveyance reinspected</del>	<del>..... \$104.60)</del>

The department may waive reinspection fees.

**(2) Inspecting increases in the height (jumping) of personnel and material hoists.**

The fee for inspecting an increase in the height (jumping) of each personnel hoist or material hoist is \$100.00 plus \$50.00 per hour for each hour in addition to 2 hours. This fee is for inspections occurring during regular working hours.

**(3) Variance inspections.**

(a) The fee for an on-site variance inspection is \$150.00 per conveyance plus \$50.00 per hour for each hour in addition to 2 hours. This fee is for inspections occurring during regular working hours.

(b) The fee for a variance approval that does not require an on-site inspection is \$50.00 per conveyance. The individual requesting the variance approval must provide the department with pictures, documentation, or other information necessary for the department to review the variance. The depart-

ment may conduct an on-site variance inspection to verify the information provided or if it determines that an inspection is necessary. If an on-site variance inspection is performed, the fees in (a) of this subsection will apply.

(4) "Red tag" inspection. The fee for performing an annual inspection to conveyances that are in "Red tag" status is \$25.00.

(5) Decommission inspection. The fee for performing a decommission inspection is \$50.00. Once the decommission inspection has been performed and approved, the conveyance will no longer require annual inspections until such time that the conveyance is brought back into service. Prior to operating the conveyance, a new inspection and annual operating permit must be obtained.

(6) Voluntary inspections by request. The owner or potential purchaser of a building within the department's jurisdiction may request a voluntary inspection of a conveyance. The fee for this inspection will be \$100.00 per conveyance and \$50.00 per hour for each hour in addition to 2 hours plus the standard per diem and mileage allowance granted to department inspectors. The owner/potential purchaser requesting the voluntary inspection will not be subject to any penalties based on the inspector's findings.

**AMENDATORY SECTION** (Amending WSR 01-12-035, filed 5/29/01, effective 6/29/01)

**WAC 296-96-01040 What is the fee for testing and inspecting regular elevators used as temporary ((~~personnel~~)) elevators to provide transportation for construction personnel, tools, and materials only?** (1) The fee for the inspecting and testing of regular elevators used as temporary ((~~personnel~~)) elevators is ~~\$(69.40))~~ 80.00, in addition to any other fees required in this chapter. This fee purchases a 30-day temporary use permit that may be renewed at the department's discretion.

(2) When this temporary use permit is purchased, a notice declaring that the equipment has not received final approval from the department must be conspicuously posted ((~~en~~)) in the elevator.

**AMENDATORY SECTION** (Amending WSR 01-12-035, filed 5/29/01, effective 6/29/01)

**WAC 296-96-01045 What are the inspection requirements and fees for conveyances in private residences?** (1) Chapter 70.87 RCW requires the department to inspect all new, altered or relocated conveyances operated exclusively for single-family use in private residences. Prior to inspection, you must complete a permit application as described in WAC 296-96-01005 and pay the appropriate fee listed in WAC 296-96-01010.

(2) Chapter 70.87 RCW allows the department to inspect conveyances operated exclusively for single-family use in private residences when the department is investigating an accident or an alleged or apparent violation of the statute or these rules.

PROPOSED

(3) No annual inspection and operating permit is required for a private residence conveyance operated exclusively for single-family use unless the owner requests it. When an owner requests an inspection and an annual operating permit, the following fee must be paid prior to an inspection:

TYPE OF CONVEYANCE	FEE
Each inclined stairway chair lift in private residence . . . . .	<del>\$(16.99)</del> 23.40
Each inclined wheel chair lift in a private residence . . . . .	<del>((22.80))</del> 23.40
Each vertical wheel chair lift in a private residence . . . . .	<del>((28.80))</del> 29.60
Each dumbwaiter in a private residence. . . . .	<del>((22.80))</del> 23.40
Each inclined elevator at a private residence . . . . .	<del>((81.00))</del> 83.20
Each private residence elevator . . . . .	<del>((52.20))</del> 53.60
Duplication of a lost, damaged or stolen operating permit . . . . .	<del>((5.10))</del> 10.00

**AMENDATORY SECTION** (Amending WSR 01-12-035, filed 5/29/01, effective 6/29/01)

**WAC 296-96-01050 How do I get a supplemental inspection?** Any person, firm, corporation or governmental agency can request a supplemental inspection from the department by paying a fee of ~~(\$299.80 per day plus)~~ \$150.00 per conveyance plus \$50.00 per hour in travel time and the standard per diem and mileage allowance granted to department inspectors. This fee is for inspections occurring during regular working hours.

**AMENDATORY SECTION** (Amending WSR 01-12-035, filed 5/29/01, effective 6/29/01)

**WAC 296-96-01055 Are technical services available and what is the fee?** You may request elevator field technical services from the department by paying a fee of ~~\$(57.80)~~ 60.00 per hour plus the standard per diem and mileage allowance granted to department inspectors. These field technical services may include code evaluation, code consultation, plan examination, code interpretation and clarification of technical data relating to the application of the department's conveyance rules. Field technical services do not include inspections.

**AMENDATORY SECTION** (Amending WSR 01-12-035, filed 5/29/01, effective 6/29/01)

**WAC 296-96-01060 Can I request an after hours inspection and what is the fee?** You may request an inspection outside of normal business hours, which are 7:00 a.m. to 5:00 p.m., if an inspector is available and the inspection is authorized by the department. The minimum fee for an after-

hours inspection is ~~\$(72.70)~~ 75.00 and \$75.00 per hour for each hour in addition to the first hour plus the standard per diem and mileage allowance granted to department inspectors. This fee is in addition to any other fees required for your project.

**AMENDATORY SECTION** (Amending WSR 01-12-035, filed 5/29/01, effective 6/29/01)

**WAC 296-96-01065 What are the annual operating permits fees?** An annual operating permit will be issued to you upon payment of the appropriate fee:

TYPE OF CONVEYANCE	FEE
Each hydraulic elevator . . . . .	<del>\$(80.99)</del> 100.00
Each roped-hydraulic elevator . . . . .	<del>((104.60))</del> 125.00
plus for each hoistway opening in excess of two . . . . .	<del>((7.99))</del> 10.00
Each cable elevator . . . . .	<del>((104.60))</del> 125.00
plus for each hoistway opening in excess of two . . . . .	<del>((7.99))</del> 10.00
Each cable elevator traveling more than 25 feet without an opening—for each 25 foot traveled . . . . .	<del>((11.00))</del> 10.00
Each limited-use/limited-application (— LULA) elevator . . . . .	<del>((80.99))</del> 100.00
Each escalator . . . . .	<del>((80.99))</del> 83.10
Each dumbwaiter in other than a private residence . . . . .	<del>((52.20))</del> 53.60
Each material lift . . . . .	<del>((69.40))</del> 100.00
Each incline elevator in other than a private residence . . . . .	<del>((104.60))</del> 107.50
Each belt manlift . . . . .	<del>((80.99))</del> 100.00
Each stair lift in other than a private residence . . . . .	<del>((52.20))</del> 53.60
Each wheel chair lift in other than a private residence . . . . .	<del>((52.20))</del> 53.60
Each personnel hoist . . . . .	<del>((80.99))</del> 100.00
Each grain elevator personnel lift . . . . .	<del>((80.99))</del> 83.10
Each material hoist . . . . .	<del>((80.99))</del> 100.00
Each special purpose elevator . . . . .	<del>((80.99))</del> 100.00
Each private residence elevator installed in other than a private residence . . . . .	<del>((80.99))</del> 100.00

PROPOSED

Each casket lift . . . . .	<del>((80.90))</del> 83.10
Each sidewalk freight elevator . . . . .	<del>((80.90))</del> 83.10
Each hand-powered manlift or freight elevator . . . . .	<del>((52.20))</del> 56.30
Each boat launching elevator . . . . .	<del>((80.90))</del> 83.10
Each auto parking elevator . . . . .	<del>((80.90))</del> 83.10
Each moving walk . . . . .	<del>((80.90))</del> 83.10
Duplication of a damaged, lost or stolen operating permit. . . . .	<del>((5.10))</del> 10.00

(d) Accessibility requirements of chapter 11 of The Uniform Building Code, 1997 edition as adopted and amended by chapter 51-40 WAC;

(e) Table 16-A Uniform and concentrated floor loads and footnotes of The Uniform Building Code, 1997 edition as adopted and amended by chapter 51-40 WAC;

(f) The Uniform Mechanical Code, 1997 edition as adopted and amended by chapter 51-42 WAC except when conflicting with the provisions of this chapter, this chapter controls;

(g) The National Electrical Code as referenced in chapter 19.28 RCW and chapter ~~((296-46))~~ 296-46A WAC;

(h) The latest adopted version of the Washington State Energy Code, as adopted ~~((by chapter 51-11 WAC))~~ according to chapter 19.27A RCW;

(i) The Uniform Plumbing Code, ~~((1997 edition))~~ as adopted and amended ~~((by chapters 51-46 and 51-47 WAC))~~ according to chapter 19.27 RCW;

(j) Where there is a conflict between codes, an earlier named code takes precedent over a later named code. Where, in any specific case, different sections of this code specify different materials, methods of construction or other requirements, the most restrictive governs. Where there is a conflict between a general requirement and a special requirement, the specific requirement must be applicable.

(2) All construction methods and installations must use accepted engineering practices, provide minimum health and safety to the occupants of commercial coaches and the public, and demonstrate journeyman quality of work of the various trades.

(3) Requirements for any size, weight, or quality of material modified by the terms "minimum," "not less than," "at least," and similar expressions are minimum standards. The manufacturer may exceed these rules provided the deviation does not result in inferior installation or defeat the purpose and intent of this chapter.

Note: The codes, RCW's and WAC's referenced in this rule are available to view at the Washington State Library, the Washington State Law Library, and may also be available at your local library.

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 296-96-0105      What are the permit fees for material lifts and how are they calculated?

**AMENDATORY SECTION** (Amending WSR 98-14-078, filed 6/30/98, effective 7/31/98)

**WAC 296-150C-0800 What manufacturing codes apply to commercial coaches?** (1) All design, construction, and installations of commercial coaches must conform with the following codes and the requirements of this chapter:

(a) The latest adopted version of the Washington State Ventilation and Indoor Air Quality Code, as adopted by chapter 51-13 WAC;

(b) The structural and other requirements of this chapter;

(c) Occupancy classification only from chapter 3 of The Uniform Building Code, 1997 edition as adopted and amended by chapter 51-40 WAC, except commercial coaches must not be group H or R-3 occupancy;

**AMENDATORY SECTION** (Amending WSR 01-12-035, filed 5/29/01, effective 6/29/01)

**WAC 296-150C-3000 Commercial coach fees.**

WAC 296-150C-3000 COMMERCIAL COACH FEES	
INITIAL FILING FEE	<del>\$(28.80))</del> 29.60
<b>DESIGN PLAN FEES:</b>	
INITIAL FEE - MASTER DESIGN	<del>\$(197.50))</del> 203.00
INITIAL FEE - ONE YEAR DESIGN	<del>\$(81.00))</del> 83.20
RENEWAL FEE	<del>\$(34.40))</del> 35.30
RESUBMIT FEE	<del>\$(57.80))</del> 59.40
ADDENDUM (Approval expires on same date as original plan)	<del>\$(57.80))</del> 59.40
ELECTRONIC PLAN SUBMITTAL FEE <del>\$(4.50))</del> 4.60 per page for the first set of plans and \$0.30 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
ELECTRICAL PLAN REVIEW (When required by WAC 296-46A-140. Plan review for educational, institutional or health care facilities and other buildings)	

PROPOSED

PROPOSED

<b>WAC 296-150C-3000 COMMERCIAL COACH FEES</b>	
Electrical Plan submission fee	\$((57.80)) <u>59.40</u>
Service/feeder Ampacity:	
0 - 100	\$((25.70)) <u>26.40</u>
101 - 200	\$((32.10)) <u>32.90</u>
201 - 400	\$((59.90)) <u>61.50</u>
401 - 600	\$((70.70)) <u>72.60</u>
601 - 800	\$((91.00)) <u>93.50</u>
801 - 1000	\$((111.30)) <u>114.40</u>
Over 1000	\$((120.80)) <u>124.10</u>
Over 600 volts surcharge	\$((19.20)) <u>19.70</u>
Thermostats:	
First	\$((11.50)) <u>11.80</u>
Each additional	\$3.00
Low voltage fire alarm and burglar alarm:	
Each control panel and up to four circuits or zones	\$((10.50)) <u>10.70</u>
Each additional circuit or zone	\$2.00
Generators, refer to appropriate service/feeder ampacity fees	
<i>Note: Altered services or feeders shall be charged the above rate per the service/feeder ampacity fees.</i>	
Supplemental submissions of plans (resubmittals, addendums, renewals, code updates, etc.) shall be charged per hour or fraction of an hour*	
	\$((68.40)) <u>70.30</u>
<b>MEDICAL GAS PLAN REVIEW:</b>	
SUBMISSION FEE	\$((55.50)) <u>57.00</u>
FIRST STATION	\$((55.50)) <u>57.00</u>
EACH ADDITIONAL STATION	\$((20.50)) <u>21.00</u>
<b>RECIPROCAL PLAN REVIEW:</b>	
INITIAL FEE - MASTER DESIGN	\$((88.20)) <u>90.60</u>
INITIAL FEE - ONE YEAR DESIGN	\$((53.40)) <u>54.80</u>
RENEWAL FEE	\$((53.40)) <u>54.80</u>
ADDENDUM	\$((53.40)) <u>54.80</u>
<b>PLANS APPROVED BY PROFESSIONALS</b>	
	\$((40.30)) <u>41.40</u>
<b>APPROVAL OF EACH SET OF DESIGN PLANS BEYOND FIRST TWO SETS</b>	
	\$((11.00)) <u>11.30</u>
<b>DEPARTMENT INSPECTION FEES</b>	
INSPECTION/REINSPECTION (Per hour* plus travel time* and mileage**)	\$((57.80)) <u>59.40</u>
TRAVEL (Per hour)	\$((57.80)) <u>59.40</u>
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
<b>DEPARTMENT AUDIT FEES:</b>	
AUDIT (Per hour*)	\$((57.80)) <u>59.40</u>

PROPOSED

<b>WAC 296-150C-3000 COMMERCIAL COACH FEES</b>	
TRAVEL (Per hour*)	\$(( <del>57.80</del> )) <u>59.40</u>
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
<b>INSIGNIA FEES:</b>	
FIRST SECTION	\$(( <del>16.90</del> )) <u>18.20</u>
EACH ADDITIONAL SECTION	\$(( <del>11.00</del> )) <u>11.30</u>
ALTERATION	\$(( <del>28.80</del> )) <u>29.60</u>
REISSUED-LOST/DAMAGED	\$(( <del>11.00</del> )) <u>11.30</u>
<b>OTHER FEES:</b>	
FIELD TECHNICAL SERVICE (Per hour* plus travel time* and mileage**)	\$(( <del>57.80</del> )) <u>59.40</u>
PUBLICATION PRINTING AND DISTRIBUTION OF RCW'S AND WAC'S (One free copy per year upon request)	\$(( <del>11.00</del> )) <u>11.30</u>
* Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments	
** Per state guidelines	
*** Actual charges incurred	

AMENDATORY SECTION (Amending WSR 01-12-035, filed 5/29/01, effective 6/29/01)

**WAC 296-150P-3000 Recreational park trailer fees.**

<b>WAC 296-150P-3000 RECREATIONAL PARK TRAILER FEES</b>	
INITIAL FILING FEE	\$(( <del>28.80</del> )) <u>29.60</u>
<b>DESIGN PLAN FEES:</b>	
NEW PLAN REVIEW FEE WITHOUT STRUCTURAL REQUIREMENTS	\$(( <del>81.00</del> )) <u>83.20</u>
NEW PLAN REVIEW FEE WITH STRUCTURAL REQUIREMENTS	\$(( <del>106.90</del> )) <u>109.80</u>
RESUBMITTAL FEE	\$(( <del>57.80</del> )) <u>59.40</u>
ADDENDUM (Approval expires on same date as original plan.)	\$(( <del>57.80</del> )) <u>59.40</u>
ELECTRONIC PLAN SUBMITTAL FEE \$(( <del>4.50</del> )) <u>4.60</u> per page for the first set of plans and \$0.30 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
<b>QUALITY CONTROL/MANUAL FEES:</b>	
INITIAL APPROVAL	\$(( <del>11.00</del> )) <u>11.30</u>
RESUBMITTAL FEE	\$(( <del>57.80</del> )) <u>59.40</u>
ADDENDUM	\$(( <del>57.80</del> )) <u>59.40</u>
<b>DEPARTMENT AUDIT FEES:</b>	
AUDIT (per hour)*	\$(( <del>57.80</del> )) <u>59.40</u>
TRAVEL (per hour)*	\$(( <del>57.80</del> )) <u>59.40</u>
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
<b>DEPARTMENT INSPECTION FEES:</b>	
INSPECTION (per hour)*	\$(( <del>57.80</del> )) <u>59.40</u>
TRAVEL (per hour)*	\$(( <del>57.80</del> )) <u>59.40</u>

PROPOSED

<b>WAC 296-150P-3000 RECREATIONAL PARK TRAILER FEES</b>	
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
<b>INSIGNIA FEES:</b>	
STATE CERTIFIED	<del>\$(10.80)</del> 11.10
ALTERATION	<del>\$(28.80)</del> 29.60
REISSUED-LOST/DAMAGED	<del>\$(10.80)</del> 11.10
<b>OTHER FEES:</b>	
FIELD TECHNICAL SERVICE (per hour* plus travel time* and mileage**)	<del>\$(57.80)</del> 59.40
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free copy per year upon request)	<del>\$(11.00)</del> 11.30
* Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.	
** Per state guidelines.	
*** Actual charges incurred.	

AMENDATORY SECTION (Amending WSR 01-12-035, filed 5/29/01, effective 6/29/01)

**WAC 296-150R-3000 Recreational vehicle fees.**

<b>WAC 296-150R-3000 RECREATIONAL VEHICLE FEES</b>	
<b>STATE PLAN</b>	
INITIAL FILING FEE	<del>\$(28.80)</del> 29.60
<b>DESIGN PLAN FEES:</b>	
NEW PLAN REVIEW FEE	<del>\$(81.00)</del> 83.20
RESUBMITTAL FEE	<del>\$(57.80)</del> 59.40
ADDENDUM (Approval expires on same date as original plan.)	<del>\$(57.80)</del> 59.40
<b>QUALITY CONTROL/MANUAL FEES:</b>	
INITIAL APPROVAL	<del>\$(11.00)</del> 11.30
RESUBMITTAL FEE	<del>\$(57.80)</del> 59.40
ADDENDUM	<del>\$(57.80)</del> 59.40
ELECTRONIC PLAN SUBMITTAL FEE <del>\$(4.50)</del> 4.60 per page for the first set of plans and \$0.30 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
<b>DEPARTMENT AUDIT FEES:</b>	
AUDIT (per hour)*	<del>\$(57.80)</del> 59.40
TRAVEL (per hour)*	<del>\$(57.80)</del> 59.40
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING	
AIRFARE***	
<b>DEPARTMENT INSPECTION FEES:</b>	
INSPECTION (per hour)*	<del>\$(57.80)</del> 59.40
TRAVEL (per hour)*	<del>\$(57.80)</del> 59.40
PER DIEM**	
HOTEL***	
MILEAGE**	

PROPOSED

<b>WAC 296-150R-3000 RECREATIONAL VEHICLE FEES</b>	
RENTAL CAR***	
PARKING***	
AIRFARE***	
<b>INSIGNIA FEES:</b>	
STATE CERTIFIED	\$((+0.50)) 10.70
ALTERATION	\$((28.80)) 29.60
REISSUED-LOST/DAMAGED	\$((+0.50)) 10.70
<b>OTHER FEES:</b>	
FIELD TECHNICAL SERVICE (per hour* plus travel time* and mileage**)	\$((57.80)) 59.40
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free copy per year)	\$((+1.00)) 11.30
* Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.	
** Per state guidelines.	
***Actual charges incurred.	

<b>WAC 296-150R-3000 RECREATIONAL VEHICLE FEES</b>	
<b>SELF CERTIFICATION</b>	
INITIAL FILING FEE	\$((28.80)) 29.60
<b>DESIGN PLAN FEES:</b>	
NEW PLAN REVIEW FEE (one time fee)	\$((81.00)) 83.20
RESUBMITTAL FEE	\$((57.80)) 59.40
ADDENDUM (Approval expires on same date as original plan.)	\$((57.80)) 59.40
ELECTRONIC PLAN SUBMITTAL FEE \$((4.50)) 4.60 per page for the first set of plans and \$0.30 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
<b>SELF CERTIFICATION/MANUAL FEES:</b>	
INITIAL APPROVAL	\$((+1.00)) 11.30
RESUBMITTAL FEE	\$((57.80)) 59.40
ADDENDUM	\$((57.80)) 59.40
<b>DEPARTMENT AUDIT FEES:</b>	
AUDIT (per hour)*	\$((57.80)) 59.40
TRAVEL (per hour)*	\$((57.80)) 59.40
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING	
AIRFARE***	
<b>DEPARTMENT INSPECTION FEES:</b>	
INSPECTION (per hour)*	\$((57.80)) 59.40
TRAVEL (per hour)*	\$((57.80)) 59.40
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
<b>INSIGNIA FEES:</b>	
SELF CERTIFIED	\$((+0.50)) 10.70

PROPOSED

<b>WAC 296-150R-3000 RECREATIONAL VEHICLE FEES</b>	
ALTERATION	\$(( <del>28.80</del> )) <u>29.60</u>
REISSUED-LOST/DAMAGED	\$(( <del>10.50</del> )) <u>10.70</u>
<b>OTHER FEES:</b>	
FIELD TECHNICAL SERVICE (per hour* plus travel time* and mileage**)	\$(( <del>57.80</del> )) <u>59.40</u>
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free copy per year)	\$(( <del>11.00</del> )) <u>11.30</u>
* Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.	
** Per state guidelines.	
*** Actual charges incurred.	

**AMENDATORY SECTION** (Amending WSR 01-12-035, filed 5/29/01, effective 6/29/01)

**WAC 296-150T-3000 Factory-built temporary worker housing fees.**

<b>WAC 296-150T-3000 TEMPORARY WORKER HOUSING FEES</b>	
<b>INITIAL FILING FEE</b>	\$(( <del>40.30</del> )) <u>41.40</u>
<b>DESIGN PLAN FEES:</b>	
INITIAL ONE YEAR DESIGN	\$(( <del>115.90</del> )) <u>119.10</u>
RENEWAL FEE	\$(( <del>40.30</del> )) <u>41.40</u>
RESUBMIT FEE	\$(( <del>57.80</del> )) <u>59.40</u>
ADDENDUM (Approval expires on same date as original plan)	\$(( <del>57.80</del> )) <u>59.40</u>
ELECTRONIC PLAN SUBMITTAL FEE \$(( <del>4.50</del> )) <u>4.60</u> per page for the first set of plans and \$0.30 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
Supplemental submissions of plans (resubmittals, addendums, renewals, code updates, etc.) shall be charged per hour or fraction of an hour*	
	\$(( <del>68.40</del> )) <u>70.30</u>
<b>APPROVAL OF EACH SET OF DESIGN PLANS BEYOND FIRST TWO SETS</b>	
	\$(( <del>11.00</del> )) <u>11.30</u>
<b>DEPARTMENT INSPECTION FEES</b>	
INSPECTION/REINSPECTION (Per hour* plus travel time* and mileage**)	\$(( <del>57.80</del> )) <u>59.40</u>
TRAVEL (Per hour)*	\$(( <del>57.80</del> )) <u>59.40</u>
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
<b>DEPARTMENT AUDIT FEES:</b>	
AUDIT (Per hour*)	\$(( <del>57.80</del> )) <u>59.40</u>
TRAVEL (Per hour*)	\$(( <del>57.80</del> )) <u>59.40</u>
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
<b>INSIGNIA FEES:</b>	
FIRST SECTION	\$(( <del>162.50</del> )) <u>167.00</u>
EACH ADDITIONAL SECTION	\$(( <del>15.90</del> )) <u>16.30</u>
REISSUED-LOST/DAMAGED	\$(( <del>40.30</del> )) <u>41.40</u>

<b>OTHER FEES:</b>	
FIELD TECHNICAL SERVICE (Per hour* plus travel time* and mileage**)	<del>\$(57.80)</del> <u>59.40</u>
((NOTIFICATION TO LOCAL ENFORCEMENT AGENCY (NLEA)	<del>23.90</del> )
PUBLICATION PRINTING AND DISTRIBUTION OF RCW'S AND WAC'S (One free per year)	<del>\$(41.00)</del> <u>11.30</u>
* Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments	
** Per state guidelines	
*** Actual charges incurred	

**AMENDATORY SECTION** (Amending WSR 99-18-069, filed 8/31/99, effective 10/1/99)

**WAC 296-150V-0800 What manufacturing codes apply to conversion vendor units or medical units?** (1) A conversion vendor unit or medical unit must comply with the following codes where applicable:

- (a) The Uniform Mechanical Code, with the amendments made by the Washington State Building Code Council, chapter 51-42 WAC;
- (b) The National Electrical Code as referenced in chapter 19.28 RCW and chapter ((296-46)) 296-46A WAC, installing electric wires and equipment;
- (c) The Uniform Plumbing Code ((1997 edition with the amendments under)) as adopted and amended according to chapter 19.27 RCW;
- (d) The Washington State Building Code Council, chapter 51-40 WAC, Uniform Building Code, Chapter 11, Acces-

sibility as applies to the exterior of the unit relating to customer service facilities in section 1105.4.7; and

(e) The Washington State Energy Code, ((chapter 51-11 WAC)) as adopted according to chapter 19.27A RCW, and the Washington State Ventilation and Indoor Air Quality Code, chapter 51-13 WAC, when heating and/or air conditioning is installed.

(2) Provide minimum health and safety to the occupants of conversion vendor units and medical units and the public, and demonstrate journeyman quality of work of the various trades.

(3) Requirements for any size, weight, or quality of material modified by the terms "minimum," "not less than," "at least," and similar expressions are minimum standards. The conversion vendor unit or medical unit may exceed these rules provided the deviation does not result in inferior installation or defeat the purpose and intent of this chapter.

**AMENDATORY SECTION** (Amending WSR 01-12-035, filed 5/29/01, effective 6/29/01)

**WAC 296-150V-3000 Conversion vendor units and medical units—Fees.**

<b>WAC 296-150V-3000 CONVERSION VENDOR UNITS AND MEDICAL UNITS</b>	
<b>INITIAL FILING FEE</b>	<del>\$(28.80)</del> <u>29.60</u>
<b>DESIGN PLAN FEES:</b>	
INITIAL FEE - MASTER DESIGN	<del>\$(197.50)</del> <u>203.00</u>
INITIAL FEE - ONE YEAR DESIGN	<del>\$(81.00)</del> <u>83.20</u>
RENEWAL FEE	<del>\$(34.70)</del> <u>35.60</u>
RESUBMIT FEE	<del>\$(57.80)</del> <u>59.40</u>
ADDENDUM (Approval expires on same date as original plan)	<del>\$(57.80)</del> <u>59.40</u>
ELECTRONIC PLAN SUBMITTAL FEE <del>\$(4.50)</del> <u>4.60</u> per page for the first set of plans and \$0.30 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
<b>RECIPROCAL PLAN REVIEW: (Pending)</b>	
INITIAL FEE - MASTER DESIGN	<del>\$(88.20)</del> <u>90.60</u>
INITIAL FEE - ONE YEAR DESIGN	<del>\$(53.40)</del> <u>54.80</u>
RENEWAL FEE	<del>\$(53.40)</del> <u>54.80</u>
ADDENDUM	<del>\$(53.40)</del> <u>54.80</u>
<b>APPROVAL OF EACH SET OF DESIGN PLANS BEYOND FIRST TWO SETS</b>	<del>\$(41.00)</del> <u>11.30</u>
<b>DEPARTMENT INSPECTION FEES:</b>	
INSPECTION/REINSPECTION (Per hour* plus travel time* and mileage**)	<del>\$(57.80)</del> <u>59.40</u>
TRAVEL (Per hour)*	<del>\$(57.80)</del> <u>59.40</u>
PER DIEM**	
HOTEL***	

PROPOSED

PROPOSED

WAC 296-150V-3000 CONVERSION VENDOR UNITS AND MEDICAL UNITS	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
<b>DEPARTMENT AUDIT FEES:</b>	
AUDIT (Per hour*)	\$(( <del>57.80</del> )) 59.40
TRAVEL (Per hour*)	\$(( <del>57.80</del> )) 59.40
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
<b>INSIGNIA FEES:</b>	
FIRST SECTION	\$(( <del>16.90</del> )) 17.30
ALTERATION	\$(( <del>28.80</del> )) 29.60
REISSUED-LOST/DAMAGED	\$(( <del>11.00</del> )) 11.30
<b>OTHER FEES:</b>	
FIELD TECHNICAL SERVICE (Per hour* plus travel time* and mileage**)	\$(( <del>57.80</del> )) 59.40
PUBLICATION PRINTING AND DISTRIBUTION OF RCW'S AND WAC'S (One free copy per year upon request)	\$(( <del>11.00</del> )) 11.30
* Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.	
** Per state guidelines.	
*** Actual charges incurred.	

**AMENDATORY SECTION** (Amending WSR 97-24-071, filed 12/2/97, effective 1/5/98)

**WAC 296-200A-080 How is a suit filed against a contractor?** (1) A civil suit against a contractor must be filed in superior court. Unless the suit is filed in a superior court, the department will not be able to ((pay)) direct payment on an unsatisfied final judgment against a secured contractor.

(2) Notice that a suit has been filed (a summons and complaint) against a contractor, the contractor's bond, and/or the contractor's deposit must be exclusively delivered to the department by ((registered or certified mail. ~~The department does not accept personal service of a summons and complaint~~)) any delivery requiring notice of receipt. The notice must be addressed to the department and must include three copies of the summons and complaint filed against the contractor, the contractor's bond and/or the contractor's deposit. The person filing the suit must pay a ((ten-dollar)) twenty-dollar service fee to the department. See RCW 18.27.040(3).

(3) The summons and complaint against a contractor should include the following information:

- (a) The name of the contractor exactly as it appears in the contractor's registration file;
- (b) The contractor's business address;
- (c) The names of the owners, partners or officers of the contractor; and
- (d) The contractor's registration number.

(4) If the suit joins a bonding company, the summons and complaint should also include:

- (a) The name of the bonding company that issued the contractor's bond;
- (b) The bond number; and
- (c) The effective date of the bond.

(5) Service is not complete until the department receives the ((ten-dollar)) twenty-dollar fee and three copies of the summons and complaint.

(6) Within ((forty-eight hours)) two days of receiving a summons and complaint, the department must transmit a copy of the summons and complaint to the registrant at their last known address and to the registrant's surety.

(7) The department will return a summons and complaint without it being served, if the department cannot identify either the contractor or bonding company being sued.

**AMENDATORY SECTION** (Amending WSR 01-12-035, filed 5/29/01, effective 6/29/01)

**WAC 296-200A-900 What fees does the department charge contractors for issuance, renewal and reinstatement of certificates of registration?** (1) For the purposes of this chapter:

- (a) A contractor's registration is **renewed** before or after it expires.
- (b) A contractor's registration is **reinstated** after the registration:

(i) ~~((Has expired; or~~  
~~((ii)))~~ Has been suspended because the contractor's insurance has expired or been canceled; or  
~~((iii)))~~ ~~((ii))~~ Has been suspended because the contractor's bond or assignment of account has been canceled or impaired.

(c) A contractor **reregisters** when his or her business structure changes.

(2) The department charges the following fees:

~~(a) ((Before August 1, 2001:~~

~~(i) \$45.00 for each issuance, renewal or reregistration of a certificate of registration.~~

~~(ii) \$46.20 for the reinstatement of a certificate of registration.~~

~~(b) On or after August 1, 2001:~~

~~(i) \$50.00 for each issuance, renewal or reregistration of a certificate of registration for contractors with an even numbered Unified Business Identifier number. This registration is valid for one year from date of issuance, renewal or reregistration or until it is suspended or revoked.~~

~~((ii)))~~ \$100.00 for each issuance, renewal or reregistration of a certificate of registration for contractors ~~((with an odd numbered Unified Business Identifier number or those who are not required to have a Unified Business Identifier by the department of revenue)).~~ This registration is valid for two years from date of issuance, renewal or reregistration or until it is suspended or revoked.

~~((iii) \$46.20))~~ (b) \$47.40 for the reinstatement of a certificate of registration.

~~((iv) After the issuance, renewal or reregistration of a certificate of registration granted under (b)(i) and (ii) of this subsection all contractors (regardless of Unified Business Identifier number) must comply with the two year registration provisions established under (b)(ii) of this subsection.)~~

(c) ~~\$(11.00))~~ 11.30 for providing a duplicate certificate of registration.

(d) ~~\$(22.10))~~ 22.70 for each requested certified letter prepared by the department.

(e) \$2.00 per copy for documents copied from a contractor's file. The maximum copy charge for copies from one contractor's file will be ~~\$(25.70))~~ 26.40.

(f) ~~((On or after July 22, 2001, a fee of))~~ \$20.00 is required to cover the costs for the service of process in an action against the contractor, the contractor's bond, or the deposit under RCW 18.27.040.

**AMENDATORY SECTION** (Amending WSR 01-12-035, filed 5/29/01, effective 6/29/01)

**WAC 296-401B-700 Fees for certificates of competency, examination and reciprocity.** When an individual applies to take a competency examination or to obtain a certificate of competency, the individual must pay the appropriate fee(s) listed below.

Type of Certificate	Fee
(1) Journeyman or specialty electrician certificate renewal (per 36-month period)	<del>\$(66.30))</del> <u>68.10</u>

Type of Certificate	Fee
(2) Late renewal of journeyman or specialty electrician certificate (per 36-month period)	<del>\$(133.70))</del> <u>136.20</u>
(3) Journeyman or specialty electrician examination application (non-refundable)	<del>\$(27.70))</del> <u>28.40</u>
(4) Journeyman or specialty electrician original certificate	<del>\$(43.70))</del> <u>44.90</u>
(5) Training certificate (expires one year after purchase)	<del>\$(21.30))</del> <u>21.80</u>
(6) Training certificate renewal or update of hours	<del>\$(21.30))</del> <u>21.80</u>
(7) Unsupervised electrical training certificate	<del>\$(21.30))</del> <u>21.80</u>
(8) Journeyman or specialty electrician test or retest	<del>\$(50.10))</del> <u>51.40</u>
(9) Reciprocal journeyman or specialty certificate	<del>\$(71.40))</del> <u>73.30</u>
(10) Reinstatement of journeyman or specialty certificate	<del>\$(21.30))</del> <u>21.80</u>
(11) Continuing education course submittal and approval, per course	<del>\$(42.60))</del> <u>43.70</u>
(12) Continuing education course renewal, per course	<del>\$(21.30))</del> <u>21.80</u>
(13) Refund processing fee. All requests for refunds will be assessed a processing fee	<del>\$(10.80))</del> <u>11.10</u>

Note: Failure to appear for an examination results in forfeiture of the examination fee.

**WSR 02-09-096**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**  
 [Filed April 17, 2002, 10:41 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 01-13-099.

Title of Rule: Chapter 296-400A WAC, Certification of competency for journeyman plumbers.

Purpose: The purpose of this rule making is to make substantive changes to the certification of competency for journeyman plumbers rules (chapter 296-400A WAC) in response to the passage of chapter 281, Laws of 2001 (ESSB 2172) from the 2001 legislative session.

These changes are necessary to:

- Update the rules to reflect current department practice;
- Establish the process, requirements and fees associated with becoming a backflow assembly maintenance and repair specialty plumber; and
- Make necessary housekeeping changes.

PROPOSED

## AMENDED SECTIONS:

**Title of the Rule:** Changed the title of chapter 296-400A WAC to "Plumber certification rules."

**WAC 296-400A-005 What definitions do I need to know to understand these rules?** Definitions were added for "backflow assembly tester," "backflow assembly," and "plumbing contractor." Also, the definition of "specialty plumber" and "training course provider" were expanded to include provisions related [to] the backflow assembly maintenance and repair specialty category.

**WAC 296-400A-020 How do I obtain a certificate of competency?** Changes were made to this section to clarify the requirements for obtaining a certificate of competency for all the plumber classifications, including the new backflow assembly maintenance and repair specialty.

**WAC 296-400A-025 Who approves medical gas piping installer endorsement training courses and courses offered by training providers necessary for backflow assembly maintenance and repair certification?** Changes were made to this section to include that the department has the authority to establish that individuals wishing to become a certified backflow assembly maintenance and repair specialty plumber must successfully complete a course of study from a training provider approved by the department.

**WAC 296-400A-026 What training course approval procedures will the department follow for medical gas piping installer endorsement and backflow assembly maintenance and repair certification?** Changes were made to this section to establish approval procedures for providing training courses required to become a backflow assembly maintenance and repair specialty plumber.

**WAC 296-400A-030 Do I need a temporary permit?** Changes were made to this section to clarify that temporary permits do not apply to backflow assembly maintenance and repair specialties.

**WAC 296-400A-031 How do I qualify for a temporary permit?** Clarification changes were made to this section to remove unnecessary language.

**WAC 296-400A-035 How can I be placed on inactive status?** Changes were made to this section to eliminate the requirement that an individual must be at least sixty-two years of age to be placed on inactive status and that inactive status requests must be submitted and approved by the department prior to the expiration date of your plumbing certificate.

**WAC 296-400A-045 What fees will I have to pay?** The fee structure was adjusted to incorporate the necessary fees for the new backflow assembly maintenance and repair specialty certification. The less than one-year trainee certificate fee was removed as no trainee certificates are issued for less than one year. Also, the replacement fee for certificates was reduced. Lastly, other minor changes were made to the fee provisions for purposes of clarity and to clearly reflect department practice.

**WAC 296-400A-070 Can I work as a certified plumber in Washington without taking the Washington state plumbers' competency examination?** Changes were made to this section to clarify the exceptions to the examina-

tion provisions of the rules. These exceptions are necessary in response to the legislative changes, which gave the department the authority to establish the backflow assembly maintenance and repair specialty.

**WAC 296-400A-100 For certification purposes, how are "years of employment" computed and documented?** Changes were made to this section to clarify that subsections (1) through (3) of this section do not apply to the backflow assembly maintenance and repair specialty certification as years of employment are not required for this specialty. Applicants for this specialty designation are required to have fulfilled the requirements in WAC 296-400A-122 and pay the applicable fees in WAC 296-400A-045(2). Also, a provision that experience obtained as a backflow assembly maintenance and repair specialty may not be applied toward journeyman or specialty plumber certification was added.

**WAC 296-400A-120 What do I need to know about plumber trainee certificates?** Changes were made to this section to eliminate the provision that a training certificate may not be issued for more than eight years unless the department determines that there are extenuating circumstances. Also, clarified that the trainee hour requirements do not apply to the backflow assembly maintenance and repair specialty certification. Lastly, a provision was added to require a trainee certificate for an individual performing backflow assembly maintenance and repair work that is not a certified plumber provided the individual works under the direct supervision of a certified backflow assembly maintenance and repair specialty, journeyman plumber, or specialty plumber for a minimum of 100% of each working day.

**WAC 296-400A-121 What do I need to know about trainee experience and plumber examination requirements for the journeyman and specialty plumber (excluding the backflow assembly maintenance and repair specialty)?** Changes were made to this section to clarify that the trainee hour requirements do not apply to the backflow assembly maintenance and repair specialty certification.

**WAC 296-400A-130 What if I make a false statement or a material misrepresentation on an application, an employment report or a trainee certificate?** Changes were made to this section to clarify that a plumber's certificate may be suspended or revoked per RCW 18.106.100. Clarified that the annual statements of employment do not apply to backflow assembly maintenance and repair specialty certification.

**WAC 296-400A-140 How does the department enforce plumbers certification requirements?** Changes were made to this section to require individuals who are certified as a backflow assembly maintenance and repair specialty to have an active backflow assembly tester certification from the department of health.

## NEW SECTIONS:

**WAC 296-400A-122 What do I need to know about trainee experience and the backflow assembly maintenance and repair specialty examination requirements?** A new section was added to establish the requirements relating to trainee experience and the examination for the backflow assembly maintenance and repair specialty certification.

**WAC 296-400A-430 If I am a certified backflow assembly maintenance and repair, journeyman, or specialty plumber do I need to be a registered contractor under chapter 18.27 RCW?** A new section was added to clarify that anyone who advertises, offers to do work, submits a bid, or performs any work under chapter 18.106 RCW and these rules must be a registered contractor under chapter 18.27 RCW, or an employee of such registered contractor, with wages as their sole compensation.

Statutory Authority for Adoption: RCW 18.106.040, 18.106.140, and chapter 281, Laws of 2001 (ESHB 2172).

Statute Being Implemented: Chapter 18.106 RCW.

Summary: See Purpose above.

Reasons Supporting Proposal: See Purpose above.

Name of Agency Personnel Responsible for Drafting: Josh Swanson, Tumwater, (360) 902-6411; Implementation and Enforcement: Patrick Woods, Tumwater, (360) 902-6348.

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: See Purpose above.

Proposal Changes the Following Existing Rules: See Purpose above.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has considered whether these proposed rules are subject to the Regulatory Fairness Act and has determined that they do not require a small business economic impact statement because the costs associated with the proposed rules are exempted by law (see RCW 19.85.025 referencing RCW 34.05.310(4)) from the small business economic impact requirements.

RCW 34.05.328 does not apply to this rule adoption. Significant rule-making criteria does not apply to these rule changes because the exempt criteria outlined in RCW 34.05.328(5) was met.

Hearing Location: Department of Labor and Industries Building, S119, 7273 Linderson Way S.W., Tumwater, WA, on May 21, 2002, at 4:00 p.m.; and at the Yakima School District (Administration Offices), 104 North 4th Avenue, Yakima, WA, on May 22, 2002, at 3:00 p.m.

Assistance for Persons with Disabilities: Contact Josh Swanson by May 20, 2002, at (360) 902-6411.

Submit Written Comments to: Josh Swanson, Specialty Compliance Services Division, P.O. Box 44400, Olympia, WA 98504-4400, swaj235@lni.wa.gov, fax (360) 902-5292, by May 22, 2002. Comments submitted by fax must be ten pages or less.

Date of Intended Adoption: May 28, 2002.

April 17, 2002

Gary Moore

Director

## Chapter 296-400A WAC

### ((CERTIFICATION OF COMPETENCY FOR JOURNEYMAN)) PLUMBER((S)) CERTIFICATION RULES

AMENDATORY SECTION (Amending WSR 98-13-126, filed 6/17/98, effective 7/20/98)

**WAC 296-400A-005 What definitions do I need to know to understand these rules?** Unless a different meaning is clearly required by the context, the following terms and definitions are important:

**"Advisory board"** is the state advisory board of plumbers.

**"Backflow assembly" or "backflow prevention assembly" or "backflow preventer"** is a device as described in the Uniform Plumbing Code that is used to prevent the undesirable reversal of flow of water or other substances through a cross-connection into the public water system or consumer's potable water system.

**"Backflow assembly tester"** is an individual certified by the department of health to perform tests to backflow assemblies.

**"Continuity affidavit"** is a form developed by the department that is used to verify whether medical gas pipe installation work has been performed. This form is provided to the department annually by the person holding the medical gas piping installer endorsement and requires the signature of the employer of the medical gas piping installer.

**"Plumbing contractor"** means any person, corporate or otherwise, who engages in, or offers or advertises to engage in, any work covered by the provisions of chapter 18.106 RCW and these rules by way of trade or business, or any person, corporate or otherwise, who employs anyone, or offers or advertises to employ anyone, to engage in any work covered by the provisions of chapter 18.106 RCW and these rules.

**"Department"** is the department of labor and industries.

**"Director"** is the director of the department of labor and industries.

**"Journeyman plumber"** is anyone who has learned the commercial plumbing trade and has been issued a journeyman certificate of competency by the department. A journeyman plumber may work on plumbing projects including residential, commercial and industrial worksite locations.

**"Medical gas piping installer"** is anyone who has been issued a medical gas piping installer endorsement of competency by the department.

**"Medical gas piping systems"** are piping systems that convey or involve oxygen, nitrous oxide, high pressure nitrogen, medical compressed air and medical vacuum systems.

**"Plumbing"** is that craft involved in installing, altering, repairing and renovating potable water systems, liquid waste systems and medical gas piping systems within a building. The installation of water softening or water treatment equipment into a water system is not considered plumbing.

PROPOSED

"Specialty plumber" is anyone who has been issued a specialty plumbers certificate of competency by the department ~~((Specialty plumber certificates are))~~ limited to ~~((the))~~:

(a) Installation, maintenance and repair of plumbing for single-family dwellings, duplexes and apartment buildings which do not exceed three stories; or

(b) Maintenance and repair of backflow assemblies located within a residential or commercial building or structure. For the purposes of this subsection, "maintenance and repair" include cleaning and replacing internal parts of an assembly, but do not include installing or replacing backflow assemblies.

"Supervision" for the purpose of these rules means within sight or sound. Supervision requirements are met when the supervising plumber is on the premises and within sight or sound of the individual who is being trained.

"Training course provider" is an entity approved by the department, in consultation with the state advisory board of plumbers, to provide medical gas piping installer or backflow assembly maintenance and repair training. All training course providers must comply with the requirements in WAC 296-400A-026.

"Trainee plumber" is anyone who has been issued a trainee certificate and is learning or being trained in the plumbing trade with direct supervision of either a journeyman plumber or specialty plumber working in their specialty.

AMENDATORY SECTION (Amending WSR 97-11-052, filed 5/20/97, effective 6/30/97)

**WAC 296-400A-020 How do I obtain a certificate of competency?** You can obtain a certificate of competency by completing the following requirements for:

(1) Journeyman and specialty plumber certificate (excluding backflow assembly maintenance and repair specialty certification):

(a) Submitting a competency examination application to the department; ~~((and~~

~~((2)))~~ (b) Paying the examination fee shown in WAC 296-400A-045(1); ~~((and~~

~~((3)))~~ (c) Submitting the required evidence of competency and experience to the department as required under WAC 296-400A-120 and 296-400A-121; and

~~((4)))~~ (d) Passing the competency examination.

(2) Backflow assembly maintenance and repair specialty certificate:

(a) Submitting a competency examination application to the department;

(b) Paying the application and certificate fee shown in WAC 296-400A-045(2);

(c) Submitting the required evidence of competency to the department as required by WAC 296-400A-122; and

(d) Passing the competency examination.

AMENDATORY SECTION (Amending WSR 98-13-126, filed 6/17/98, effective 7/20/98)

**WAC 296-400A-025 Who approves medical gas piping installer endorsement training courses and courses**

**offered by training providers necessary for backflow assembly maintenance and repair certification? (1) Medical gas piping installer endorsement.** RCW 18.106.050 authorizes the department to:

~~((1)))~~ (a) Approve training courses for the medical gas piping installer endorsement; and

~~((2)))~~ (b) Set training course fees.

(2) **Backflow assembly maintenance and repair certification.** RCW 18.106.040 authorizes the department to establish eligibility requirements in rule. Individuals that wish to become a certified backflow assembly maintenance and repair specialty plumber must successfully complete a course of study from a training provider approved by the department.

AMENDATORY SECTION (Amending WSR 98-13-126, filed 6/17/98, effective 7/20/98)

**WAC 296-400A-026 What training course approval procedures will the department follow for medical gas piping installer endorsement and backflow assembly maintenance and repair certification? (1) Medical gas piping installer endorsement.**

(a) The department will review and approve courses submitted by training course providers that offer medical gas piping systems training. Course approvals will be decided in consultation with the state advisory board of plumbers.

~~((2)))~~ (b) All providers seeking course approval, must submit the required information (see (e) of this subsection ~~((5) of this section))~~) to the department at least thirty days before a regularly scheduled advisory board meeting. **No course can be offered as meeting the requirements of a medical gas endorsement until it has been approved.**

~~((3)))~~ (c) All material required for approval will be reviewed without testimony and the review will be based solely upon the information submitted. Once reviewed, the department has five working days to give a provider written notification of acceptance or rejection. In the case of rejection, the department must specify its reasons.

~~((4)))~~ (d) If a provider has a course rejected, it may request a hearing before the advisory board at the next regularly scheduled meeting. Any information supporting the provider's position, which was not included with the original approval request, must be submitted to the board at least twenty days before the meeting at which the hearing will be held.

At the hearing, the department and the provider may produce witnesses and give testimony. The hearing must be conducted according to chapter 34.05 RCW. The board must base its decision upon the testimony and evidence presented and must notify the parties immediately upon reaching its decision. A majority of the board is necessary to render a decision.

~~((5)))~~ (e) Specific course approval criteria:

~~((a)))~~ (i) All training courses must conform to and be based upon current standards and requirements governing the installation of medical gas piping systems.

~~((b)))~~ (ii) All course approval requests must include:

~~((i))~~ (A) A general description of the course, including its scope, the instructional materials to be used and the instructional methods to be followed; ~~((and~~

~~((ii))~~ (B) A copy of the complete medical gas piping installer training curriculum; ~~((and~~

~~((iii))~~ (C) A detailed course outline; ~~((and~~

~~((iv))~~ (D) The name and qualifications of the course instructor(s); ~~((and~~

~~((v))~~ (E) The locations where the course will be taught; ~~((and~~

~~((vi))~~ (F) The days and hours the course will be offered; and

~~((vii))~~ (G) The specific fees associated with the course, as well as, the total cost of the course.

~~((e))~~ (iii) All fees for approved training courses must be reasonable and in line with fees charged for other comparable code based training courses.

~~((f))~~ (f) Training courses are approved for a three-year period.

~~((7))~~ (g) A provider, whose courses are approved, must give the department literature describing the courses so the department can disseminate this information to prospective applicants.

~~((8))~~ (h) It is the responsibility of the provider to annually review and update its courses and to notify the department of any changes.

~~((9))~~ (i) The department may withdraw its approval of any training course if it determines the provider is no longer in compliance with the requirements of this chapter. If the department withdraws its approval of a training course, it must give the provider written notification of the withdrawal, specifying the reasons for its decision. If the department withdraws its approval of a training course, the provider may request a hearing before the advisory board at the next regularly scheduled meeting. Any information supporting the provider's position must be submitted to the board at least twenty days before the meeting at which the hearing will be held. At the hearing, the department and the provider may produce witnesses and give testimony. The hearing must be conducted according to chapter 34.05 RCW. The board must base its decision upon the testimony and evidence presented and must notify the parties immediately upon reaching its decision. A majority of the board is necessary to render a decision.

## **(2) Backflow assembly maintenance and repair certification.**

**(a) The department will review and approve courses submitted by training course providers that offer backflow assembly maintenance and repair training. Course approvals will be decided in consultation with the state advisory board of plumbers.**

**(b) All providers seeking course approval, must submit the required information (see (e) of this subsection) to the department at least thirty days before a regularly scheduled advisory board meeting. No course can be offered as meeting the requirements necessary for backflow assembly maintenance and repair certification until it has been approved.**

(c) All material required for approval will be reviewed without testimony and the review will be based solely upon the information submitted. Once reviewed, the department has five working days to give a provider written notification of acceptance or rejection. In the case of rejection, the department must specify its reasons.

(d) If a provider has a course rejected, it may request a hearing before the advisory board at the next regularly scheduled meeting. Any information supporting the provider's position, which was not included with the original approval request, must be submitted to the board at least twenty days before the meeting at which the hearing will be held.

At the hearing, the department and the provider may produce witnesses and give testimony. The hearing must be conducted according to chapter 34.05 RCW. The board must base its decision upon the testimony and evidence presented and must notify the parties immediately upon reaching its decision. A majority of the board is necessary to render a decision.

(e) Specific course approval criteria:

(i) All training courses must conform to and be based upon current standards and requirements governing the maintenance and repair of backflow assemblies. To be approved by the department the training provider curriculum must at least include training in the following:

(A) Regulations associated with cross connection controls.

(B) Terminology, definitions, and acronyms associated with performing work to backflow assemblies.

(C) Components of approved backflow assemblies.

(D) Performing tests to backflow assemblies (this includes the use of test kits).

(E) Performing repairs to backflow assemblies.

(F) Cleaning and maintaining backflow assemblies.

(G) Identifying and correcting (troubleshooting) potential problems associated with backflow assemblies.

(H) General safety associated with working on backflow assemblies.

(I) Using and understanding information, manuals, specifications, and other materials provided for backflow assemblies.

(J) Completing backflow assembly test report forms required by the department of health.

(K) Ability to identify plumbing work that must be performed by an individual holding a journeyman plumber certificate.

(ii) All course approval requests must include:

(A) A general description of the course, including its scope, the instructional materials to be used and the instructional methods to be followed;

(B) A copy of the complete backflow assembly maintenance and repair training curriculum;

(C) A detailed course outline;

(D) The name and qualifications of the course instructor(s);

(E) The locations where the course will be taught;

(F) The days and hours the course will be offered; and

(G) The specific fees associated with the course, as well as, the total cost of the course.

(iii) All fees for approved training courses must be reasonable and in line with fees charged for other comparable code based training courses.

(f) Training courses are approved for a two-year period.

(g) A provider, whose courses are approved, must give the department literature describing the courses so the department can disseminate this information to prospective applicants.

(h) It is the responsibility of the provider to annually review and update its courses and to notify the department of any changes.

(i) The department may withdraw its approval of any training course if it determines the provider is no longer in compliance with the requirements of this chapter. If the department withdraws its approval of a training course, it must give the provider written notification of the withdrawal, specifying the reasons for its decision. If the department withdraws its approval of a training course, the provider may request a hearing before the advisory board at the next regularly scheduled meeting. Any information supporting the provider's position must be submitted to the board at least twenty days before the meeting at which the hearing will be held. At the hearing, the department and the provider may produce witnesses and give testimony. The hearing must be conducted according to chapter 34.05 RCW. The board must base its decision upon the testimony and evidence presented and must notify the parties immediately upon reaching its decision. A majority of the board is necessary to render a decision.

AMENDATORY SECTION (Amending WSR 98-13-126, filed 6/17/98, effective 7/20/98)

**WAC 296-400A-030 Do I need a temporary permit?**

If you are an active out-of-state journeyman plumber residing in a state that does not have a reciprocal agreement with Washington and you would like to work as a plumber in Washington, you need a temporary permit. Temporary permits are not issued for installers of medical gas piping systems.

Temporary permits are not issued for the backflow assembly maintenance and repair specialty. Thus, WAC

296-400A-030 through 296-400A-033 do not apply to this specialty.

AMENDATORY SECTION (Amending WSR 98-13-126, filed 6/17/98, effective 7/20/98)

**WAC 296-400A-031 How do I qualify for a temporary permit?** To qualify for a temporary permit, you must:

- (1) Have an active state-issued journeyman plumbers certificate; ~~((and))~~
- (2) Give the department sufficient qualifying evidence for a journeyman plumber certificate of competency; ~~((and))~~
- (3) Never have taken the journeyman competency examination in Washington state; and
- (4) Not be an apprentice plumber.

AMENDATORY SECTION (Amending WSR 98-13-126, filed 6/17/98, effective 7/20/98)

**WAC 296-400A-035 How can I be placed on inactive status?** To be placed on inactive status, you must meet these three requirements:

- (1) Be a currently certified plumber; ~~((and))~~
- (2) ~~((Be at least sixty-two years of age))~~ Have your inactive status request submitted and approved by the department prior to the expiration date of your plumbing certificate; and
- (3) Not be working in the plumbing trade.

Inactive status means that you are not currently working in the plumbing trade and you are not required to pay the annual certificate renewal fee. You may return to active status, without reexamination, by paying the reinstatement ~~((of a journeyman certificate))~~ fee shown in WAC 296-400A-045.

AMENDATORY SECTION (Amending WSR 99-07-101, filed 3/23/99, effective 4/23/99)

**WAC 296-400A-045 What fees will I have to pay?** The following are the department's plumbers fees:

(1) Fees related to journeyman and specialty plumber certification (excluding backflow assembly maintenance and repair specialty certification):

<u>Type of Fee</u>	<u>Period Covered by Fee</u>	<u>Dollar Amount of Fee</u>
Examination application	Per examination	\$108.25
*Reciprocity application	Per application	\$108.25
Trainee certificate**	One year	\$32.50
<del>((Trainee certificate</del>	<del>Less than one year</del>	<del>\$3.00 per month with a minimum fee of \$21.50))</del>
Temporary permit	90 days	\$54.00
Journeyman or specialty certificate***	Two years	\$86.75
Journeyman or specialty certificate	Less than two years	\$3.50 per month with a minimum fee of \$ 32.50
Medical gas endorsement examination application****	Per application	\$40.00
Medical gas endorsement***	One year	\$30.00

PROPOSED

Medical gas endorsement	Less than one year	\$2.50 per month with a minimum fee of \$17.50
Medical gas endorsement examination fee****		See note below.
Medical gas endorsement training course fee*****		See note below.
Reinstatement of ((a-journeyman)) certificates		\$173.50
Replacement of all certificates		\$((32.50)) 15.00

- \* Reciprocity application is only allowed for applicants that are applying work experience toward certification that was obtained in state(s) that the department has a reciprocity agreement with.
  - \*\* The trainee certificate shall expire one year from the date of issuance and be renewed on or before the date of expiration.
  - \*\*\* This fee applies to either the original issuance or a renewal of a certificate. If you have passed the plumbers certificate of competency examination or the medical gas piping installer endorsement examination and paid the certificate fee, you will be issued a plumber certificate of competency or a medical gas endorsement that will expire on your birthdate.
- The annual renewal of a Medical Gas Piping Installer Endorsement shall include a continuity affidavit verifying that brazing work has been performed within the past year.
- \*\*\*\* This fee is paid directly to a nationally recognized testing agency under contract with the department. It covers the cost of preparing and administering the written competency examination and the materials necessary to conduct the practical competency examination required for the medical gas piping system installers endorsement. **This fee is not paid to the department.**
  - \*\*\*\*\* This fee is paid directly to a training course provider approved by the department, in consultation with the state advisory board of plumbers. It covers the cost of providing training courses required for the medical gas piping system installer endorsement. **This fee is not paid to the department.**

(2) Fees related to the backflow assembly maintenance and repair specialty certificate:

<u>Type of Fee</u>	<u>Period Covered by Fee</u>	<u>Dollar Amount of Fee</u>
<u>Examination application</u>	<u>Per examination</u>	<u>\$108.25</u>
<u>Reciprocity application**</u>	<u>Per application</u>	<u>\$40.00</u>
<u>Trainee certificate***</u>	<u>One year</u>	<u>\$32.50</u>
<u>Backflow assembly maintenance and repair specialty application</u>	<u>Per application</u>	<u>\$40.00</u>
<u>Backflow assembly maintenance and repair specialty certificate</u>	<u>Two years</u>	<u>\$60.00</u>
<u>Backflow assembly maintenance and repair specialty certificate</u>	<u>Less than two years</u>	<u>\$2.50 per month with a minimum fee of \$17.50</u>
<u>Backflow assembly maintenance and repair specialty training course fee****</u>		<u>See note below</u>
<u>Reinstatement fee</u>		<u>\$100.00</u>
<u>Replacement of certificates</u>		<u>\$15.00</u>
<u>Training provider initial approval and renewal fee</u>	<u>Per application</u>	<u>\$40.00</u>
<u>Training provider renewal fee</u>	<u>Two years</u>	<u>\$40.00</u>

- \* This fee is paid directly to a training course and examination provider approved by the department, in consultation with the state advisory board of plumbers. This fee is not paid to the department.
- \*\* Reciprocity application is only allowed for applicants that are applying work experience toward certification that was obtained in state(s) that the department has a reciprocity agreement with.
- \*\*\* The trainee certificate shall expire one year from the date of issuance and be renewed on or before the date of expiration.
- \*\*\*\* This fee is paid directly to a training course provider approved by the department, in consultation with the state advisory board of plumbers. It covers the cost of providing training courses required for the backflow assembly maintenance and repair certificate. This fee is not paid to the department.

- (3) If your birth year is:
  - ((1)) (a) In an even-numbered year, your certificate will expire on your birthdate in the next even-numbered year.
  - ((2)) (b) In an odd-numbered year, your certificate will expire on your birthdate in the next odd-numbered year.

AMENDATORY SECTION (Amending WSR 98-13-126, filed 6/17/98, effective 7/20/98)

**WAC 296-400A-070 Can I work as a certified plumber in Washington without taking the Washington state plumbers' competency examination?** You may be eligible to work in Washington state without taking an examina-

tion if:

(1) You have a current plumbers certificate or license from another state; and

(2) That state has a current reciprocal agreement with the department of labor and industries; and

(3) You pay the reciprocity application fee and journeyman or specialty certificate fee shown in WAC 296-400A-045.

The director of labor and industries negotiates reciprocal agreements with states that have equivalent requirements for certification and licensing of journeyman and specialty plumbers. The agreement allows plumbers from those states to work in Washington and Washington-certified plumbers to work in the other state without taking competency examinations. To find out if your state has an agreement with the department, contact the plumber's certification clerk at the department's Tumwater, WA headquarters.

Reciprocity agreements cannot be used to take the Washington state competency examination instead of the examination in your home state.

(4)(a) Those actively certified by the department of health on or before July 1, 2001, as backflow assembly testers and registered as a contractor under chapter 18.27 RCW or employed by a registered contractor, may perform maintenance and repair of backflow prevention assemblies, without being a certified plumber under chapter 18.106 RCW and these rules, until January 1, 2003.

(b) After January 1, 2003, backflow assembly testers exempted under (a) of this subsection are required to meet the eligibility requirements for a specialty plumber's certificate of competency under chapter 18.106 RCW and these rules.

**AMENDATORY SECTION** (Amending WSR 97-11-052, filed 5/20/97, effective 6/30/97)

**WAC 296-400A-100 For certification purposes, how are "years of employment" computed and documented?**

(1) For certification purposes, 2,000 hours of employment is considered one year. See RCW 18.106.070(2).

(2) When you renew your certificate, you must document your previous years' plumbing work by accurately completing the department's approved form and submitting it to the department.

(3) If you have completed a one, two, three, four or more years plumbing construction trainee program, you must have the necessary training hours for the year in which you are registered. See RCW 18.106.040.

(4) Subsections (1) through (3) of this section do not apply to the backflow assembly maintenance and repair specialty certification as years of employment are not required for this specialty. Applicants for this specialty designation are required to have fulfilled the requirements in WAC 296-400A-122 and pay the applicable fees in WAC 296-400A-045(2).

(5) Experience obtained as a backflow assembly maintenance and repair specialty may not be applied toward journeyman or specialty plumber certification.

**AMENDATORY SECTION** (Amending WSR 98-13-126, filed 6/17/98, effective 7/20/98)

**WAC 296-400A-120 What do I need to know about plumber trainee certificates? (1) Journeyman and specialty plumber certification (excluding backflow assembly maintenance and repair specialty certification):**

(a) The department issues separate trainee certificates according to the following schedule:

Certificate Year	Hours Employed As Plumber Trainee
First	Less than 2,000 hours
Second	More than 1,999 hours but less than 4,000 hours
Third	More than 3,999 hours but less than 6,000 hours
Fourth	More than 5,999 hours

~~((2))~~ (b) You may apply for the next year's trainee certificate whenever you have the required documented work hours.

~~((3))~~ You cannot be issued a training certificate for more than eight years unless the department determines that there are extenuating circumstances.

~~(4))~~ (c) If you are a trainee applying for a journeyman certificate, you must complete a minimum of two of the required four years in commercial plumbing experience.

~~((5))~~ (d) A certified specialty plumber working on a commercial job site may work as a journeyman trainee only if they have a current trainee certificate on their person while performing commercial plumbing work.

~~((6))~~ (e) On a job site, the ratio of certified plumbers to noncertified plumbers must be:

~~((a))~~ (i) One specialty plumber or journeyman working on a specialty plumbing job may supervise no more than two trainees.

~~((b))~~ (ii) One journeyman plumber working on a commercial job may supervise no more than one trainee.

~~((7))~~ (f) A plumber trainee who has a current trainee certificate with the state of Washington and has successfully completed or is enrolled in an approved medical gas piping installer training course may work on medical gas piping systems. Work may only occur when there is direct supervision by an active Washington state certified journeyman plumber with an active medical gas piping installer endorsement issued by the department. Supervision must be one hundred percent of the working day on a one-to-one ratio.

(2) **Backflow assembly maintenance and repair specialty certification.** A trainee certificate must be obtained by an individual performing backflow assembly maintenance and repair work that is not a certified plumber provided the individual works under the direct supervision of a certified backflow assembly maintenance and repair specialty, journeyman plumber, or specialty plumber for a minimum of one hundred percent of each working day.

**AMENDATORY SECTION** (Amending WSR 97-11-052, filed 5/20/97, effective 6/30/97)

**WAC 296-400A-121 What do I need to know about trainee experience and plumber examination requirements for the journeyman and specialty plumber (excluding the backflow assembly maintenance and repair specialty)?** (1) If you possess a trainee certificate:

(a) You may take the specialty plumber examination after completing 6,000 hours of documented training.

(b) You may take the journeyman examination after completing 8,000 hours of documented training which must include 4,000 hours of commercial plumbing experience.

(2) All journeyman trainees must work under the direct supervision of a journeyman plumber until they have completed 7,500 hours of training. After completing the 7,500 supervised hours, a trainee may work without direct supervision until they complete 8,000 hours. (See RCW 18.106.070(3).)

When 8,000 training hours have been completed, the trainee must take the journeyman examination. Any trainee who has failed the journeyman plumber examination cannot retake the examination for at least one month and must work under the direct supervision of a journeyman plumber until the examination is passed.

(3) To be eligible for the specialty plumber's examination, a specialty trainee must complete 6,000 hours of training under the direct supervision of either a certified specialty plumber or a journeyman plumber. Any specialty trainee who has failed the specialty examination, cannot retake the examination for at least one month and must work under the direct supervision of a certified plumber until the examination is passed.

(4) **Any applicant** (trainee, specialty plumber or journeyman) who fails an examination, will be required to wait at least one month before retaking the examination. If an applicant fails the second attempt, the waiting period for reexamination will be extended to at least two months. An applicant who fails the examination a third time will have a mandatory waiting period of at least four months.

#### **NEW SECTION**

**WAC 296-400A-122 What do I need to know about trainee experience and the backflow assembly maintenance and repair specialty examination requirements?**

(1) A trainee certificate must be obtained by an individual performing backflow assembly maintenance and repair work that is not a certified plumber provided the individual works under the direct supervision of a certified backflow assembly maintenance and repair specialty, journeyman plumber, or specialty plumber for a minimum of one hundred percent of each working day while the backflow assembly maintenance and repair work is being performed.

(2) Each applicant for a backflow assembly maintenance and repair specialty certificate must furnish written evidence that he or she has:

(a) Met the backflow assembly tester requirements and have a valid backflow assembly tester certification administered and enforced by the department of health; and

(b) Successfully completed a course of study from a training provider approved by the department. A list of approved training providers is available from the department upon request.

(3) **Any applicant** who fails an examination, will be required to wait at least one month before retaking the examination. If an applicant fails the second attempt, the waiting period for reexamination will be extended to at least two months. An applicant who fails the examination a third time will have a mandatory waiting period of at least four months.

**AMENDATORY SECTION** (Amending WSR 97-11-052, filed 5/20/97, effective 6/30/97)

**WAC 296-400A-130 What if I make a false statement or a material misrepresentation on an application, an employment report or a trainee certificate?** (1) All required applications and annual statements of employment hours are made under oath. Making false statements and/or material misrepresentations carry serious consequences. Any person who knowingly makes a false statement or material misrepresentation on an application, an affidavit of experience or a trainee certificate may have their certificate suspended, revoked, and/or be referred to the county prosecutor for criminal prosecution. In addition, the department may subtract a maximum of 2,000 employment hours from a trainee's acceptable total hours.

(2) The department's decisions, under this section, can be appealed to the advisory board. The appeal hearing will be conducted according to the appropriate provisions of chapter 34.05 RCW.

(3) The annual statements of employment described in subsection (1) of this section do not apply to the backflow assembly maintenance and repair specialty certification.

**AMENDATORY SECTION** (Amending WSR 98-13-126, filed 6/17/98, effective 7/20/98)

**WAC 296-400A-140 How does the department enforce plumbers certification requirements?** The department enforces plumber certification requirements by means of job-site inspections conducted by department compliance inspectors. The inspector must determine whether:

(1) Each person doing plumbing work has a proper certificate on their person; and

(2) The ratio of certified specialty and/or journeyman plumbers to certified trainees is correct; and

(3) ~~(That)~~ Each certified trainee is directly supervised by either a certified specialty plumber or a certified journeyman; and

(4) ~~(That)~~ Persons who are installing medical gas piping systems have active medical gas piping installer endorsements in addition to their active plumber certification.

(5) Persons who are certified as backflow assembly maintenance and repair specialties must have an active back-

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flow assembly tester certification from the department of health.

#### NEW SECTION

**WAC 296-400A-430** If I am a certified backflow assembly maintenance and repair, journeyman, or specialty plumber do I need to be a registered contractor under chapter 18.27 RCW? Anyone who advertises, offers to do work, submits a bid, or performs any work under chapter 18.106 RCW and these rules must be a registered contractor under chapter 18.27 RCW, or an employee of such a registered contractor, with wages as their sole compensation.

WSR 02-09-097

PROPOSED RULES

#### DEPARTMENT OF LABOR AND INDUSTRIES

[Filed April 17, 2002, 10:41 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 01-15-103.

Title of Rule: Electrical evaluation/certification laboratory accreditation (chapter 296-402A WAC) and amusement rides or structures (chapter 296-403 WAC).

Purpose: **Electrical evaluation/certification laboratory accreditation (chapter 296-402A WAC) and amusement rides or structures (chapter 296-403 WAC)**, the purpose of this rule making is to make substantive changes to the amusement rides or structures (chapter 296-403 WAC) and the electrical evaluation/certification laboratory accreditation (chapter 296-402A WAC) rules with the assistance of advisory committees.

The last substantive changes that were made to the carnival/amusement ride rules dates back to 1986. Also, the testing laboratory rules require provisions to allow the department to address unsafe electrical equipment. These rule changes were done with the assistance of advisory committees from the two industry groups.

The changes to the carnival/amusement ride rules are necessary to:

- Update the rules to reflect current department practice;
- Address deficiencies that exist in the rules relating to safety inspections and incident reporting; and
- Develop/clarify the process for becoming a certified amusement ride inspector.

The testing laboratory rule changes are merely to adopt an electrical policy (01-02) to allow the department the ability to address electrical equipment that has been approved by an accredited testing laboratory, which has been found to be unsafe. Also, we clarified that electrical evaluation reports must be submitted electronically.

#### AMENDED SECTIONS:

**WAC 296-402A-040** When is an electrical product considered safe? Changes were made to this section to adopt electrical program inspection policy 01-02 to develop a process for declaring when electrical equipment is unsafe. These changes are necessary to address electrical equipment that is approved by an accredited testing laboratory that the department determines are unsafe. This section also establishes notification requirements that the department will use to inform testing laboratories, the general public and other interested parties about unsafe electrical equipment.

**WAC 296-402A-410** Who gets a copy of the evaluation report and what format must be used to submit the report? This section was amended to clarify how the department must be provided copies of the evaluation report electronically in a format approved by the department and clients must be notified in a format acceptable to them.

**WAC 296-402A-630** Must an evaluation laboratory apply to perform each field evaluation? Changes were made to this section to clarify that the laboratory's request for permission must be submitted on a department supplied form.

#### NEW SECTIONS:

**WAC 296-403A-100** Definitions. Moved the provisions found in WAC 296-403-010, rewrote the definitions for purposes of clarity, applied clear rule-writing principles, and added new definitions for use with this chapter.

**WAC 296-403A-110** Insurance. Moved the provisions found in WAC 296-403-020, rewrote the insurance provisions for purposes of clarity, allowed more time for the insurance company to notify the department, and applied clear rule-writing principles.

**WAC 296-403A-120** Application for and renewal of operating permit. Moved the provisions found in WAC 296-403-030, rewrote the operating permit application provisions for purposes of clarity, and applied clear rule-writing principles. Also, clarified that amusement rides or structures that undergo major modification must be recertified by an amusement ride inspector or insurer per RCW 67.42.020(2) before being placed into operation, this change is consistent with RCW 67.42.040 and current practice.

**WAC 296-403A-130** Operating permit. Moved the provisions found in WAC 296-403-040, rewrote the operating permit provisions for purposes of clarity, and applied clear rule-writing principles. Also, clarified that temporary operating permits are also acceptable that have been issued as outlined in WAC 296-403A-140, this change is consistent with current practice.

**WAC 296-403A-140** Temporary operating permit. Moved the provisions found in WAC 296-403-050, rewrote the temporary operating permit provisions for purposes of clarity, and applied clear rule-writing principles.

**WAC 296-403A-150** Fees. Moved the provisions found in WAC 296-403-060, rewrote the fee provisions for purposes of clarity, and applied clear rule-writing principles. Also, clarified that the fee for issuing operating permits also applies to bungee jumping operating permits, this change is authorized by chapter 67.42 RCW and is consistent with current practice.

**WAC 296-403A-160 Appeals.** Moved the provisions found in WAC 296-403-070, rewrote the appeal provisions for purposes of clarity, made necessary corrections, and applied clear rule-writing principles.

**WAC 296-403A-170 Amusement ride inspector qualifications.** Moved the provisions found in WAC 296-403-080, rewrote the inspector qualification provisions for purposes of clarity, and applied clear rule-writing principles. Also, added provisions for competency evaluations and established an implementation schedule for compliance. These provisions are necessary to ensure that amusement ride inspectors are competent to perform inspections.

**WAC 296-403A-180 Safety and maintenance seminar.** Moved the provisions found in WAC 296-403-090, rewrote the seminar provisions for purposes of clarity, and applied clear rule-writing principles. Also, added additional seminars which are acceptable to the department for complying with this section, this change is consistent with current practice.

**WAC 296-403A-190 Safety standards for amusement rides and amusement structures.** Established provisions for the safety of amusement rides and amusement structures. These provisions require:

- Amusement rides and structures to comply with all applicable requirements of the National Electrical Code and this chapter, manufacturer's specifications, American Society of Testing and Materials (ASTM) Standards on Amusement Rides and Devices, insurance company inspection requirements, and the authority having jurisdiction.
- The amusement ride inspector to verify the correction of all deficiencies noted on the application for an amusement ride operating decal. The correction of any deficiencies must be completed within fifteen calendar days unless the inspector has determined that deficiencies are of a serious nature that will prohibit operation of the amusement ride or amusement structure. The period to correct deficiencies may be extended for a specific period at the discretion of the safety inspector and/or the department.
- The amusement ride inspector to report to the department any amusement ride or structure that is not allowed to operate because of serious safety deficiencies. Any deficiencies must be reinspected by the amusement ride inspector/company or other qualified inspector/company authorized by the original ride inspector/company.

These changes are necessary to establish requirements in rule for which amusement rides and structures are to be inspected for purposes of safety. This includes adopting the ASTM code, manufacturer's specifications, insurance company inspection requirements, and the applicable jurisdiction's requirements. These changes are also consistent with the department's mandate in chapter 67.42 RCW to ensure that amusement rides are inspected for safety.

**WAC 296-403A-195 Incident reporting.** Established provisions for incident reporting of amusement rides and amusement structures. These provisions include requiring

amusement structure/ride owner(s) and/or operator(s) to report to the department:

- Any incident or accident where evacuation of a ride results from an electrical or mechanical malfunction or when emergency personnel are required to assist in the evacuation; and
- Any incident/accident involving an amusement ride or structure involving personal injury that requires medical treatment, other than ordinary first aid. Medical treatment other than ordinary first aid means treatment beyond that which occurs at the location of the incident/accident and is provided by or under the supervision of a physician licensed to practice medicine, and the treatment is in response to a medical concern that is related directly to the incident/accident.

Reports meeting the above criteria must be made in writing within twenty-four hours after any incident/accident. This report may be faxed to a phone number supplied by the department followed by the original report in the mail.

These reporting requirements are necessary to ensure that unsafe rides are either inspected or taken out of service. Currently, the department relies on voluntary information sharing and the media to be made aware of such unsafe amusement rides or structures. It is also important to note that although this is a new requirement no penalty is associated with it as we are hopeful that this rule will at least ensure for voluntary compliance and department involvement.

**WAC 296-403A-200 Reciprocal certificate.** Moved the provisions found in WAC 296-403-120 for reciprocal agreements.

**WAC 296-403A-210 Revocation and suspension of certification of amusement ride inspectors—Reinstatement.** Moved the provisions found in WAC 296-403-140, rewrote the revocation and suspension provisions for purposes of clarity, and applied clear rule-writing principles. Also, clarified that amusement ride inspectors whose certification has been revoked must reapply for certification according to this chapter.

**WAC 296-403A-220 Fees for examination, certification, and renewal of certification for inspectors.** Moved the provisions found in WAC 296-403-150 relating to fees.

**WAC 296-403A-230 Electrical requirements for amusement rides and amusement structures.** Moved the provisions found in WAC 296-403-160, rewrote the electrical requirements for purposes of clarity, made necessary changes, and applied clear rule-writing principles. Also, clarified that concessions and games may also be certified and labeled by the department as a factory assembled structure.

**WAC 296-403A-240 Department on-site electrical inspection.** Established provisions for on-site electrical inspection and clarified when an on-site electrical inspection and fee are not required. These changes are consistent with current practice.

#### REPEALED SECTIONS:

Chapter 296-403 WAC is being repealed and replaced with the new chapter 296-403A WAC.

Statutory Authority for Adoption: RCW 19.28.010, 19.28.031, 19.28.061, 19.28.101, 19.28.171, 19.28.191,

19.28.201, 19.28.251, 19.28.271, 19.28.311, 19.28.321, 67.42.020, 67.42.025, and 67.42.050.

Statute Being Implemented: Chapters 19.28 and 67.42 RCW.

Summary: See Purpose above.

Reasons Supporting Proposal: See Purpose above.

Name of Agency Personnel Responsible for Drafting: Josh Swanson, Tumwater, (360) 902-6411; Implementation and Enforcement: Patrick Woods, Tumwater, (360) 902-6348.

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: See Purpose above.

Proposal Changes the Following Existing Rules: See Purpose above.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required because this rule either does not impose any new costs on business; imposes costs that are not more than minor; and/or are exempted by law (see RCW 19.85.025 referencing RCW 34.05.310(4)) from the small business economic impact requirements.

RCW 34.05.328 does not apply to this rule adoption. Significant rule-making criteria does apply to these rule changes because they do not meet the exempt criteria outlined in RCW 34.05.328(5).

Hearing Location: Department of Labor and Industries Building, S119, 7273 Linderson Way S.W., Tumwater, WA, on May 21, 2002, at 4:00 p.m.; and at the Yakima School District (Administration Offices), 104 North 4th Avenue, Yakima, WA, on May 22, 2002, at 3:00 p.m.

Assistance for Persons with Disabilities: Contact Josh Swanson by May 20, 2002, at (360) 902-6411.

Submit Written Comments to: Josh Swanson, Specialty Compliance Services Division, P.O. Box 44400, Olympia, WA 98504-4400, swaj235@lni.wa.gov, fax (360) 902-5292, by May 22, 2002. Comments submitted by fax must be ten pages or less.

Date of Intended Adoption: May 30, 2002.

April 17, 2002

Gary Moore

Director

**Chapter 296-403A WAC**

**AMUSEMENT RIDES OR STRUCTURES**

**NEW SECTION**

**WAC 296-403A-100 Definitions.** Definitions as found in ASTM F 747-97 Standard Terminology Related to Amusement Rides and Devices are adopted in addition to the following:

(1) **"Air supported"** structure or device means an amusement device that incorporates a structural and mechanical system and employs a high-strength fabric or film that

achieves its strength, shape and stability by pretensioning with internal air pressure (inflation).

(2) **"Amusement ride"** means any vehicle, boat, or other mechanical/air supported device, the vehicle, boat, or other device includes only those vehicles, boats, or devices that move upon or within a structure, along cables or rails, through the air by centrifugal force or otherwise, that is used to convey one or more individuals for amusement, entertainment, diversion, or recreation. Examples of an amusement ride includes, but is not limited to, devices commonly known as skyrides, Ferris wheels, carousels, parachute towers, tunnels of love, roller coasters, mechanical bulls, gyrotron, space balls, bungee operated, simulators and similar devices.

Conveyances for persons in recreational winter sports activities such as: Ski lifts, ski tows, j-bars, t-bars, and similar devices subject to regulation under chapter 70.88 RCW are not amusement rides. Any single-passenger coin-operated ride that is manually, mechanically, or electrically operated and customarily placed in a public location that does not normally require the supervision or services of an operator is not an amusement ride. Nonmechanized playground equipment including, but not limited to, swings, seesaws, stationary spring-mounted animal features, rider-propelled merry-go-rounds, climbers, slides, trampolines, and physical fitness devices are not amusement rides. Permanent water slides are not amusement rides. Animal rides such as: Pony rides, riding stables, hay rides and elephant rides are not amusement rides.

(a) **"Portable amusement ride"** means an amusement ride which is relocated at least once per year with or without disassembly.

(b) **"Permanent amusement ride"** means an amusement ride which is erected to remain a lasting part of the premises.

(3) **"Amusement structure"** means any electrical, mechanical, nonmechanical, or air-supported device or any combinations thereof operated for revenue and to provide amusement or entertainment to viewers or audiences at carnivals, fairs, or amusement parks. A game or concession where a member of the public performs an act or makes a purchase is not an amusement structure. Examples of an amusement structure include, but are not limited to, structures commonly known as permanent steel or wooden roller coasters, a permanent dark ride or fun house, a permanent drop tower, or a permanent building enclosing a portable amusement device.

(4) **"ASTM"** means the American Society for Testing and Materials (F-24 committee) as it relates to amusement rides and devices. Copies of the ASTM are available from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, Pennsylvania 19428-2959.

(5) **"Authority having jurisdiction"** means the department.

(6) **"Board"** or **"electrical board"** means the board established pursuant to RCW 19.28.311.

(7) **"Carnival"** means a mobile enterprise principally devoted to offering amusement or entertainment to patrons in, upon, or by means of portable amusement rides or structures.

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(8) **"Certificate of inspection"** means a document given under oath or affirmation from an insurer or a person with whom the insurer has contracted to make a safety inspection of the amusement ride or structure. The certificate must contain: The name, address and signature of the inspector, the complete description of the amusement ride or structure and the name and address of the owner or operator.

(9) **"Certificate of insurance"** means a document certifying that the insurance required by chapter 67.42 RCW is in effect. Copies of this document/form are available from the department upon request.

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

(11) **"Insurance policy"** means an insurance policy written by an insurer authorized to do business in this state under Title 48 RCW.

(12) **"Major modification"** means any change to the original configuration or layout of components or replacement of components that are not like-for-like.

(13) **"NEC"** means the National Electrical Code. Copies of the NEC are available from the NFPA (National Fire Protection Association), 1 Batterymarch Park, Quincy, Massachusetts 02169-7471.

(14) **"Operating permit"** means a permit that is issued by the department.

(15) **"Operating permit decal"** is a decal issued by the department that must be affixed on or adjacent to the control panel of the amusement ride or structure in a location visible to the patrons of the ride or structure.

(16) **"RCW"** means the *Revised Code of Washington*. Copies of RCWs are available from the office of the code reviser.

(17) **"Safety inspection"** means a procedure to be conducted by a safety inspector to determine whether an amusement ride or device is assembled, maintained, tested, operated, and inspected in accordance with the current ASTM standards, the manufacturer's or insurer's standards, and this chapter, whichever is the most stringent, and that determines the current operational safety of the ride or device.

(18) **"Safety inspector"** and **"amusement ride inspector"** both mean a third-party inspector authorized by the department to conduct safety inspections of amusement rides or devices in compliance with this chapter. The inspector must be an independent, third party with no organizational, managerial, financial, design, or promotional affiliation with the amusement ride or amusement structure being inspected. The inspector must not be a principal, owner, or employee of any amusement company or manufacturer doing business in the state of Washington, unless authorized by the department to conduct specific inspections on a case-by-case basis. Inspectors who have installed, modified or repaired an amusement ride or structure may not perform the initial inspection on the equipment they have installed, modified, or repaired. The inspector must have an adequate diversity of clients or activity so that the loss or award of a specific contract regarding amusement ride or amusement structure safety certification would not be a deciding factor in the financial well being of the inspector.

(19) **"WAC"** means the *Washington Administrative Code*. Copies of WACs are available from the department and the office of the code reviser.

#### NEW SECTION

**WAC 296-403A-110 Insurance.** The following are the requirements for insurance for amusement rides and structures:

(1) An original copy of the insurance policy in an amount not less than one million dollars per occurrence from an insurer authorized to do business in the state of Washington must be filed with the department.

(2) A certificate of insurance must be presented to either the sponsor, lessor, landowner or other person responsible for an amusement ride being offered for use by the public.

(3) The insurance company must notify the department at least thirty days before canceling or revoking a policy and upon the nonrenewal of the policy.

(4) If the insurance company withdraws, cancels, revokes, suspends, or excludes coverage of any ride(s) from any policy furnished to the department, such withdrawal, cancellation, revocation, suspension, or exclusion must be plainly stated in documents furnished to the department.

(5) The department must be notified within twenty-four hours of the withdrawal, cancellation, revocation, suspension, or exclusion of insurance coverage of an amusement ride or structure for which an operating permit has been issued by the department.

#### NEW SECTION

**WAC 296-403A-120 Application for and renewal of operating permit.** (1) The person(s) making application for an operating permit for an amusement structure or an amusement ride must provide the following documentation on an application form provided by the department and pay the appropriate fee:

(a) The name, address and telephone number of the owner or operator of the amusement ride or structure together with the name and signature of the applicant.

(b) Description of amusement ride or structure. Each amusement ride or structure must be individually identified:

(i) By a trade name or title and a narrative description from which the amusement structure or ride can be identified; and

(ii) A serial number which is welded onto the frame or contained on an identification plate which is permanently affixed to the amusement structure or ride.

(c) Certificate of inspection. The amusement ride inspector or insurer per RCW 67.42.020(2) must certify that the amusement ride or structure has been inspected for safety and meets the standards for compliance with all applicable requirements of the National Electrical Code and this chapter, manufacturer's specifications, American Society of Testing and Materials (ASTM) Standards on Amusement Rides and Devices, and insurance company inspection requirements.

(d) Amusement rides or structures that undergo major modification must be recertified by an amusement ride

inspector or insurer per RCW 67.42.020(2) before being placed into operation.

(2) **Renewal of operating permit.** An operating permit may be renewed before the expiration date by submitting an application with the proper fee and a certificate of safety inspection. The safety inspection must have been performed within thirty days before the expiration date of the operating permit.

#### NEW SECTION

**WAC 296-403A-130 Operating permit.** An amusement ride or structure must not be operated unless the owner or operator has obtained an operating permit and an operating permit decal is posted on the ride, unless a temporary operating permit has been issued as outlined in WAC 296-403A-140. The owner or operator of the amusement ride or structure must have available for inspection, at the location where the amusement ride or structure is to be operated, a copy of the operating permit for each amusement ride or structure. Each operating permit that has been issued to an owner or operator is valid for one year from the date of issue or the date of inspection whichever is less, unless revoked. The operating permit will become null and void in the event that the insurance policy is canceled or is no longer in effect or if an amusement ride or structure is materially rebuilt or materially modified so as to change the original action of the amusement ride or structure.

#### NEW SECTION

**WAC 296-403A-140 Temporary operating permit.** A temporary operating permit expires after fifteen days and will not be renewed or extended unless authorized by the chief electrical inspector. The department electrical section may issue a temporary operating permit when:

- (1) The insurance policy required by chapter 67.42 RCW is on file with the department; and
- (2) The safety inspection of the amusement ride or structure has been performed within the last year; and
- (3) The department has received a complete application for an operating permit.

#### NEW SECTION

**WAC 296-403A-150 Fees.** The fee for issuing each operating permit (including bungee jumping operating permits) and operating permit decal is ten dollars.

#### NEW SECTION

**WAC 296-403A-160 Appeals.** (1) Decisions by the department can be appealed to the electrical board when:

- (a) An operating permit has been denied or revoked.
- (b) The department has ordered the cessation of the operation of an amusement ride or structure.
- (c) An amusement ride inspector application has been denied, or certificate has been suspended or revoked.

The appeal will be conducted in accordance with chapter 34.05 RCW. An appeal does not stay the decision of the

department. The appeal must be filed within twenty days after notice of the decision of the department is sent by certified mail, return receipt requested, or is served upon the owner or operator.

(2) A formal appeal is made by filing a written notice of appeal with the department's chief electrical inspector and must state the decision by the department that is being appealed and the relief that is desired. The formal appeal must be accompanied by a certified check for two hundred dollars which will be returned to the holder of the certificate or permit if the decision of the department is not sustained by the board. If the board sustains the decision of the department, the two hundred dollars will be applied by the department to the payment of the per diem and expenses of the members of the board incurred in the matter, and any balance remaining after payment of per diem and expenses will be paid into the electrical license fund.

(3) An informal appeal must be made in writing to the department chief electrical inspector and must state the action by the department that is being appealed and the relief that is desired.

(4) See chapter 296-13 WAC for additional information on appeals before the electrical board.

#### NEW SECTION

**WAC 296-403A-170 Amusement ride inspector qualifications.** An amusement ride inspector must meet the following minimum qualifications:

- (1) Two years experience with an insurance company as an amusement ride inspector; or
- (2) Two years experience inspecting amusement rides and enforcing amusement ride codes while employed by a state or governmental body regulating amusement rides; or
- (3) Not less than five years documented field operating and maintenance experience with amusement rides and devices, including responsibility for erection, assembly, disassembly; personnel supervision responsibility for erection, maintenance, and operating functions; or
- (4) Not less than ten years documented practical experience in the design, construction, maintenance, repair, field inspection, and operation of amusement rides and devices as an authorized representative of a recognized amusement ride manufacturer; and

(5) In addition to the above criteria an amusement ride inspector must be certified by the department after demonstrating competency by:

- (a) Passing a competency examination administered by the department; or
- (b) Passing a test administered by the National Association of Amusement Ride Safety Officials for NAARSO Level II or other certification organizations recognized by the department, as an amusement ride inspector.

Those individuals who are certified by the department before December 31, 2000, will have until December 31, 2003, to take and successfully pass one of the examinations in (a) or (b) of this subsection. Individuals with at least ten years of experience may become certified without testing if they were certified with the department on December 31, 2000.

(6) An amusement ride inspector may work without certification, as a trainee, if directly and continually supervised during the inspection process by a certified amusement ride inspector.

(7) This section does not apply to insurers or a person with whom the insurer has contracted with per RCW 67.42.020(2).

#### NEW SECTION

**WAC 296-403A-180 Safety and maintenance seminar.** Every amusement ride inspector must annually attend at least one amusement ride safety and maintenance seminar sponsored by the Amusement Industry Manufacturers and Equipment Suppliers, Northwestern Showman's Club, National Association of Amusement Ride Safety Officials, International Association of Amusement Parks and Attractions, or an equivalent approved by the department. All experience and schooling must be documented and verified and must be furnished to the department with an application for an amusement ride inspector certificate.

#### NEW SECTION

**WAC 296-403A-190 Safety standards for amusement rides and amusement structures.** (1) A certified amusement ride inspector will inspect amusement rides and structures for safety. Amusement rides and structures must comply with all applicable requirements of the National Electrical Code and this chapter, manufacturer's specifications, American Society of Testing and Materials (ASTM) Standards on Amusement Rides and Devices, insurance company inspection requirements, and the authority having jurisdiction.

(2) The amusement ride inspector must verify the correction of all deficiencies noted on the application for an amusement ride operating decal. The correction of any deficiencies must be completed within fifteen calendar days unless the inspector has determined that deficiencies are of a serious nature that will prohibit operation of the amusement ride or amusement structure. The period to correct deficiencies may be extended for a specific period at the discretion of the safety inspector and/or the department. The amusement ride inspector must report to the department any amusement ride or structure that is not allowed to operate because of serious safety deficiencies. Any deficiencies must be reinspected by the amusement ride inspector/company or other qualified inspector/company authorized by the original ride inspector/company.

#### NEW SECTION

**WAC 296-403A-195 Incident reporting.** (1) Amusement structure/ride owner(s) and/or operator(s) must report to the department:

(a) Any incident or accident where evacuation of a ride results from an electrical or mechanical malfunction or when emergency personnel are required to assist in the evacuation; and

(b) Any incident/accident involving an amusement ride or structure involving personal injury that requires medical treatment, other than ordinary first aid. Medical treatment other than ordinary first aid means treatment beyond that which occurs at the location of the incident/accident and is provided by or under the supervision of a physician licensed to practice medicine, and the treatment is in response to a medical concern that is related directly to the incident/accident.

(2) Reports meeting the above criteria must be made in writing within twenty-four hours after any incident/accident. This report may be faxed to a phone number supplied by the department followed by the original report in the mail. The report must include a detailed description of all available facts regarding the incident/accident for review by the department. After review, the department may require the amusement ride or structure to be inspected by an amusement ride inspector before continuing the operation of the ride or structure. When the department revokes a ride operating permit, a complete and detailed account of the incident/accident must be provided to the department before a new operating permit will be issued following an incident/accident.

#### NEW SECTION

**WAC 296-403A-200 Reciprocal certificate.** The department may upon proper application, issue an amusement ride inspector certificate to an individual who meets the minimum qualifications as set forth in this chapter and who possesses a current, valid amusement ride inspector certificate in a state or province which has equal or higher standards for amusement ride inspectors as those contained in this chapter. No amusement ride inspection examination will be required of those persons who qualify for a reciprocal amusement ride inspector certificate.

#### NEW SECTION

**WAC 296-403A-210 Revocation and suspension of certification of amusement ride inspectors—Reinstatement.** (1) An amusement ride inspector's certificate of competency may be suspended or revoked for cause such as: Certifying the safety of an unsafe ride, falsifying records or reports or certifying an amusement ride or structure which he or she has not personally inspected.

(2) The suspension or revocation of a certificate of competency that is not contested will be suspended or revoked immediately. If the suspension or revocation of a certificate of competency is contested, the suspension or revocation will not occur until after a hearing has been held before the department. The inspector and his or her employer are entitled to appear at such hearings and to be heard.

(3) The department must deliver to both the inspector charged and to his or her employer (if known), not less than ten days prior to the hearing, a written notice of the charges and of the time and place of such hearing.

(4) An inspector whose certificate of competency has been suspended may apply for reinstatement not less than ninety days after the time of suspension. If the certificate of

competency has been revoked, the inspector will need to reapply for certification according to this chapter.

#### NEW SECTION

**WAC 296-403A-220 Fees for examination, certification, and renewal of certification for inspectors.** (1) Fee for each application for inspector's certificate of competency and examination, one hundred dollars.

(2) Application fee (nonrefundable), twenty dollars.

(3) Fee for annual renewal of certificate of competency or reciprocal inspector certificate, twenty dollars.

#### NEW SECTION

**WAC 296-403A-230 Electrical requirements for amusement rides and amusement structures.** (1) Electrical distribution system. Service equipment, separately derived systems, feeders and circuits for each amusement ride, amusement structure or concession must comply with all applicable requirements of the National Electrical Code and chapter 296-46A WAC.

(2) Flexible multiconductor cords must be connected to equipment by approved connectors designed for the purpose or by listed cord caps. Individual conductors of multiconductor cords in sizes #2 AWG and larger are permitted to be connected by listed and labeled connection systems in accordance with Article 520-53(k) of the National Electrical Code. Where conductors are connected individually by such connection systems, the outer jacket of multiconductor cord must be secured to the electrical equipment independent from the receptacles and plugs by approved cable grips that are installed in a manner to prevent pressure from being applied to the receptacles and plugs.

(3) Individual, single conductor, insulated, portable power cable, in addition to complying with Section 525-13 of the National Electrical Code, must comply with the following:

(a) All conductors of the feeder or circuit including the equipment grounding conductor must originate in the same electrical equipment and terminate in the same equipment.

(b) All conductors of the feeder or circuit including the ungrounded, grounded, and equipment grounding conductors must run together, except for portions installed within approved cable protection systems.

(c) The cables must be secured to the electrical equipment independent from the cable receptacles and plugs by approved cable grips that prevent pressure from being applied to the connectors.

(d) The cables must be connected to electrical equipment by approved listed and labeled connection systems in compliance with Section 520-53(k) of the National Electrical Code.

(4) Disconnecting means. A separate, enclosed, externally operable fused switch or circuit breaker must be installed on each amusement ride, structure or concession to disconnect all electrical equipment. The disconnecting means must be readily accessible and identified as the disconnecting means. The disconnecting means is not required to be readily accessible when a disconnecting means meeting the requirements of NEC 525-30 is also installed. Where

more than one power supply is employed, the disconnecting means must be grouped.

(5) Rotating equipment. Components of amusement rides or structures that rotate more than three hundred sixty degrees and which have electrically operated equipment, must be supplied by approved collector rings that are totally enclosed or located so they are accessible to authorized personnel only. The collector rings must be factory produced with an equipment grounding segment having a voltage and current rating that equals or exceeds the rating of the current carrying segments. Collector rings must have an ampacity not less than one hundred twenty-five percent of the full-load current of the largest device served plus the full-load current of all other devices served. Collector rings for control and signal purposes must have an ampacity not less than one hundred twenty-five percent of the full-load current of the largest device served plus the full-load current of all other devices served.

(6) Equipment grounding. All noncurrent carrying metal parts of amusement rides and structures must be grounded by an equipment grounding conductor routed with the feeder or circuit conductors in accordance with the National Electrical Code and these rules. The metallic structure must not be used as a current carrying conductor.

**EXCEPTION:** The metallic structure is permitted to be used as the return path for low voltage systems that do not exceed thirty volts, provided that the ungrounded conductors are protected by an overcurrent device in accordance with the National Electrical Code and the system is factory built for such use.

(7) Existing concessions or games electrical systems must comply with the National Electrical Code and must be maintained in full compliance with codes and standards in effect at the time they were manufactured. When new concessions or games are purchased, manufactured or constructed, or where existing concessions or games have major modification, the electrical system must comply with this chapter and the edition of the National Electrical Code in effect at the time. All concessions and games must be identified in or on the disconnecting means and in records furnished to the department with the edition of the National Electrical Code the electrical system is intended to comply with, or be certified and labeled by the department as a factory assembled structure.

#### NEW SECTION

**WAC 296-403A-240 Department on-site electrical inspection.** (1) Department electrical inspection will be done each time an amusement ride or structure is set up. Fees will be paid in accordance with chapter 296-46A WAC. An on-site electrical inspection permit and fee is not required for any amusement ride or structure when all of the following conditions are met:

(a) The ride is equipped with a supply cord that does not exceed 120 volts or 20 amps.

(b) The amusement ride inspector, on the operating permit application, has documented the size and length of the supply cord.

(c) No extension cords are used to supply the equipment.

PROPOSED

(d) The amusement ride or structure has a current amusement ride operating permit decal.

(2) Itinerary for set-up locations must be made available to the chief electrical inspector upon request.

(3) Amusement rides that are leased and set up for private use (not operated for revenue) must also comply with the following in addition to the on-site inspection and operating permit requirements established by this chapter:

(a) The lessor must provide the lessee with manufacturer's set up instructions.

(b) The lessor or their authorized agent is responsible for providing proper set up and tear down of each amusement ride or structure (authorized agents must be under written contract to the owner or operator).

(c) The lessor is responsible to maintain proper documentation assuring that each lessee has been provided with proper manufacturer's instructions for operating and setting up each individual leased amusement ride or structure.

**AMENDATORY SECTION** (Amending WSR 00-11-115, filed 5/19/00, effective 6/30/00)

**WAC 296-402A-040 When is an electrical product considered safe?** An electrical product is considered to be safe when it is either certified by a laboratory accredited by the department or labeled with a field evaluation mark by a laboratory accredited by the department.

The department may declare electrical equipment unsafe if:

- The equipment is not being manufactured or produced in accordance with all standards of design and construction and all terms and conditions set out in the certification report for the equipment referred to in this chapter;

- The equipment has been shown by field experience to be unduly hazardous to persons or property;

- An examination of the equipment or of the certification report for the equipment shows that the equipment does not comply with all applicable standards; or

- An examination of the certification report or the equipment shows that the equipment cannot be installed in accordance with this code.

When the department declares an electrical product unsafe, the department will:

- Notify the product manufacturer and the appropriate testing laboratory in writing;

- Notify the general public by:

- Report to the Consumer Product Safety Commission;
- A published article in the Electrical Currents;
- Internet website posting; and
- News release.

**AMENDATORY SECTION** (Amending WSR 00-11-115, filed 5/19/00, effective 6/30/00)

**WAC 296-402A-410 Who gets a copy of the evaluation report and what format must be used to submit the report?** (1) The department's chief electrical inspector submitted electronically in a format approved by the department.

(2) Local electrical inspection office submitted electronically in a format approved by the department.

(3) Client submitted in any format acceptable to the client and testing laboratory.

**AMENDATORY SECTION** (Amending WSR 00-11-115, filed 5/19/00, effective 6/30/00)

**WAC 296-402A-630 Must an evaluation laboratory apply to perform each field evaluation?** Yes. The laboratory must request permission from the department in writing two working days prior to conducting any field evaluation of an electrical product to be installed in any jurisdiction in the state. Requests must be made using a department supplied form.

**REPEALER**

The following chapter of the Washington Administrative Code is repealed:

WAC 296-403-010	Definitions.
WAC 296-403-020	Insurance.
WAC 296-403-030	Application for operating permit.
WAC 296-403-040	Operating permit.
WAC 296-403-050	Temporary operating permit.
WAC 296-403-060	Fees.
WAC 296-403-070	Appeals.
WAC 296-403-080	Amusement ride inspector qualifications.
WAC 296-403-090	Safety and maintenance seminar.
WAC 296-403-100	On-site examination.
WAC 296-403-110	On-site examination content.
WAC 296-403-120	Reciprocal certificate.
WAC 296-403-130	Insurance company amusement ride inspector.
WAC 296-403-140	Revocation of certification of amusement ride inspectors—Reinstatement.
WAC 296-403-150	Fees for examination, certification, and renewal of certification for inspectors.
WAC 296-403-160	Amusement rides or structures, carnivals, circuses, and similar traveling shows.

**WSR 02-09-098**  
**PROPOSED RULES**  
**DEPARTMENT OF AGRICULTURE**

[Filed April 17, 2002, 11:34 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 02-05-089.

Title of Rule: Rules relating to noxious weed seed and plant quarantine, chapter 16-752 WAC.

Purpose: Amendment of existing rule to add a single species of nonnative, highly invasive plant to the quarantine list of species forbidden from sale or distribution in the state.

Statutory Authority for Adoption: Chapters 17.24, 17.10, 15.13 RCW.

Statute Being Implemented: Chapters 17.24, 17.10, 15.13 RCW.

Summary: Amendment of the existing noxious weed seed and plant quarantine rule to add kudzu to the list of species forbidden from sale or distribution in the state was requested by the Washington State Noxious Weed Control Board and the Washington State Weed Coordinators Association. The quarantine is intended to aid in prevention of kudzu introduction and spread in this state.

Reasons Supporting Proposal: Kudzu, *Pueraria montana* var. *lobata*, is an extremely invasive woody vine weed species that has caused severe economic and environmental problems in the southeastern United States. In August 2001, a small, rapidly growing infestation was discovered and eradicated in Clark County, demonstrating it can survive in this state.

Name of Agency Personnel Responsible for Drafting: Mary Toohey, 1111 Washington Street, Olympia, WA 98504-2560, (360) 902-1907; Implementation and Enforcement: Tom Wessels, 1111 Washington Street, Olympia, WA 98504-2560, (360) 902-1984.

Name of Proponent: Washington State Weed Coordinators Association, Washington State Noxious Weed Control Board, private and governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: A very small infestation of kudzu, a nonnative, highly invasive weedy vine, was found in Clark County in August 2001. The infestation was eradicated, but it persisted long enough to demonstrate that this species, which has caused economic and environmental devastation in the southeastern United States, is capable of long-term survival in Washington state. Oregon is currently attempting to eradicate several infestations. The proposed amendment to the rule would add kudzu to the existing list of plant species forbidden from sale or distribution in this state. This would aid in preventing the establishment of a highly undesirable species, preventing harm to native species, alteration of ecosystems, and economic harm to agricultural and nursery industries and to maintained landscapes.

Proposal Changes the Following Existing Rules: The proposal adds one highly invasive, nonnative plant species, kudzu, to the existing list of quarantine species which are forbidden from sale or distribution in this state.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Kudzu, the sole species proposed for addition to the quarantine list, has been eradicated from the state and currently is not known to be distributed or offered for sale into this state. The effect of amending the rule is protection of the state's economic and environmental well-being from an extremely invasive, nonnative pest. No small businesses are likely to experience negative economic effects from this action, as none are known to offer kudzu for sale at this time. The rule would constitute a net benefit to the economy of the state by protecting its environment from a pest that is extremely costly to control or eradicate.

RCW 34.05.328 does not apply to this rule adoption. The Washington State Department of Agriculture is not a listed agency.

Hearing Location: Natural Resources Building, 1111 Washington Street, 2nd Floor, Conference Room 259, Olympia, WA 98504, on May 23, 2002, at 9:00 a.m.

Assistance for Persons with Disabilities: Contact Jodi Jones by May 15, 2002, TDD (360) 902-1996, or (360) 902-1806.

Submit Written Comments to: Mary Toohey, Assistant Director, Washington State Department of Agriculture, P.O. Box 42560, Olympia, WA 98504, e-mail mtoohey@agr.wa.gov, fax (360) 902-2053, by close of business May 23, 2002.

Date of Intended Adoption: May 29, 2002.

April 17, 2002

Mary A. Martin Toohey  
 Assistant Director

**AMENDATORY SECTION** (Amending WSR 00-24-021, filed 11/28/00, effective 12/29/00)

**WAC 16-752-610 Noxious weed seed and plant quarantine—Regulated articles.** All plants, plant parts, and seeds in packets, blends, and "wildflower mixes" of the following listed species are regulated under the terms of this noxious weed seed and plant quarantine:

Scientific Name	Common Names
<i>Abutilon theophrasti</i>	velvetleaf
<i>Alliaria petiolata</i>	garlic mustard
<i>Amorpha fruticosa</i>	indigobush, lead plant
<i>Anchusa officinalis</i>	common bugloss, alkanet, anchusa
<i>Anthriscus sylvestris</i>	wild chervil
<i>Carduus acanthoides</i>	plumeless thistle
<i>Carduus nutans</i>	musk thistle, nodding thistle
<i>Carduus pycnocephalus</i>	Italian thistle
<i>Carduus tenuiflorus</i>	slenderflower thistle
<i>Centaurea calcitrapa</i>	purple starthistle
<i>Centaurea diffusa</i>	diffuse knapweed
<i>Centaurea jacea</i>	brown knapweed, rayed knapweed, brown centaury horse-knobs, hardheads
<i>Centaurea jacea</i> x <i>nigra</i>	meadow knapweed
<i>Centaurea biebersteinii</i>	spotted knapweed
<i>Centaurea macrocephala</i>	bighead knapweed
<i>Centaurea nigra</i>	black knapweed

PROPOSED

Scientific Name	Common Names
<i>Centaurea nigrescens</i>	Vochin knapweed
<i>Chaenorrhinum minus</i>	dwarf snapdragon
<i>Crupina vulgaris</i>	common crupina
<i>Cytisus scoparius</i>	Scotch broom
<i>Daucus carota</i>	wild carrot, Queen Anne's lace
<i>Echium vulgare</i>	blueweed, blue thistle, blue devil, viper's bugloss, snake flower
<i>Euphorbia esula</i>	leafy spurge
<i>Euphorbia oblongata</i>	eggleaf spurge
<i>Galega officinalis</i>	goatsrue
<i>Helianthus ciliaris</i>	Texas blueweed
<i>Heracleum mantegazzianum</i>	giant hogweed, giant cow parsnip
<i>Hibiscus trionum</i>	Venice mallow, flower-of-an-hour, bladder ketmia, modesty, shoo-fly
<i>Hieracium aurantiacum</i>	orange hawkweed, orange paintbrush, red daisy flameweed, devil's weed, grim-the-collier
<i>Hieracium caespitosum</i>	yellow hawkweed, yellow paintbrush, devil's paintbrush, yellow devil, field hawkweed, king devil
<i>Hieracium floribundum</i>	yellow devil hawkweed
<i>Hieracium pilosella</i>	mouseear hawkweed
<i>Impatiens glandulifera</i>	policeman's helmet
<i>Isatis tinctoria</i>	dyers' woad
<i>Kochia scoparia</i>	kochia, summer-cyprus, burning-bush, fireball, Mexican fireweed
<i>Lepidium latifolium</i>	perennial pepperweed
<i>Leucanthemum vulgare</i>	oxeye daisy, white daisy, whiteweed, field daisy, marguerite, poorland flower
<i>Linaria dalmatica</i> spp. <i>dalmatica</i>	Dalmatian toadflax
<i>Mirabilis nyctaginea</i>	wild four o'clock, umbrella-wort
<i>Onopordum acanthium</i>	Scotch thistle
<i>Proboscidea louisianica</i>	unicorn-plant
<u><i>Pueraria montana</i> var. <i>lobata</i></u>	<u>kudzu</u>
<i>Salvia aethiopsis</i>	Mediterranean sage
<i>Salvia pratensis</i>	meadow clary
<i>Salvia sclarea</i>	clary sage
<i>Senecio jacobaea</i>	tansy ragwort
<i>Silybum marianum</i>	milk thistle
<i>Solanum elaeagnifolium</i>	silverleaf nightshade
<i>Solanum rostratum</i>	buffaloburr
<i>Soliva sessilis</i>	lawnweed
<i>Sorghum halepense</i>	johnsongrass
<i>Spartium junceum</i>	Spanish broom
<i>Tamarix ramosissima</i>	saltcedar
<i>Thymelaea passerina</i>	spurge flax
<i>Torilis arvensis</i>	hedgearsley
<i>Ulex europaeus</i>	gorse, furze
<i>Zygophyllum fabago</i>	Syrian bean-caper



**WSR 02-09-008**  
**EXPEDITED RULES**  
**SECRETARY OF STATE**

[Filed April 4, 2002, 1:20 p.m.]

Title of Rule: WAC 434-332-010 Definition of new resident voter extended.

Purpose: We propose to delete chapter 434-332 WAC.

Summary: Voting rights for those temporarily residing outside the United States.

Reasons Supporting Proposal: This rule is out of date, no longer necessary, and refers to a statute that no longer exists.

Name of Agency Personnel Responsible for Drafting: Bill Huennekens, 520 East Union Avenue S.E., Olympia, (360) 902-4169; Implementation and Enforcement: Dean Logan, 520 East Union Avenue S.E., Olympia, (360) 902-4180.

Name of Proponent: Office of the Secretary of State, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Delete WAC 434-332-010 because it is not necessary any more and the statute referenced in the language of the rule no longer exists.

Proposal Changes the Following Existing Rules: The change deletes the rule.

**NOTICE**

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THE USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Bill Huennekens, Office of the Secretary of State, 520 East Union Avenue S.E., Olympia, WA 98504, AND RECEIVED BY June 17, 2002.

April 4, 2002

Steve Excell

Assistant Secretary of State

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 434-332-010      Definition of a new resident voter extended.

**WSR 02-09-012**  
**EXPEDITED RULES**  
**DEPARTMENT OF AGRICULTURE**

[Filed April 5, 2002, 10:37 a.m.]

Title of Rule: Chapter 16-400 WAC, Fruit and vegetable inspection fees.

Purpose: Reduce the customer assisted inspection program (CAIP) federal-state grade certification charges for fresh potatoes.

Statutory Authority for Adoption: Chapter 15.17 RCW.

Statute Being Implemented: RCW 15.17.150.

Summary: Agency response to reduce the customer assisted inspection program (CAIP) federal-state grade certification charges for fresh potatoes from 4 1/2 cents per cwt. to 3 1/2 cents per cwt. or thirty dollars per staff hour worked.

Reasons Supporting Proposal: Assessment by the agency of the CAIP pilot program indicated that the current certification charges far exceeded the expenses incurred to perform the certification and justifies the request for a fee reduction and will create a reasonable parity to the income/expense ratio.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jim Quigley, Olympia, Washington, (360) 902-1833.

Name of Proponent: Washington State Department of Agriculture, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The purpose of the rule is to establish charges for inspections and certifications under the customer assisted inspection program (CAIP) performed by the fruit and vegetable inspection program. The current fees were established to initiate a CAIP pilot program for fresh potato participants. Assessment of the pilot program indicated that the current charges exceeded the normal income/expense ratio to perform the certifications under the CAIP program. The reduction will bring the income/expense ratio to a more reasonable parity. The reduction of inspection fees for the CAIP program will enable more fresh potato packers to participate in the CAIP program as an alternative certification at a reduced cost compared to the traditional certification process.

Proposal Changes the Following Existing Rules: Reduce the certification charges for fresh potato packers from the current fees of three-fourths of the rates specified in WAC 16-400-010 (2)(a), which is 4 1/2 per cwt., but not less than the hourly rate of thirty dollars. The proposal will reduce the certification charges to 3 1/2 cents per cwt. but not less than the hourly rate of thirty dollars per staff hour.

**NOTICE**

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THE USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU

**EXPEDITED**

MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Dannie McQueen, Administrative Regulations Manager, Washington State Department of Agriculture, P.O. Box 42560, Olympia, WA 98504-2560, AND RECEIVED BY June 18, 2002.

April 5, 2002  
Robert W. Gore  
Assistant Director

AMENDATORY SECTION (Amending WSR 01-18-052, filed 8/30/01, effective 9/30/01)

**WAC 16-400-045 Grade and condition certificates—Customer assisted inspection program (CAIP) certification charges—Fruits and vegetables.** Charges for grade and condition certificates for all fruits and vegetables issued under this section shall be:

- (1) The minimum charge for grade and condition certificates for all fresh fruits and vegetables shall be nine dollars.
- (2) Charges for grade and condition certificates for fresh market fruit and vegetables in containers - wrapped, place pack, face and fill, in bags, master containers, consumer packages, or loose in bulk cartons, boxes, crates, bins or in bags, per cwt. or fraction thereof:
  - (a) Federal-state grade certification shall be three-fourths of the cwt. rates specified in WAC 16-400-010 (2)(a) and 16-400-040 (2)(a), except: Federal-state grade certification for fresh potatoes shall be three and one-half cents per cwt., but not less than the hourly rate of thirty dollars per staff hour worked.
  - (b) Should the cwt. rate charges total less than thirty dollars per staff hour worked, additional certification charges shall be assessed to equal thirty dollars per hour worked.

**WSR 02-09-018**  
**EXPEDITED RULES**  
**DEPARTMENT OF REVENUE**  
[Filed April 5, 2002, 2:42 p.m.]

Title of Rule: Repealing WAC 458-12-135 Listing of property—Taxing district designation.  
Purpose: To provide information for county assessors and their staff regarding the designation of consolidated taxing districts.  
Statutory Authority for Adoption: RCW 84.08.010 and 84.08.070.  
Statute Being Implemented: RCW 84.04.120 and 84.40.090.  
Summary: This rule provides a definition of the terms "taxing district" and "consolidated taxing district." This rule also explains that the assessor must designate the name or number of each consolidated taxing district in which each description of real or personal property is located and assessed. The department anticipates repealing this rule because the information is being incorporated into WAC 458-12-140.  
Name of Agency Personnel Responsible for Drafting: Mark Mullin, 1025 Union Avenue S.E., Suite #400, Olympia,

WA, (360) 570-6112; Implementation and Enforcement: Sandy Guilfoil, 1025 Union Avenue S.E., Suite #200, Olympia, WA, (360) 570-5860.

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 a definition of the terms "taxing district" and "consolidated taxing district." This rule also explains that the assessor must designate the name or number of each consolidated taxing district in which each description of real or personal property is located and assessed. This rule is no longer necessary as the information contained in the rule is being updated and incorporated into WAC 458-12-140.

Proposal does not change existing rules. WAC 458-12-135 will be repealed.

**NOTICE**

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THE USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Mark Mullin, Department of Revenue, P.O. Box 47467, Olympia, WA 98504-7467, AND RECEIVED BY June 17, 2002.

April 5, 2002  
Claire Hesselholt, Rules Manager  
Legislation and Policy Division

**WSR 02-09-025**  
**EXPEDITED RULES**  
**OFFICE OF**  
**FINANCIAL MANAGEMENT**  
[Filed April 9, 2002, 8:27 a.m.]

Title of Rule: WAC 82-50-021 Official lagged, semi-monthly pay dates established.  
Purpose: To establish official pay dates for state officers and employees for calendar year 2003.  
Statutory Authority for Adoption: RCW 42.16.010(1) and 42.16.017.  
Statute Being Implemented: RCW 42.16.010(1) and 42.16.017.  
Summary: This proposed rule making amends WAC 82-50-021 by establishing pay dates for state officers and employees for calendar year 2003 and removing now obsolete pay dates for calendar year 2001.  
Reasons Supporting Proposal: Statute requires that the Office of Financial Management annually update and publish pay dates.  
Name of Agency Personnel Responsible for Drafting: Millie Lund, 6639 Capitol Boulevard, Tumwater, (360) 664-

EXPEDITED

7678; Implementation and Enforcement: Wendy Jarrett, 6639 Capitol Boulevard, Tumwater, (360) 664-7675.

Name of Proponent: Office of Financial Management, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: WAC 82-50-021 exists to publish the official lagged, semimonthly pay dates for state officers and employees. This section of WAC, which provides pay dates for the current and ensuing calendar years, is amended each year to add pay dates for the ensuing year and delete the obsolete pay dates for the previous year.

Proposal Changes the Following Existing Rules: Official lagged, semimonthly pay dates for calendar year 2003 are added and the now obsolete pay dates for calendar year 2001 are deleted.

**NOTICE**

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THE USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Jennifer Strus, Office of Financial Management, P.O. Box 43113, Olympia, WA 98504-3113, AND RECEIVED BY June 17, 2002.

April 9, 2002  
Jennifer Strus  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 01-12-007, filed 5/24/01, effective 6/24/01)

**WAC 82-50-021 Official lagged, semimonthly pay dates established.** Unless exempted otherwise under the provisions of WAC 82-50-031, the salaries of all state officers and employees are paid on a lagged, semimonthly basis for the official twice-a-month pay periods established in RCW 42.16.010(1). The following are the official lagged, semimonthly pay dates for calendar years (~~2001 and~~) 2002 and 2003:

<del>((CALENDAR YEAR 2001</del>	CALENDAR YEAR 2002
<del>Wednesday, January 10, 2001</del>	Thursday, January 10, 2002
<del>Thursday, January 25, 2001</del>	Friday, January 25, 2002
<del>Friday, February 9, 2001</del>	Monday, February 11, 2002
<del>Monday, February 26, 2001</del>	Monday, February 25, 2002
<del>Friday, March 9, 2001</del>	Monday, March 11, 2002
<del>Monday, March 26, 2001</del>	Monday, March 25, 2002
<del>Tuesday, April 10, 2001</del>	Wednesday, April 10, 2002
<del>Tuesday, April 25, 2001</del>	Thursday, April 25, 2002
<del>Thursday, May 10, 2001</del>	Friday, May 10, 2002
<del>Friday, May 25, 2001</del>	Friday, May 24, 2002
<del>Monday, June 11, 2001</del>	Monday, June 10, 2002

<del>((CALENDAR YEAR 2001</del>	CALENDAR YEAR 2002
<del>Monday, June 25, 2001</del>	Tuesday, June 25, 2002
<del>Tuesday, July 10, 2001</del>	Wednesday, July 10, 2002
<del>Wednesday, July 25, 2001</del>	Thursday, July 25, 2002
<del>Friday, August 10, 2001</del>	Friday, August 9, 2002
<del>Friday, August 24, 2001</del>	Monday, August 26, 2002
<del>Monday, September 10, 2001</del>	Tuesday, September 10, 2002
<del>Tuesday, September 25, 2001</del>	Wednesday, September 25, 2002
<del>Wednesday, October 10, 2001</del>	Thursday, October 10, 2002
<del>Thursday, October 25, 2001</del>	Friday, October 25, 2002
<del>Friday, November 9, 2001</del>	Friday, November 8, 2002
<del>Monday, November 26, 2001</del>	Monday, November 25, 2002
<del>Monday, December 10, 2001</del>	Tuesday, December 10, 2002
<del>Monday, December 24, 2001</del>	Tuesday, December 24, 2002))

<u>CALENDAR YEAR 2002</u>	<u>CALENDAR YEAR 2003</u>
<u>Thursday, January 10, 2002</u>	<u>Friday, January 10, 2003</u>
<u>Friday, January 25, 2002</u>	<u>Friday, January 24, 2003</u>
<u>Monday, February 11, 2002</u>	<u>Monday, February 10, 2003</u>
<u>Monday, February 25, 2002</u>	<u>Tuesday, February 25, 2003</u>
<u>Monday, March 11, 2002</u>	<u>Monday, March 10, 2003</u>
<u>Monday, March 25, 2002</u>	<u>Tuesday, March 25, 2003</u>
<u>Wednesday, April 10, 2002</u>	<u>Thursday, April 10, 2003</u>
<u>Thursday, April 25, 2002</u>	<u>Friday, April 25, 2003</u>
<u>Friday, May 10, 2002</u>	<u>Friday, May 9, 2003</u>
<u>Friday, May 24, 2002</u>	<u>Friday, May 23, 2003</u>
<u>Monday, June 10, 2002</u>	<u>Tuesday, June 10, 2003</u>
<u>Tuesday, June 25, 2002</u>	<u>Wednesday, June 25, 2003</u>
<u>Wednesday, July 10, 2002</u>	<u>Thursday, July 10, 2003</u>
<u>Thursday, July 25, 2002</u>	<u>Friday, July 25, 2003</u>
<u>Friday, August 9, 2002</u>	<u>Monday, August 11, 2003</u>
<u>Monday, August 26, 2002</u>	<u>Monday, August 25, 2003</u>
<u>Tuesday, September 10, 2002</u>	<u>Wednesday, September 10, 2003</u>
<u>Wednesday, September 25, 2002</u>	<u>Thursday, September 25, 2003</u>
<u>Thursday, October 10, 2002</u>	<u>Friday, October 10, 2003</u>
<u>Friday, October 25, 2002</u>	<u>Friday, October 24, 2003</u>
<u>Friday, November 8, 2002</u>	<u>Monday, November 10, 2003</u>
<u>Monday, November 25, 2002</u>	<u>Tuesday, November 25, 2003</u>
<u>Tuesday, December 10, 2002</u>	<u>Wednesday, December 10, 2003</u>
<u>Tuesday, December 24, 2002</u>	<u>Wednesday, December 24, 2003</u>

**WSR 02-09-042**

**EXPEDITED RULES**

**DEPARTMENT OF HEALTH**

(Health Professions Quality Assurance)

[Filed April 12, 2002, 1:05 p.m.]

Title of Rule: WAC 246-12-040 How to return to active status when a credential has expired.

Purpose: To allow expanded opportunity for credential holders to renew in person at the Department of Health.

Statutory Authority for Adoption: RCW 43.70.280.

Statute Being Implemented: RCW 43.70.280.

Summary: The proposed change would allow the late penalty fee to be waived if payment is made on the first busi-

EXPEDITED

ness day after the expiration date, if the expiration date falls on a day the Department of Health is closed.

Reasons Supporting Proposal: This rule change will benefit those we credential by allowing greater opportunity for persons to renew their credentials in person without a penalty.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Mary Dale, 1300 S.E. Quince, Olympia, WA 98504-7860, (360) 236-4983.

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: Payment is due for renewal of credentials on the expiration date of the credential. The proposed change would allow the late penalty fee to be waived if payment is made on the first business day after the expiration date, if the expiration date falls on a day the Department of Health is closed. This rule change will benefit those we credential by allowing greater opportunity for persons to renew their credentials in person, without penalty.

Proposal Changes the Following Existing Rules: A late penalty fee will not be charged if payment is made on the first business day after the expiration date, if the expiration date falls on a day the Department of Health is closed.

#### NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THE USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Mary Dale, Department of Health, P.O. Box 47860, Olympia, WA 98504-7860, AND RECEIVED BY June 18, 2002.

April 12, 2002  
Mary C. Selecky  
Secretary

AMENDATORY SECTION (Amending WSR 98-05-060, filed 2/13/98, effective 3/16/98)

**WAC 246-12-040 How to return to active status when a credential has expired.** (1) The credential status is **expired** if the practitioner does not renew on or before the expiration date. The practitioner must not practice until the credential is returned to active status.

(2) Any renewal that is postmarked or presented to the department after midnight on the expiration date is late, and subject to a **late renewal penalty fee**. The ~~practitioner must not practice until the credential is returned to active status~~ late penalty fee will be waived if:

(a) The credential expires on a day the department is closed for business; and

(b) Payment is received at the department of health, health professions quality assurance main office on the next business day.

~~((2))~~ (3) A credential is returned to active status by complying with the following:

(a) Expired for one renewal cycle or less:

(i) Pay the late renewal penalty fee;

(ii) Pay the current renewal fee;

(iii) Pay the current substance abuse monitoring surcharge, if required by the profession;

(iv) Provide written declarations or documentation, if required for the profession; and

(v) Comply with current continuing education or continuing competency requirements if required by the profession.

(b) Expired for more than one renewal cycle but less than three years:

(i) Complete an abbreviated application form;

(ii) Pay the late renewal penalty fee;

(iii) Pay the current renewal fee;

(iv) Pay the current substance abuse monitoring surcharge, if required by the profession;

(v) Pay the expired credential reissuance fee;

(vi) Provide a written declaration that no action has been taken by a state or federal jurisdiction or hospital which would prevent or restrict the practitioner's practice of the profession;

(vii) Provide a written declaration that he or she has not voluntarily given up any credential or privilege or has not been restricted in the practice of the profession in lieu of or to avoid formal action;

(viii) Provide a written declaration that continuing education and competency requirements for the two most recent years have been met, if required for the profession to maintain an active credential; and

(ix) Provide other written declarations or documentation, if required for the profession.

(c) Expired for over three years:

(i) Complete an abbreviated application form;

(ii) Pay the late renewal penalty fee;

(iii) Pay the current renewal fee;

(iv) Pay the current substance abuse monitoring surcharge, if required by the profession;

(v) Pay the expired credential reissuance fee;

(vi) Satisfy other competency requirements of the regulatory entity, if required;

(vii) Provide a written declaration that no action has been taken by a state or federal jurisdiction or hospital which would prevent or restrict the practitioner's practice of the profession;

(viii) Provide a written declaration that he or she has not voluntarily given up any credential or privilege or has not been restricted in the practice of the profession in lieu of or to avoid formal action;

(ix) Provide a written declaration that continuing education or competency requirements for the two most recent years have been met, if required for the profession to maintain an active credential;

(x) Provide other written declarations or documentation, if required for the profession; and

EXPEDITED

(xi) If not previously provided, provide proof of AIDS education as required for the profession and in Part 8 of this chapter.

**WSR 02-09-046**  
**EXPEDITED RULES**  
**DEPARTMENT OF**  
**NATURAL RESOURCES**

[Order 708—Filed April 12, 2002, 3:54 p.m.]

Title of Rule: Survey, plat and map filing and recording fees.

Purpose: The purpose of this rule amendment is to increase the fee, set in WAC 332-150-030, as directed by the Board of Natural Resources.

Statutory Authority for Adoption: RCW 58.24.070.

Statute Being Implemented: RCW 58.24.070.

Summary: After fourteen years without an increase, it is now necessary to raise the fee \$20 per recording to support the current program. An expedited implementation is appropriate because, over the last year, the primary interested parties, those paying the fee (land surveyors), and those collecting the fee (county auditors), were provided multiple opportunities for input through various open forum meetings and through other appropriate channels. The fee increase has been advertised through mailings and publications to these professional groups. The leadership of these groups have been in constant contact with DNR staff and have relayed information back to their constituents for review through their own channels and various meetings. Their input has been incorporated into the final decision.

Reasons Supporting Proposal: The new fee level will generate sufficient revenue to the surveys and maps account to fund the Public Land Survey Office for several years.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Dave Steele, 1111 Washington Street, Olympia, 98504-7060, (360) 902-1181.

Name of Proponent: Survey Advisory Board, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The purpose of this rule amendment is to increase the fee, set in WAC 332-150-030, as directed by the Board of Natural Resources. It will generate sufficient revenue to the surveys and maps account to fund the Public Land Survey Office for several years.

Proposal Changes the Following Existing Rules: It changes the fee from \$26 per recorded survey map, to \$46.

**NOTICE**

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THE USE OF

THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Dave Steele, Department of Natural Resources, P.O. Box 47060, Olympia, WA 98504-7060, AND RECEIVED BY June 18, 2002.

April 12, 2002

Doug Sutherland

Commissioner of Public Lands

AMENDATORY SECTION (Amending Order 509, filed 7/14/87)

**WAC 332-150-030 Filing and recording fees.** Effective ((~~July 26, 1987~~)) June 13, 2002, each county auditor shall collect the fee of ((~~twenty-six~~)) forty-six dollars per instrument in addition to any other fees required by law, as a condition precedent to the filing and recording of any surveys, subdivision plats, short plats or condominium surveys, plats or maps.

**EXPEDITED**



**WSR 02-09-001**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 02-53A—Filed April 3, 2002, 12:06 p.m.]

Date of Adoption: February 9, 2002.  
 Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order:  
 Amending WAC 220-56-115 and 220-56-235.

Statutory Authority for Adoption: RCW 77.12.047.

Adopted under notice filed as WSR 01-21-126 on October 24, 2001.

Changes Other than Editing from Proposed to Adopted Version: WAC 220-56-115, change two barbless hooks in marine waters to no more than two hooks in Marine Areas 1-4 and two barbless hooks in Marine Areas 5-13, except for forage fish jigger gear.

WAC 220-56-235, require release of all yelloweye rockfish in Catch Record Card Areas 1-4.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Effective Date of Rule: Thirty-one days after filing,

April 3, 2002

Debbie Nelson

for Russ Cahill, Chair

Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 01-24, filed 3/5/01, effective 5/1/01)

**WAC 220-56-115 Angling—Lawful and unlawful acts.** (1) It is unlawful for any person to use more than one line with three hooks while angling (~~for food fish~~) for personal use except:

(a) It is unlawful to use more than 2 hooks while fishing in Marine Areas 1-4, except for forage fish jigger gear.

(b) It is unlawful to use more than two barbless hooks while fishing (~~for bottomfish or halibut~~) in Marine Areas 5-13, except for forage fish jigger gear.

~~((b))~~ (c) It is lawful to use forage fish jigger gear as provided for in WAC 220-56-265 and squid jig gear as provided for in WAC 220-56-390.

~~((e))~~ (d) A second line using forage fish jigger gear is lawful while fishing in Catch Record Card Areas 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12, and 13.

(2) It shall be unlawful for any person to take, fish for or possess (~~feed~~) fish taken for personal use by any means other than angling with a line attached to a pole held in hand while landing the fish or with a hand-operated line without rod or reel except as follows:

(a) It is lawful to leave the pole in a pole holder while playing or landing the fish if the pole is capable of being readily removed from the pole holder.

(b) It is lawful to use an electric power-operated reel designed for sport fishing attached to a pole.

(c) It is lawful to fish for or possess salmon taken for personal use with hand lines (lines not attached to a handheld pole) except use of hand lines is unlawful in those waters west of the mouth of the Sekiu River, the Pacific Ocean, Washington waters at the mouth of the Columbia River west of a line projected true north and south through Buoy 10, Grays Harbor, and Willapa Bay.

(3) It shall be unlawful for any person while angling (~~for food fish~~) to fail to keep his angling gear under his direct and immediate physical control.

(4) In areas where a saltwater license is valid, each fisher aboard a vessel may continue to deploy angling gear or shellfish gear until the daily limit of food fish or shellfish for all licensed and juvenile anglers aboard has been retained.

AMENDATORY SECTION (Amending Order 01-24, filed 3/5/01, effective 5/1/01)

**WAC 220-56-235 Possession limits—Bottomfish.** It is unlawful for any person to take in any day more than the following quantities of bottomfish for personal use. The possession limit at any time shall not exceed the equivalent of two daily limits in fresh, frozen or processed form. Unless otherwise provided bottomfish fishing is open the entire year.

(1) Coastal (Catch Record Card Areas 1 through 4):

(a) Lingcod - 2 fish minimum length 24 inches.

(b) Rockfish - 10 fish of which no more than 2 may be (~~an aggregate of~~) canary rockfish (~~and~~). Release all yelloweye rockfish.

(c) Surfperch (excluding shiner perch) - 15 fish.

(d) Wolfeel - ((2)) 0 fish (~~east of the Bonilla-Tatoosh line~~) from Catch Record Card Area 4.

(e) Cabezon - 2 fish east of the Bonilla-Tatoosh line.

(f) All other species - no limit.

(2) Inner Puget Sound (Catch Record Card Areas 5 through 13):

(a) Catch Record Card Areas 5 and 6 - 15 fish in the aggregate of all species and species groups of bottomfish, which may include no more than:

Rockfish	1 fish
Rockfish May 1 through September 30 in Marine Area 5 west of Slip Point	3 fish of which no more than 1 may be other than black rockfish
Surfperch	10 fish
Pacific cod	2 fish

Pollock	2 fish
Flatfish (except halibut)	15 fish
Lingcod	1 fish
Wolf-eel	((2)) 0 fish
Cabezon	2 fish
Pacific hake	2 fish

(b) Catch Record Card Area 7 - 15 fish in the aggregate of all species of bottomfish, which may include no more than:

Rockfish	1 fish
Surfperch	10 fish
Pacific cod	2 fish
Flatfish (except halibut)	15 fish
Lingcod	1 fish
Wolf-eel	0 fish
Cabezon	2 fish
Pollock	2 fish
Pacific hake	2 fish

(c) Catch Record Card Areas 8-1 through 13 - 15 fish in the aggregate of all species and species groups of bottomfish, which may include no more than:

Rockfish	1 fish
Surfperch	10 fish
Pacific cod	0 fish
Pollock	0 fish
Flatfish (except halibut)	15 fish
Lingcod	1 fish
Wolf-eel	0 fish
Cabezon	2 fish
Pacific hake	0 fish

(d) It is unlawful to possess lingcod taken by angling less than 26 inches in length or greater than 40 inches in length.

(e) The daily limit taken by spear fishing may include no more than one lingcod. There is no size restriction on the one lingcod allowed in the daily limit if taken by spear fishing.

(f) It is unlawful to retain cabezon taken from Catch Record Card Areas 5 through 13 from December 1 through April 30.

(g) It is unlawful to retain six-gill shark taken from Catch Record Card Areas 5 through 13.

**WSR 02-09-010**  
**PERMANENT RULES**  
**DEPARTMENT OF TRANSPORTATION**

[Filed April 5, 2002, 9:35 a.m.]

Date of Adoption: April 4, 2002.

Purpose: The purpose of this rule is to raise the ferry tolls within the specified WACs. The revisions follow the annual review of WSF's farebox revenue needs.

Citation of Existing Rules Affected by this Order: Amending state ferries and toll bridges, WAC 468-300-010, 468-300-020, 468-300-040, and 468-300-220.

Statutory Authority for Adoption: RCW 47.56.030, 47.60.326.

Adopted under notice filed as WSR 02-05-062 on February 15, 2002.

Changes Other than Editing from Proposed to Adopted Version: Proposed early week/late week fare periods for the San Juan Islands are shifted one day earlier. A \$1.00 retail/shipping and handling fee is added to the passenger pass.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Effective Date of Rule: Thirty-one days after filing.

April 4, 2002

Chris Marr, Chair

Transportation Commission

**AMENDATORY SECTION** (Amending WSR 01-11-010, filed 5/3/01, effective 6/3/01)

**WAC 468-300-010 Ferry passenger tolls.**

Effective 03:00 a.m. (~~June 3, 2001~~) May 12, 2002

((ROUTES	Full-Fare	Senior/ Disabled	Youth-Fare 18 and under	Frequent-User	Monthly Pass <sup>5</sup>	Quarterly- Pass <sup>5</sup>	Annual-Pass <sup>5</sup>	Bicycle- Surcharge <sup>2,6</sup>
				Coupon-Book-20 Rides <sup>1</sup>				
Via Passenger-Only Ferry Seattle to Bremerton								
Seattle to Vashon	5.50	2.70	4.20	31.50 <sup>7</sup>	108.20	324.60	1,298.40	0.90
Via Passenger-Only Ferry Bremerton to Seattle								
Vashon to Seattle	1.00	0.50	1.00	N/A	108.20	324.60	1,298.40	N/C

PERMANENT

(ROUTES	Full Fare	Senior/ Disabled	Youth Fare 18 and under	Frequent User Coupon Book 20 Rides <sup>1</sup>	Monthly Pass <sup>5</sup>	Quarterly Pass <sup>5</sup>	Annual Pass <sup>5</sup>	Bicycle Surcharge <sup>2,6</sup>
Via Auto Ferry								
*Fauntleroy-Southworth	4.00	2.00	2.80	28.00	58.80	176.90	705.60	0.90
*Seattle-Bremerton								
*Seattle-Bainbridge-Island								
*Edmonds-Kingston	4.50	2.20	3.20	31.50	66.20	198.50	793.80	0.90
Port Townsend-Keystone	2.00	1.00	1.40	28.00	N/A	N/A	N/A	0.45
*Fauntleroy-Vashon								
*Southworth-Vashon								
*Pt. Defiance-Tahlequah	2.90	1.40	2.10	20.50	42.70	127.90	511.60	0.90
*Mukilteo-Clinton	2.70	1.30	1.90	19.00	39.70	119.10	476.30	0.90
*Anacortes to Lopez, Shaw, Orcas or Friday Harbor	6.80	3.40	4.80	47.75	N/A	N/A	N/A	3.60
Between Lopez, Shaw, Orcas and Friday Harbor <sup>4</sup>	N/C	N/C	N/C	N/C	N/A	N/A	N/A	N/C
<i>International Travel</i>								
Anacortes to Sidney and Sidney to all destinations	11.00	5.50	7.70	N/A	N/A	N/A	N/A	5.60
From Lopez, Shaw + -, Orcas and Friday Harbor to Sidney@	4.25	2.00	3.00	N/A	N/A	N/A	N/A	2.00
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) <sup>3</sup>	15.25	7.50	10.70	N/A	N/A	N/A	N/A	7.60))

ROUTES	Full Fare	Senior/ Disabled	Youth Fare 18 and under	Frequent User Coupon Book 20 Rides <sup>1</sup>	Monthly Pass <sup>3</sup>	Quarterly Pass <sup>3</sup>	Annual Pass <sup>3</sup>	Bicycle Surcharge <sup>2,6</sup>
Via Passenger-Only Ferry								
*Seattle-Vashon	7.10	3.50	5.60	58.25	93.20	279.60	1,118.40	1.00
Via Passenger-Only Ferry								
Seattle to Bremerton	6.10	3.00	4.60	38.25 <sup>2</sup>	93.20	279.60	1,118.40	1.00
Via Passenger-Only Ferry								
Bremerton to Seattle	1.00	0.50	1.00	N/A	93.20	279.60	1,118.40	N/C
Via Auto Ferry								
*Fauntleroy-Southworth	4.00	2.00	2.80	30.00	48.00	144.00	576.00	1.00
*Seattle-Bremerton								
*Seattle-Bainbridge Island								
*Edmonds-Kingston	5.10	2.50	3.60	38.25	61.20	183.60	734.40	1.00
Port Townsend-Keystone	2.00	1.00	1.40	30.00	48.00	144.00	576.00	0.50
*Fauntleroy-Vashon								
*Southworth-Vashon								
*Pt. Defiance-Tahlequah	3.30	1.60	2.40	24.75	39.60	118.80	475.20	1.00
*Mukilteo-Clinton	3.10	1.50	2.20	23.25	37.20	111.60	446.40	1.00
*Anacortes to Lopez, Shaw, Orcas or Friday Harbor - Sun- day-Tuesday	6.80	3.40	4.80	56.00	N/A	N/A	N/A	4.00
*Anacortes to Lopez, Shaw, Orcas or Friday Harbor - Wednesday-Saturday	8.00	4.00	5.60	56.00	N/A	N/A	N/A	4.00
Between Lopez, Shaw, Orcas and Friday Harbor <sup>4</sup>	N/C	N/C	N/C	N/C	N/A	N/A	N/A	N/C
<i>International Travel</i>								
Anacortes to Sidney and Sidney to all destinations	12.40	6.20	8.70	N/A	N/A	N/A	N/A	6.00
From Lopez, Shaw + -, Orcas and Friday Harbor to Sidney@	4.50	2.25	3.25	N/A	N/A	N/A	N/A	2.00

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ROUTES	Full Fare	Senior/ Disabled	Youth Fare 18 and under	Frequent User	Monthly Pass <sup>2</sup>	Quarterly Pass <sup>2</sup>	Annual Pass <sup>2</sup>	Bicycle Surcharge <sup>2,6</sup>
				Coupon Book 20 Rides <sup>1</sup>				
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) <sup>3</sup>	16.90	8.45	11.95	N/A	N/A	N/A	N/A	8.00

@ These fares rounded to the next multiple of \$.25. All other fares rounded to the next multiple of \$0.10.

\* These routes operate as a one-point toll collection system.

<sup>1</sup>FREQUENT USER COUPONS - Shall be valid only for 90-days from date of purchase after which time the tickets shall not be accepted for passage. Unused coupons will not be eligible for refund or exchange.

~~((Frequent user coupon books purchased prior to June 3, 2001, with an expiration date after July 7, 2001, will be accepted for passage through July 7, 2001, and exchange for 90 days from date of purchase. Unused coupons can only be refunded on a pro-rata basis after July 7, 2001.))~~

<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.

<sup>5</sup>PASSES - Passenger passes are available for all routes except(~~(+)~~) Anacortes/San Juan Island/Sidney ~~((and Port Townsend/Key-stone))~~. It is valid for the period printed on the pass and will be presented to Washington state ferries staff whenever a passenger fare is collected. This pass is based on ~~((24))~~ 16 days of passenger travel with a ~~((30))~~ 25% discount. The quarterly pass is based on ~~((63))~~ 48 days of travel with a ~~((30))~~ 25% discount and the annual pass is based on ~~((252))~~ 192 days with a ~~((30))~~ 25% discount. A \$1.00 retail/shipping and handling fee will be added to the price of the pass.

A combination ferry-transit 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 16 days of passenger travel per month at a 25% discount. Passes may be available in monthly, quarterly or annual denominations.

<sup>6</sup>BICYCLE PASS - A bicycle pass is available on all routes except: Anacortes/San Juan Island/Sidney for a \$20.00 annual fee subject to meeting WSF specified conditions. The pass is valid for one year. A cyclist with a valid pass shall have the bicycle surcharge waived.

<sup>7</sup>SEATTLE TO BREMERTON ~~((AND SEATTLE TO VASHON))~~ PASSENGER ONLY - Riders on Seattle to Bremerton ~~((and Seattle to Vashon))~~ passenger only need to supplement frequent user coupon with an additional surcharge fare of \$1.00 (\$0.50 for Senior/Disabled).

CHILDREN/YOUTH - Children under five years of age will be carried free when accompanied by parent or guardian. Children/youths five through eighteen years of age will be charged the youth fare, which will be 70% of full fare rounded to the next multiple of \$0.10.

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 as a passenger.

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 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 per month at a 40% discount. Passes may be available in monthly, quarterly or annual denominations.))~~

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).

Special passenger fare rate(s) may be established for a pilot program in conjunction with the Central Puget Sound Regional Fare Integration project on ferry route(s) serving King, Pierce, Snohomish and Kitsap counties. The rate(s) may be established at the discretion of the secretary of transportation for a specific discount not to exceed fifty percent of full fare.

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. Starting September 1, 1999, all school groups 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. Due to space limitations, authorized school groups will not be permitted to use one of the passenger-only routes without prior WSF approval.

BUNDLED SINGLE FARE BOOKS - WSF may bundle single fare types into multiple trip books as a customer convenience. These books shall be valid only until the second Sunday of May following the date of purchase, after which time the coupons shall not be accepted for passage. Unused coupons are not refundable.

PEAK SEASON SURCHARGE - A 20% surcharge shall be applied to passengers from the second Sunday in May to the second Sunday in October, except those using frequent user tickets, on the Anacortes to Lopez, Shaw, Orcas and Friday Harbor routes.

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AMENDATORY SECTION (Amending WSR 01-11-010, filed 5/3/01, effective 6/3/01)

WAC 468-300-020 Vehicle under 20', motorcycle, and stowage ferry tolls.

Effective 03:00 a.m. ((June 3, 2001)) May 12, 2002

(ROUTES	Vehicle Under 20'	Vehicle w/Sr Under 20' Citizen or Disabled Driver <sup>4</sup>	Vehicle Under 20' Over Height Charge <sup>1</sup>	Frequent User Coupon-book 20 Rides <sup>2</sup>	Motorcycle <sup>5</sup> Incl. Driver Stowage <sup>1</sup> One Way@	Motorcycle w/Sr Citizen or Disabled Driver Stowage <sup>1</sup> One Way@	Motorcycle Oversize Charge <sup>1</sup>	Motorcycle Frequent User Ticket-book 20 Rides <sup>2</sup> @
	Incl. Driver One Way							
Fauntleroy-Southworth								
Port Townsend/Keystone	7.00	6.00	7.00	112.00	3.00	2.00	1.00	48.00
Seattle-Bainbridge Island								
Seattle-Bremerton-Edmonds-Kingston	8.00	6.85	8.00	128.00	3.40	2.25	1.15	54.40
*Fauntleroy-Vashon								
*Southworth-Vashon								
*Pt. Defiance-Tahlequah	10.25	8.75	10.25	82.00	4.40	2.90	1.50	35.20
Mukilteo-Clinton	5.00	4.30	5.00	80.00	2.10	1.45	0.70	33.60
10 Rides - 5 Round Trips								
*Anacortes to Lopez	17.00	13.60	17.00	68.00	8.90	5.50	2.10	71.20
*Shaw, Orcas	20.00	16.60	20.00	80.00	9.50	6.10	2.70	76.00
*Friday Harbor	22.50	19.10	22.50	90.00	10.00	6.60	3.20	80.00
Between Lopez, Shaw, Orcas and Friday Harbor <sup>3</sup>	9.00	9.00	9.00	36.00	2.75	2.75	2.75	N/A
<i>International Travel</i>								
Anacortes to Sidney and Sidney to all destinations	29.75	24.25	29.75	N/A	14.80	9.30	3.80	N/A
Travelers with advanced reservations (\$15 fee)								
Anacortes to Sidney and Sidney to all destinations <sup>6</sup>	14.75	9.25	29.75	N/A	N/A	N/A	N/A	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney	9.75	7.50	9.75	N/A	5.50	3.25	1.25	N/A
Travelers with advanced reservations (\$7 fee) from Lopez, Shaw, Orcas and Friday Harbor to Sidney <sup>7</sup>								
	2.75	0.50	9.75	N/A	N/A	N/A	N/A	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round-trip) <sup>5</sup>	39.50	31.75	39.50	N/A	20.30	12.55	5.05	N/A))

ROUTES	Vehicle Under 20'	Vehicle w/Sr Under 20' Citizen or Disabled Driver <sup>4</sup>	Vehicle Under 20' Over Height Charge <sup>1</sup>	Frequent User Coupon book 20 Rides <sup>2</sup>	Motorcycle <sup>5</sup> Incl. Driver Stowage <sup>1</sup> One Way@	Motorcycle w/Sr Citizen or Disabled Driver Stowage <sup>1</sup> One Way@	Motorcycle Oversize Charge <sup>1</sup>	Motorcycle Frequent User Ticket book 20 Rides <sup>2</sup> @
	Incl. Driver One Way							
Fauntleroy-Southworth								
Port Townsend/Keystone	7.00	6.00	7.00	112.00	3.00	2.00	1.00	48.00
Seattle-Bainbridge Island								
Seattle-Bremerton-Edmonds-Kingston	9.00	7.70	9.00	144.00	3.90	2.60	1.35	62.40
*Fauntleroy-Vashon								
*Southworth-Vashon								
*Pt. Defiance-Tahlequah	11.75	10.05	11.75	94.00	5.00	3.30	1.70	40.00
Mukilteo-Clinton	5.50	4.70	5.50	88.00	2.40	1.60	0.80	38.40
10 Rides - 5 Round Trips								
*Anacortes to Lopez - Sunday-Tuesday	17.00	13.60	17.00	80.00	8.90	5.50	2.10	83.20

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ROUTES	Vehicle Under 20'	Vehicle Under 20' w/Sr Citizen or Disabled Driver <sup>4</sup>	Vehicle Under 20' Over Height Charge <sup>1</sup>	Frequent User Coupon book 20 Rides <sup>2</sup>	Motorcycle <sup>5</sup> Incl. Driver Stowage <sup>1</sup> One Way@	Motorcycle w/Sr Citizen or Disabled Driver Stowage <sup>1</sup> One Way@	Motorcycle Oversize Charge <sup>1</sup>	Motorcycle Frequent User Ticket book 20 Rides <sup>2</sup> @
	Incl. Driver One Way							
<i>*Lopez - Wednesday-Saturday</i>	20.00	16.00	20.00	80.00	10.40	6.40	2.40	83.20
<i>*Shaw, Orcas - Sunday-Tuesday</i>	20.00	16.60	20.00	94.00	9.50	6.10	2.70	88.80
<i>*Shaw, Orcas - Wednesday-Saturday</i>	23.50	19.50	23.50	94.00	11.10	7.10	3.10	88.80
<i>*Friday Harbor - Sunday-Tuesday</i>	22.50	19.10	22.50	106.00	10.00	6.60	3.20	93.60
<i>*Friday Harbor - Wednesday-Saturday</i>	26.50	22.50	26.50	106.00	11.70	7.70	3.70	93.60
<i>Between Lopez, Shaw, Orcas and Friday Harbor<sup>3</sup></i>	10.25	10.25	10.25	41.00	3.25	3.25	3.25	N/A
<i>International Travel</i>								
<i>Anacortes to Sidney and Sidney to all destinations</i>	33.50	27.30	33.50	N/A	16.70	10.50	4.30	N/A
<i>Travelers with advanced reservations (\$15 fee)</i>								
<i>Anacortes to Sidney and Sidney to all destinations<sup>6</sup></i>	18.50	12.30	33.50	N/A	N/A	N/A	N/A	N/A
<i>Lopez, Shaw, Orcas and Friday Harbor to Sidney</i>								
<i>Travelers with advanced reservations (\$7 fee) from Lopez, Shaw, Orcas and Friday Harbor to Sidney<sup>7</sup></i>	2.75	0.50	9.75	N/A	N/A	N/A	N/A	N/A
<i>Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip)<sup>5</sup></i>	43.25	34.80	43.25	N/A	22.45	14.00	5.55	N/A

@ These fares rounded to the next multiple of \$0.10. All other fares rounded to the next 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 an overheight charge of 100% of the vehicle full fare. Motorcycles with trailers, sidecars, or three wheels will pay an oversize motorcycle charge of 100% of the motorcycle 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 charge 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 COUPONS - Shall be valid only for 90 days from date of purchase after which time the ticket shall not be accepted for passage. Unused coupons will not be eligible for refund.

((Frequent user coupon books purchased prior to June 3, 2001, with an expiration date after July 7, 2001, will be accepted for passage through July 7, 2001, and exchange for 90 days from date of purchase. Unused coupons can only be refunded on a pro rata basis after July 7, 2001.))

<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 WSF 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>ROUND TRIP - Round trip tickets for international travel available for trips beginning or ending on one of the islands served.

<sup>6</sup>RESERVATION FARES - These fares apply only to travelers that have made advanced reservations and paid the \$15 nonrefundable reservation fee. The reservation fee shall be a \$30 nonrefundable fee when the peak season surcharge is in effect.

<sup>7</sup>RESERVATION FARES - These fares apply only to travelers that have made advanced reservations and paid the \$7 nonrefundable reservation fee. The reservation fee shall be a \$15 nonrefundable fee when the peak season surcharge is in effect.

RIDE SHARE VEHICLES - A commuter ride share vehicle 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 \$(+0) 20 fee, a permit valid for one year valid only during the hours shown on the permit. The \$(+0-00) 20.00 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

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shall not be less than four times the applicable passenger fare. Carpools of three or more registered in WSF's preferential loading program must also pay a \$20.00 yearly permit fee.

**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 25% surcharge shall be applied to vehicles from the second Sunday in May to the second Sunday in October except those using frequent user ~~((tickets))~~ coupons. A ~~((38))~~ 22% surcharge shall be applied on vehicle fares for the Sidney B.C. route. A 35% surcharge shall be applied on vehicle

fares from Anacortes to Lopez, Shaw, Orcas and Friday Harbor, except those using frequent user coupons.

**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).

**BUNDLED SINGLE FARE BOOKS** - WSF may bundle single fare types into multiple trip books as a customer convenience. These books shall be valid only until the second Sunday of May following the date of purchase after which time the coupons shall not be accepted for passage. Unused coupons are not refundable.

**AMENDATORY SECTION** (Amending WSR 01-11-010, filed 5/3/01, effective 6/3/01)

**WAC 468-300-040 Oversize vehicle ferry tolls.**

Effective 03:00 a.m. ~~((June 3, 2004))~~ May 12, 2002

((ROUTES	((Oversize Vehicle Ferry Tolls <sup>1</sup>							
	Overall Unit Length—Including Driver							
	20' To Under	20' To Under	30' To Under	40' To Under	50' To Under	60' To under	70' To and include	Cost Per Ft. Over 80' @
Fauntleroy-Southworth Port Townsend/Keystone	10.50	21.00	28.00	35.00	42.00	49.00	56.00	0.70
Seattle Bainbridge Island- Seattle/Bremerton								
Edmonds-Kingston	12.00	24.00	32.00	40.00	48.00	56.00	64.00	0.80
*Fauntleroy-Vashon								
*Southworth-Vashon								
*Pt. Defiance-Tahlequah	15.00	30.75	41.00	51.25	61.50	71.75	82.00	1.00
Mukilteo-Clinton	7.50	15.00	20.00	25.00	30.00	35.00	40.00	0.50
*Anacortes to Lopez <sup>2</sup>								
*Shaw, Orcas								
*Friday Harbor	30.00	60.00	80.00	100.00	120.00	140.00	160.00	2.00
Between Lopez, Shaw, Orcas and Friday Harbor <sup>2</sup>	13.50	27.00	36.00	45.00	54.00	63.00	72.00	N/A
<i>International Travel</i>								
Anacortes to Sidney- and Sidney to all destinations	44.75	89.25	119.00	148.75	178.50	208.25	238.00	3.00
Travelers with advanced reservations (\$15 fee)								
Anacortes to Sidney and Sidney to all destinations <sup>5</sup>	29.75	74.25	104.00	133.75	163.50	193.25	223.00	3.00
Lopez, Shaw, Orcas and Friday Harbor to Sidney	14.75	29.25	39.00	48.75	58.50	68.25	78.00	1.00
Travelers with advanced reservations (\$7 fee) from								
Lopez, Shaw, Orcas and Friday Harbor to Sidney <sup>6</sup>	7.75	22.25	32.00	41.75	51.50	61.25	71.00	1.00
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) <sup>4</sup>	59.25	118.50	158.00	197.50	237.00	276.50	316.00	4.00))

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Oversize Vehicle Ferry Tolls<sup>1</sup>

Overall Unit Length - Including Driver

ROUTES	20'	20'	30'	40'	50'	60'	70'	Cost Per Ft.
	To Under	To Under						
	30'	30'	40'	50'	60'	70'	70'	Over 80'
	Under	Over	To Under	To Under	To Under	To Under	To and include	Over 80'
	7'6"	7'6"	40'	50'	60'	70'	80'	@
	High	High						
<u>Fauntleroy-Southworth</u>								
<u>Port Townsend/Keystone</u>	10.50	21.00	28.00	35.00	42.00	49.00	56.00	0.70
<u>Seattle-Bainbridge Island</u>								
<u>Seattle/Bremerton</u>								
<u>Edmonds-Kingston</u>	13.50	27.00	36.00	45.00	54.00	63.00	72.00	0.90
<u>*Fauntleroy-Vashon</u>								
<u>*Southworth-Vashon</u>								
<u>*Pt. Defiance-Tahlequah</u>	16.50	35.25	47.00	58.75	70.50	82.25	94.00	1.10
<u>Mukilteo-Clinton</u>	8.25	16.50	22.00	27.50	33.00	38.50	44.00	0.55
<u>*Anacortes to Lopez<sup>2</sup></u>								
<u>*Shaw, Orcas</u>								
<u>*Friday Harbor - Sunday-Tuesday</u>	30.00	60.00	80.00	100.00	120.00	140.00	160.00	2.00
<u>*Anacortes to Lopez<sup>2</sup></u>								
<u>*Shaw, Orcas</u>								
<u>*Friday Harbor -</u>								
<u>Wednesday-Saturday</u>	35.25	70.50	94.00	117.50	141.00	164.50	188.00	2.35
<u>Between Lopez, Shaw, Orcas and</u>								
<u>Friday Harbor<sup>2</sup></u>	15.50	30.75	41.00	51.25	61.50	71.75	82.00	N/A
<u>International Travel</u>								
<u>Anacortes to Sidney</u>								
<u>and Sidney to all destinations</u>	50.25	100.50	134.00	167.50	201.00	234.50	268.00	3.35
<u>Travelers with advanced</u>								
<u>reservations (\$15 fee)</u>								
<u>Anacortes to Sidney and</u>								
<u>Sidney to all destinations<sup>2</sup></u>	35.25	85.50	119.00	152.50	186.00	219.50	253.00	3.35
<u>Lopez, Shaw, Orcas</u>								
<u>and Friday Harbor to Sidney</u>	14.75	29.25	39.00	48.75	58.50	68.25	78.00	1.00
<u>Travelers with advanced</u>								
<u>reservations (\$7 fee) from</u>								
<u>Lopez, Shaw, Orcas and Friday</u>								
<u>Harbor to Sidney<sup>4</sup></u>	7.75	22.25	32.00	41.75	51.50	61.25	71.00	1.00
<u>Lopez, Shaw, Orcas and Friday</u>								
<u>Harbor to Sidney (round trip)<sup>4</sup></u>	65.00	129.75	173.00	216.25	259.50	302.75	346.00	4.35

@ These fares rounded to the next multiple of \$0.05. All other fares rounded to the next 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 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 and drivers 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 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>ROUND TRIP - Round trip tickets for international travel available for trips beginning or ending on one of the islands served.

<sup>5</sup>RESERVATION FARES - These fares apply only to travelers that have made advanced reservations and paid the \$15 nonrefundable reservation fee. The reservation fee shall be a \$30 nonrefundable fee when the peak season surcharge is in effect.

<sup>6</sup>RESERVATION FARES - These fares apply only to travelers that have made advanced reservations and paid the \$7 nonrefundable reservation fee. The reservation fee shall be a \$15 nonrefundable fee when the peak season surcharge is in effect.

PEAK SEASON SURCHARGE - A peak season surcharge of 25% shall apply to all oversize vehicles, except for Anacortes to Lopez, Shaw, Orcas, Friday Harbor and international travel. The senior citizen discount shall apply to the driver of an oversize vehicle. A ((6\$)) 22% surcharge shall be applied on fares for the Sidney B.C. route. A 35% surcharge will apply to oversized

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vehicles traveling from Anacortes to Lopez, Shaw, Orcas and Friday Harbor.

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))~~ 15% 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

(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.

AMENDATORY SECTION (Amending WSR 01-11-010, filed 5/3/01, effective 6/3/01)

**WAC 468-300-220 Calculation of charter rates for vessels owned by the Washington state ferry system.** Pursuant to chapter 323, Laws of 1997, vessels owned by the Washington state ferry system may be made available for charter subject to operational availability. Execution of a charter agreement as set forth in the statute must precede a commitment to charter. The following actual hourly vessel operating costs have been calculated for establishing the rates to be charged for vessel charters from July 1, ~~((2000))~~ 2001, through June 30, ~~((2001))~~ 2002:

Vessel Class	Deck Crew On Overtime	Deck Crew On Straight Time
Jumbo Mark II	<del>\$(1,100)</del> <u>1,165.37</u>	<del>\$(906)</del> <u>967.22</u>
Jumbo	<del>((1,036))</del> <u>1,124.43</u>	<del>((857))</del> <u>940.48</u>
Super	<del>((997))</del> <u>1,077.82</u>	<del>((824))</del> <u>900.55</u>
Evergreen	<del>((803))</del> <u>810.31</u>	<del>((660))</del> <u>663.60</u>
Issaquah	<del>((773))</del> <u>857.56</u>	<del>((630))</del> <u>710.85</u>
Steel	<del>((640))</del> <u>677.05</u>	<del>((526))</del> <u>560.90</u>
Rhododendron	<del>((614))</del> <u>639.05</u>	<del>((497))</del> <u>522.90</u>
Hiyu	<del>((429))</del> <u>448.04</u>	<del>((367))</del> <u>383.79</u>
Passenger Only	<del>((514))</del> <u>548.85</u>	<del>((433))</del> <u>465.88</u>
Passenger Only Fast Ferry	<del>((585))</del> <u>647.37</u>	<del>((502))</del> <u>561.78</u>

The rate for an individual charter will be calculated by:

(1) Multiplying the actual operating cost set forth above for the vessel that is chartered by the number of hours, or fraction thereof, for which the vessel is chartered;

(2) Adding labor costs, mileage and per diem expenses to determine the total actual costs if the particular charter requires a crew callout; and

(3) Increasing the total actual costs calculated pursuant to subsections (1) and (2) of this section by fifty percent, and rounding to the nearest fifty dollars.

In the case of charters for the transport of hazardous materials, the transporter is required to pay for all legs necessary to complete the charter, even if the vessel is simultaneously engaged in an operational voyage on behalf of the Washington state ferry system.

**WSR 02-09-024  
PERMANENT RULES  
SUPERINTENDENT OF  
PUBLIC INSTRUCTION**

[Filed April 8, 2002, 4:37 p.m.]

Date of Adoption: April 5, 2002.

Purpose: These rules implement the 2001 State Operating Appropriations Act proviso adding 2.2 certificated instructional staff per 1,000 students to the state-funded kindergarten through fourth grade staff ratio. These staff were formerly funded in the better schools program.

Citation of Existing Rules Affected by this Order: Repealing WAC 392-140-911; and amending WAC 392-

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140-903, 392-140-905, 392-140-907, 392-140-908, 392-140-910, and 392-140-912.

Statutory Authority for Adoption: RCW 28A.150.290(2).

Other Authority: Section 502 (2)(a)(v), chapter 7, Laws of 2001 2nd sp.s. (the state operating budget).

Adopted under notice filed as WSR 01-24-020 on November 27, 2001.

Changes Other than Editing from Proposed to Adopted Version: Minor editing changes only.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 6, Repealed 1.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 6, Repealed 1.

Effective Date of Rule: Thirty-one days after filing.

April 5, 2002

Dr. Terry Bergeson  
Superintendent of  
Public Instruction

**AMENDATORY SECTION** (Amending WSR 01-08-048, filed 3/30/01, effective 4/30/01)

**WAC 392-140-903 K-4 Staff enhancement—Definitions.** As used in WAC 392-140-900 through 392-140-913:

(1) "Report S-275" means the school district personnel report as defined in WAC 392-121-225.

(2) "Form SPI 1158" means the form provided by the superintendent of public instruction on which school districts report ~~((supplemental))~~ a net change in K-12 full-time equivalent (FTE) staff and/or ((supplemental)) K-4 FTE staff ((for the school year)) after October 1 and K-6 supplemental contracts for extended learning opportunities not reportable on Report S-275.

(3) "Report 1159" means the report produced by the superintendent of public instruction displaying the calculations of K-4 certificated instructional staffing and K-4 apportionment ratios and other information as necessary.

(4) "Form SPI 1160" means the form provided by the superintendent of public instruction on which school districts may select the period of enrollment the superintendent of public instruction shall use to calculate staffing ratios.

(5) "Form SPI 1230" means the form provided by the superintendent of public instruction on which school districts ~~((have))~~ had the option of reporting 1989-90 FTE K-3 basic education classified instructional assistants ~~((pursuant to~~

~~WAC 392-140-716 and 392-140-745))~~ before September 1, 1999.

(6) "Form SPI 1230K-4" means the form provided by the superintendent of public instruction on which school districts have the option of reporting 1989-90 FTE K-4 basic education classified instructional assistants after September 1, 1999.

(7) "FTE K-4 basic education enrollment" means the school district's K-4 full-time equivalent enrollment reported for basic education funding pursuant to WAC 392-121-122 for the month of October or such other period selected by the district on optional Form SPI 1160.

(8) "FTE basic education certificated instructional employee" means the FTE calculated pursuant to WAC 392-121-215 for a basic education certificated instructional employee assigned in whole or in part to the following programs as defined in the *Accounting Manual for Public School Districts in the State of Washington*:

- (a) Basic education, program 01;
- (b) Vocational, basic, state, program 31;
- (c) Skills center, basic, state, program 45; and
- (d) District-wide support, program 97.

(9) "FTE K-4 basic education certificated instructional employee" means for a FTE basic education certificated instructional employee the following:

(a) If the basic education certificated instructional employee serves only K-4 students, one hundred percent of the FTE assigned to basic education; or

(b) If the basic education certificated instructional employee serves K-4 students and students of one or more other grades, multiply the FTE assigned to basic education by:

- (i) The proportion of time spent serving K-4 students to all time serving students;
- (ii) The proportion of K-4 students served to all students served; or
- (iii) Any combination of (i) or (ii) of this subsection as appropriate.

(10) "FTE K-4 basic education certificated instructional staff" means the sum of FTE K-4 basic education certificated instructional employees for a school district.

(11) "Extended learning opportunities" means additional classroom contact time provided to students by teachers beyond the normal school day for more than half-day or half-year kindergarten, before-and-after school programs, weekend school programs, summer school programs, and intersession opportunities to assist students in meeting the essential academic learning requirements and student assessment performance standards.

(12) "K-6 basic education supplemental contracts for extended learning opportunities" means time-related supplemental contracts for extended learning opportunities provided by teachers for students enrolled in grades kindergarten through six (K-6). For the purposes of this subsection, these supplemental contract hours shall include only the following staff assignments as defined in the S-275 Personnel Reporting Handbook:

- (a) Program 01, basic education; and
- (b) Activity 27, teaching; and

(c) Duty roots:(i) 31, elementary teacher; or(ii) 33, other teacher; or(iii) 63, contractor teacher; and(d) Duty suffix 4, extended learning opportunities; and(e) Grade groups:(i) K, kindergarten; or(ii) E, elementary (grades 1, 2, 3, or 4); or(iii) M, middle (grades 5 or 6).(13) "Basic education classified instructional assistant"

means a person who is assigned in whole or in part to:

(a) Program 01 - basic education; 31 - vocational, basic, state; or 45 - skills center, basic, state; and

(b) Activity 27 - teaching; and

(c) Duty 910 - aide.

(((12))) (14) "Basic education classified instructional assistant FTE" means the number determined for a basic education classified instructional assistant as follows:

(a) Determine the hours per year that the employee is assigned as a basic education classified instructional assistant; and

(b) Divide by 2080.

(((13))) (15) "District FTE K-4 basic education classified instructional assistants" means the sum of a school district's FTE K-4 basic education classified instructional assistants.(a) If the basic education classified instructional assistant serves only K-4 students, one hundred percent of the FTE determined pursuant to ((WAC 392-140-903(12))) subsection (14) of this section.(b) If the basic education classified instructional assistant serves K-4 students and students of one or more other grades, multiply the FTE determined pursuant to ((WAC 392-140-903(12))) subsection (14) of this section by:

(i) The proportion of time spent serving K-4 students to all time serving students;

(ii) The proportion of K-4 students served to all students served; or

(iii) Any combination of (b)(i) or (ii) of this subsection as appropriate.

(((14))) (16) "Actual average salary for basic education classified instructional assistants" means the dollar amount determined for a school district for a school year as follows:

(a) For each basic education certificated instructional assistant reported on Report S-275 determine the assignment salary reported;

(b) Sum the dollar amounts determined pursuant to (a) of this subsection; and

(c) Divide the result of (b) of this subsection by the sum of the school district's FTE basic education classified instructional assistants as reported on Report S-275.

NEW SECTION**WAC 392-140-904 K-4 Staff enhancement—School district reporting.** School districts shall report staff information to the superintendent of public instruction as follows:

(1) Required Report S-275. School districts shall report K-4 basic education certificated instructional staff employed as of October 1 of the school year on Report S-275 pursuant to instructions provided by the superintendent of public

instruction. K-6 basic education supplemental contracts for extended learning opportunities provided by staff employed by the district as of October 1 shall be reported on Report S-275 and shall be updated throughout the school year as needed to reflect actual hours employed.

(2) Optional Form SPI 1158. School districts may use this form to report the following:

(a) Net changes in K-4 basic education certificated instructional staff or in K-4 basic education classified instructional assistants after October 1 determined as follows:

(i) Determine the base contract K-4 basic education FTE that would be reported for each employee for the school year on Report S-275 if the current date were substituted for the October 1 snapshot date as required in S-275 instructions and subtract the base contract K-4 basic education FTE as of October 1 actually reported for the employee on the school district's most current Report S-275.

(ii) Include decreases as well as increases in FTE staff after October 1 and not reflected in Report S-275. Decreases include terminations, retirements, unpaid leave, and reassignment of staff.

(b) K-6 basic education supplemental contracts for extended learning opportunities for staff that were not employed by the district as of October 1 of the school year and not reported on Report S-275.

(3) Optional Form SPI 1160. School districts may use this form to select an enrollment period other than October:

(a) Enrollment for any month of the school year; or

(b) Annual average enrollment for the school year.

(4) Optional Form SPI 1230 K-4. School districts may use this form to report 1989-90 FTE K-4 classified instructional assistants. This is a one-time form. Once filed, the information from this form is used for all subsequent years unless revised by the district.

(5) Optional report forms for a school year must be filed with the superintendent of public instruction by September 30 following the close of the school year.

AMENDATORY SECTION (Amending WSR 00-02-063, filed 1/3/00, effective 2/3/00)**WAC 392-140-905 K-4 Staff enhancement—Determination of the K-4 staff ratio equivalent of K-6 basic education supplemental ((FTE staff)) contracts for extended learning opportunities.** (~~"Supplemental FTE staff" means the school district's net change in FTE K-4 basic education certificated instructional staff or FTE K-4 basic education classified instructional assistants after October 1 of the school year determined as follows:~~~~(1) Determine the K-4 basic education FTE that would be reported for each employee for the school year on Report S-275 if the current date were substituted for the October 1 snapshot date as required in S-275 instructions and subtract the K-4 basic education FTE as of October 1 actually reported for the employee on the school district's most current Report S-275.~~~~(2) Include decreases as well as increases in staff after October 1 and not reflected in Report S-275. Decreases include terminations, retirements, unpaid leave, and reassign-~~

~~ment of staff.))~~ The K-4 staff ratio equivalent of K-6 basic education supplemental contracts for extended learning opportunities shall be determined as follows:

(1) Sum hours of K-6 basic education supplemental contracts for extended learning opportunities reported on Report S-275 and optional Form SPI 1158 if provided;

(2) Divide the result of subsection (1) of this section by 900;

(3) Divide the result of subsection (2) of this section by the district's FTE K-4 basic education enrollment; and

(4) Multiply the result of subsection (3) of this section by 1000.

AMENDATORY SECTION (Amending WSR 00-02-063, filed 1/3/00, effective 2/3/00)

**WAC 392-140-907 K-4 Staff enhancement—Determination of increase in K-4 basic education classified instructional assistants.** The superintendent of public instruction shall calculate a district's increase in K-4 basic education classified instructional assistants for a school year by determining the district's FTE K-4 basic education classified instructional assistants for the school year reported on the district's Report S-275 ~~((for the school year))~~ and optional Form SPI 1158, and subtracting the district's FTE K-4 basic education classified instructional assistants in the 1989-90 school year determined pursuant to WAC 392-140-906.

AMENDATORY SECTION (Amending WSR 00-02-063, filed 1/3/00, effective 2/3/00)

**WAC 392-140-908 K-4 Staff enhancement—Determination of the K-4 certificated staff ratio equivalent of increased K-4 classified instructional assistants.** For those school districts with an increase in K-4 basic education classified instructional assistants ~~((and a K-4 certificated instructional staffing ratio of 51.00 or greater)),~~ the superintendent of public instruction shall ~~((recognize))~~ calculate a K-4 certificated staff ratio equivalent ~~((of up to 1.30 calculated))~~ as follows:

(1) Sum the increase in the district's K-4 basic education classified instructional assistants ~~((and any supplemental FTE K-4 classified instructional assistants))~~ determined pursuant to WAC ~~((392-140-905 and reported by the district on Form SPI 1158))~~ 392-140-907;

(2) Divide the result of subsection (1) of this section by the district's FTE K-4 basic education enrollment;

(3) Multiply the result of subsection (2) of this section by the ratio of actual average salary for basic education classified instructional assistants to average basic education certificated instructional staff salary for the purpose of apportionment; and

(4) Multiply the result of subsection (3) of this section by 1000.

~~((5) The lesser of 1.30 or the result of subsection (4) of this section is the district's recognized K-4 certificated staff ratio equivalent of increased K-4 classified instructional assistants.))~~

AMENDATORY SECTION (Amending WSR 00-02-063, filed 1/3/00, effective 2/3/00)

**WAC 392-140-910 K-4 Staff enhancement—Determination of district K-4 certificated instructional staffing ratio.** The superintendent of public instruction shall calculate each school district's K-4 certificated instructional staffing ratio as follows:

(1) Add FTE K-4 basic education certificated instructional ~~((staff))~~ employees from Report S-275 and any ~~((supplemental))~~ net change in FTE K-4 basic education certificated instructional staff ~~((determined pursuant to WAC 392-140-905 and))~~ reported on Form SPI ((Form)) 1158 pursuant to WAC 392-140-903;

(2) Divide the result of subsection (1) of this section by FTE K-4 basic education enrollment; and

(3) Multiply the result obtained in subsection (2) of this section by 1000.

AMENDATORY SECTION (Amending WSR 00-02-063, filed 1/3/00, effective 2/3/00)

**WAC 392-140-912 K-4 Staff enhancement—Determination of K-4 apportionment ratios.** The superintendent of public instruction shall determine each school district's ratio of state allocated certificated instructional staff units per one thousand K-4 students for state basic education apportionment as follows:

(1) For the months of September through December, the superintendent shall use the district's estimated K-4 ratio as submitted on Report F-203 Estimates of State Revenue, or as submitted on a letter to the superintendent after submission of Report F-203.

(2) Beginning with the January apportionment payment and each month thereafter, the superintendent shall calculate the district's K-4 apportionment ratio as the greater of (a) or (b) of this subsection:

(a) The district's minimum state-funded K-4 staffing ratio, using FTE enrollment for state apportionment, and calculated as follows:

(i) Sum the district's K-3 FTE enrollment times 0.049 and the district's fourth grade FTE enrollment times 0.046;

(ii) Divide the result of (a)(i) of this subsection by the district total K-4 FTE enrollment;

(iii) Multiply the result of (a)(ii) of this subsection by 1000.

(b) The lesser of:

(i) ~~((53.2))~~ 55.4; or

(ii) The sum of the following:

(A) The district's K-4 certificated instructional staff ratio pursuant to WAC 392-140-910; and ((the district's K-4 certificated staff ratio equivalent of increased K-4 classified instructional assistants pursuant to WAC 392-140-908 if applicable))

(B) The lesser of 2.2 or the district's K-4 staff ratio equivalent of K-6 basic education supplemental contracts for extended learning opportunities pursuant to WAC 392-140-904; and

(C) If the district's K-4 basic education certificated instructional staff ratio is 51.00 or greater, the district's K-4

certificated staff ratio equivalent of the increased K-4 classified instructional assistants pursuant to WAC 392-140-908 if applicable, otherwise zero.

### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 392-140-911      K-4 Staff enhancement—  
School district reporting—  
Optional reports.

**WSR 02-09-028**  
**PERMANENT RULES**  
**STATE BOARD OF HEALTH**

[Filed April 9, 2002, 1:38 p.m.]

Date of Adoption: March 13, 2002.

Purpose: The rule change will more accurately reflect the intent of the Americans with Disabilities Act. This proposed rule improves access to public places for disabled citizens, and will clarify that animals other than dogs may serve as service animals.

Citation of Existing Rules Affected by this Order:  
Amending WAC 246-215-150.

Statutory Authority for Adoption: RCW 43.20.050.

Other Authority: Chapter 70.84 RCW.

Adopted under notice filed as WSR 02-04-091 on February 4, 2002.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 1, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Effective Date of Rule: Thirty-one days after filing.

April 3, 2002

Don Sloma

Executive Director

AMENDATORY SECTION (Amending Order 261B, filed 4/1/92, effective 5/2/92)

**WAC 246-215-150 Construction and maintenance of physical facilities.** Food service establishment owners shall:

(1) Ensure floors and floor coverings in all areas are:

(a) Constructed of easily cleanable materials;

(b) Kept clean;

(c) In good repair; and

(d) Coved at the floor/wall junctures, except for carpeted areas.

(2) Provide proper construction of floors and floor coverings with the following characteristics:

(a) Water impervious construction;

(b) Grease resistance;

(c) Durability; and

(d) Drains provided when water or pressure spray methods of cleaning are used, in any of the following areas:

(i) Food preparation areas;

(ii) Food and utensil storage areas;

(iii) Utensil washing areas;

(iv) Walk-in refrigerators;

(v) Dressing rooms or locker rooms with shower facilities; and

(vi) Bathrooms where toilets or urinals are located.

(3) Ensure walls, windows, doors, and ceilings in all areas are clean and in good repair.

(4) Ensure that walls are constructed, in addition to requirements in subsection (3) of this section, with the following characteristics:

(a) Smooth finish;

(b) Nonabsorbent surfaces; and

(c) Construction with easily cleanable materials in the following areas:

(i) Walk-in refrigerators and freezers;

(ii) Food preparation areas;

(iii) Utensil washing areas;

(iv) Dressing rooms or locker rooms with shower facilities; and

(v) Bathrooms.

(5) Provide:

(a) Lighting of at least thirty foot candles in the following:

(i) Areas where food is prepared or stored;

(ii) Areas where utensils are washed;

(iii) Areas where hands are washed;

(iv) In bathrooms; and

(v) When cleaning is occurring.

(b) Proper shields or guards for lights in the food preparation and storage areas.

(6) Ensure design, installation, and maintenance of ventilation systems in accordance with applicable state and local mechanical and fire codes; and

(a) Provide ventilation systems, when necessary, to keep all areas free of excessive:

(i) Heat;

(ii) Steam;

(iii) Condensation;

(iv) Fumes and vapors;

(v) Obnoxious odors; and

(vi) Smoke.

(b) Design and maintain ventilation hoods and filters to:

(i) Prevent grease and condensate from dripping into food or onto food contact surfaces; and

(ii) Allow ready removal of filters for cleaning and replacement.

(7) Maintain the premises by:

(a) Allowing only articles necessary for operation and maintenance of the food service establishment to be stored there;

(b) Prohibiting use of any room in the food service establishment as living or sleeping quarters:

(i) Except when separated from all food service operations by complete partitions and solid doors; and

(ii) Except for bed and breakfasts.

(c) Allowing live animals only under the following conditions:

(i) Fish, crustacea, and shellfish for food purposes in aquariums;

(ii) Fish in aquariums for display or decor;

(iii) Patrol dogs accompanying security or police officers; or

(iv) ~~((Guide dogs))~~ Dog guides or service ~~((dogs))~~ animals, as defined under chapter 70.84 RCW, are allowed to accompany a blind, visually handicapped, hearing impaired, or otherwise physically disabled person in all areas of a food service establishment except in food preparation areas.

(d) Allowing only food service workers or other persons authorized by the health officer in food preparation and storage areas.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Effective Date of Rule: Thirty-one days after filing.

April 9, 2002

William E. Brookreson  
Director

AMENDATORY SECTION (Amending WSR 98-09-071, filed 4/20/98, effective 5/21/98)

**WAC 16-325-015 Regulated area.** The seed potato isolation district consists of that area of Whatcom County lying within the following boundaries:

On the west the boundary follows ~~((Interstate 5 from its intersection with Smith Rd., northwesterly to the intersection with Loomis Rd., then from the intersection of Loomis Road and Interstate 5 north along Giles Rd. to its end, continuing north through the center of Range 1 East to the Canadian border))~~ Georgia Straight from the Canadian border south to Slater Road.

On the north the boundary follows the Canadian border from ~~((its intersection with the center of Range 1 East))~~ Georgia Straight easterly to South Pass Road.

On the east the boundary follows South Pass Rd. southwesterly to the point where the eastern edge of Range 4 East intersects South Pass Road, then south along the eastern boundary of Range 4 East to the Nooksack River (south of the town of Deming).

On the south the boundary follows the Nooksack River northwesterly to the City of Everson, south from Everson on Mission Road to Smith Road ~~((then))~~, westerly on Smith Rd to Interstate 5, southeasterly on Interstate 5 to Slater Road, westerly on Slater Road to Rural Ave., southwestly on Rural Ave. to Marine Dr., westerly on Marine Dr. to Ferndale Rd., northerly on Ferndale Rd. to Slater then westerly on Slater to Georgia Straight.

### WSR 02-09-030

#### PERMANENT RULES

#### DEPARTMENT OF AGRICULTURE

[Filed April 9, 2002, 3:54 p.m.]

Date of Adoption: April 9, 2002.

Purpose: The Seed Potato Isolation District in Whatcom County was established to protect certified seed potato plantings from virus diseases spread from commercial potato plantings. Certified seed potatoes must meet the highest standards of disease sanitation. They generally cannot be grown in proximity to commercial potato crops (that is, potatoes grown for table or processing) without significantly increased disease risk. The rule ensures adequate quality certified seed potatoes can continue to be grown within the isolation district. This amendment expands the boundaries of the seed potato isolation district within Whatcom County.

Citation of Existing Rules Affected by this Order: Amending WAC 16-325-015.

Statutory Authority for Adoption: Chapter 15.15 RCW.

Adopted under notice filed as WSR 02-04-020 on January 24, 2002.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

### WSR 02-09-039

#### PERMANENT RULES

#### OLYMPIC AIR POLLUTION CONTROL AUTHORITY

[Filed April 11, 2002, 3:21 p.m.]

Date of Adoption: April 10, 2002.

Purpose: To amend sections of the OAPCA regulation to address programmatic issues between the state and local implementations of New Source Review.

Citation of Existing Rules Affected by this Order: Amending OAPCA Regulation 1, Articles 1 and 7.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 02-05-047 on February 14, 2002.

Changes Other than Editing from Proposed to Adopted Version: There are a number of changes, other than editing, from the February 14, 2002, proposed rule amendments to

the April 2002 adopted version of OAPCA Regulation 1, Articles 1 and 7. The changes are:

- Removed definitions for "adverse impact on visibility," "director," "integral vista," "mandatory class I federal area," "nonattainment area," "significant visibility impairment," and "visibility impairment of Class I areas" as these terms are not used in OAPCA's rule.
- Clarified and revised the meaning of the definitions for "commenced construction," "particulate matter emissions," "visibility impairment," and "volatile organic compound."
- Added definitions for "federal class I areas" and "non-road engine" as they are used in new sections. Definition consistent with state rule.
- Revised the meaning of the definitions of "major modification," "major source," "net emissions increase," and "significant" and moved to Section 7.17, as these definitions only apply to this section.
- Revised Section 7.17(a) (now subpart (b)) to reinforce that this section applies to modifications.
- Revised Section 7.17 (a)(7) (now subpart (b)(7)) and Section 7.18 (a)(4) to require the project to receive a PSD permit (if applicable) before OAPCA issues approval.
- Revised Section 7.20(a) to clarify that it only applies to orders issued by the Authority.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 5, Amended 2, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 5, Amended 2, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Effective Date of Rule: Thirty-one days after filing.

April 10, 2002

Richard Stedman  
Executive Director

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 02-11 issue of the Register.

**WSR 02-09-040**

**PERMANENT RULES**

**DEPARTMENT OF LICENSING**

[Filed April 12, 2002, 11:25 a.m., effective January 1, 2003]

Date of Adoption: April 12, 2002.

Purpose: To amend existing rule. Pursuant to RCW 43.135.055, during the 2001-03 fiscal biennium, the depart-

ment may increase fees in excess of the fiscal growth factor if the increases are necessary to fully fund the costs of the licensing programs.

The department has reviewed the rule noted and recommends amending with new fees for the purpose of having a sufficient level of revenue to defray the costs of administering the program.

Citation of Existing Rules Affected by this Order: Amending WAC 308-20-210 Cosmetology, barber, manicurist, esthetician, salon/shop, booth renter, mobile operator and personal service operator fees.

Statutory Authority for Adoption: RCW 18.16.030 and 43.24.086.

Other Authority: RCW 43.135.055.

Adopted under notice filed as WSR 02-04-088 on February 4, 2002.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Effective Date of Rule: January 1, 2003.

April 12, 2002

Alan E. Rathbun

Assistant Director

AMENDATORY SECTION (Amending WSR 92-15-087, filed 7/17/92, effective 8/17/92)

**WAC 308-20-210 Cosmetology, barber, manicurist, esthetician, salon/shop, booth renter, mobile operator and personal service operator fees.** The following fees shall be charged by the professional licensing division of the department of licensing:

Title of Fee	Fee
Cosmetologist:	
Examination application	\$ 25.00
Examination retake	25.00
Renewal per year	<del>((20.00))</del> <u>25.00</u>
Late renewal penalty	20.00
Duplicate license	15.00
Certification	25.00
Out-of-state application	25.00

Instructor:

PERMANENT

Title of Fee	Fee
Examination application	30.00
Examination retake	30.00
Renewal, per year	<del>((20.00))</del> <u>25.00</u>
Late renewal penalty	20.00
Duplicate license	15.00
Certification	25.00
Out-of-state application	30.00
<b>Manicurist:</b>	
Examination application	25.00
Examination retake	25.00
Renewal per year	<del>((20.00))</del> <u>25.00</u>
Late renewal penalty	20.00
Duplicate	15.00
Certification	25.00
Out-of-state application	25.00
<b>Esthetician:</b>	
Examination application	25.00
Examination retake	25.00
Renewal per year	<del>((20.00))</del> <u>25.00</u>
Late renewal penalty	20.00
Duplicate	15.00
Certification	25.00
Out-of-state application	25.00
<b>Barber:</b>	
Examination application	25.00
Examination retake	25.00
Renewal per year	<del>((20.00))</del> <u>25.00</u>
Late renewal penalty	20.00
Duplicate license	15.00
Certification	25.00
Out-of-state application	25.00
<b>School:</b>	
License application	175.00
Renewal per year	<del>((175.00))</del> <u>185.00</u>
Late renewal penalty	175.00
Duplicate	15.00
Curriculum review	15.00
<b>Salon/shop:</b>	
Application	50.00
Renewal	<del>((50.00))</del> <u>60.00</u>
Late renewal penalty	50.00

Title of Fee	Fee
Duplicate license	15.00
<b>Booth renter:</b>	
Application	50.00
Renewal	<del>((50.00))</del> <u>60.00</u>
Late renewal penalty	50.00
Duplicate license	15.00
<b>Mobile operator:</b>	
Application	50.00
Renewal	<del>((50.00))</del> <u>60.00</u>
Late renewal penalty	50.00
Duplicate license	15.00
<b>Personal service operator:</b>	
Application	50.00
Renewal	<del>((50.00))</del> <u>60.00</u>
Late renewal penalty	50.00
Duplicate license	15.00

**WSR 02-09-041**  
**PERMANENT RULES**  
**DEPARTMENT OF HEALTH**  
 (Counselor Programs)  
 [Filed April 12, 2002, 1:04 p.m.]

Date of Adoption: April 12, 2002.

Purpose: Repeal obsolete WACs.

Repealing the education, experience, examination, AIDS/HIV, and fee requirements for certified mental health counselors, marriage and family therapists and social workers.

Citation of Existing Rules Affected by this Order: Repealing WAC 246-810-320, 246-810-321, 246-810-332, 246-810-340, 246-810-520, 246-810-521, 246-810-532, 246-810-540, 246-810-720, 246-810-732, and 246-810-740.

Statutory Authority for Adoption: Chapter 18.19 RCW. Adopted under notice filed as WSR 01-20-117 on October 13 [3], 2001.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 12.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

PERMANENT

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 12.

Effective Date of Rule: Thirty-one days after filing.

April 12, 2002

Mary C. Selecky  
Secretary

### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-810-320	Education requirements—Degree equivalents.
WAC 246-810-321	Program equivalency.
WAC 246-810-332	Supervised postgraduate experience.
WAC 246-810-340	Examination.
WAC 246-810-520	Education requirements.
WAC 246-810-521	Behavioral sciences—Program equivalency.
WAC 246-810-532	Supervised postgraduate experience.
WAC 246-810-540	Examination for certified mental health counselors.
WAC 246-810-720	Education requirements.
WAC 246-810-721	Education and experience equivalency.
WAC 246-810-732	Supervised postgraduate experience.
WAC 246-810-740	Examination required.

### **WSR 02-09-051**

#### **PERMANENT RULES**

#### **DEPARTMENT OF**

#### **SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed April 12, 2002, 3:57 p.m.]

Date of Adoption: April 12, 2002.

Purpose: The Division of Employment and Assistance Programs, Office of Refugee and Immigrant Assistance is amending WAC 388-400-0030 Refugee cash assistance—Summary of eligibility requirements, to bring it in compliance with new WAC 388-466-0120 Refugee cash assistance and 388-466-0140 Income and resources for refugee cash assistance.

Citation of Existing Rules Affected by this Order: Amending WAC 388-400-0030.

Statutory Authority for Adoption: RCW 74.08.090, 74.04.050, and 74.08A.320.

Other Authority: 7 C.F.R. § 400.65, § 400.66, § 400.67, § 400.68, and § 400.69.

Adopted under notice filed as WSR 02-05-069 on February 14 [15], 2002.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 1, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Effective Date of Rule: Thirty-one days after filing.

April 12, 2002

Brian H. Lindgren, Manager  
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 01-06-031, filed 3/2/01, effective 4/1/01)

**WAC 388-400-0030 ((How do I qualify for)) Refugee cash assistance(?)—Summary of eligibility requirements.** (1) To be eligible for refugee cash assistance (RCA), you must:

(a) Provide the name of the voluntary agency (VOLAG) which resettled you; ~~((and))~~

(b) Meet the(~~:~~

~~(i))~~ immigration status requirements of WAC 388-466-0005;

~~((ii) Work))~~ (c) Meet employment and training requirements of WAC ~~((388-466-0015))~~ 388-466-0150;

~~((iii))~~ and

(d) Meet income and resource requirements ~~((under chapters 388-450 and 388-470 WAC with exceptions as provided under WAC 388-466-0010))~~ of WAC 388-466-0140.

(2) You are not eligible to receive RCA if you:

(a) Are eligible for temporary assistance for needy families (TANF) or Supplemental Security Income;

(b) Have been denied TANF or have been terminated from TANF due to intentional noncompliance with TANF eligibility requirements; or

(c) Are a full-time student in an institution of higher education.

(3) ~~((If you are a refugee family and have children who are United States citizens, we treat you as a single assistance unit under chapter 388-408 WAC.~~

(4)) We determine your eligibility and benefit level for RCA using the TANF payment standards under WAC 388-478-0020.

~~((5))~~ (4) If you are eligible for RCA (~~and are pregnant or have a dependent child~~) you may also be eligible for additional requirements for emergent needs under WAC 388-436-0002.

~~((6))~~ (5) If you meet the requirements of this section you are eligible for refugee cash assistance only during the eight-month period beginning(~~(~~

~~(a) The date asylum is granted if you are an asylee, or~~

~~(b)) in the first month you entered the United States ((if you are not an asylee)) (WAC 388-466-0120).~~

**WSR 02-09-052**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Medical Assistance Administration)

[Filed April 12, 2002, 4:03 p.m.]

Date of Adoption: April 9, 2002.

Purpose: Amending WAC 388-513-1301, to remove the definitions of "annuity" and "life estate"; add a reference to chapter 388-561 WAC, Trusts, annuities, and life estates, which includes these definitions; clarify other definitions in this WAC; and remove duplicated definitions of terms defined in WAC 388-500-0005.

Citation of Existing Rules Affected by this Order: Amending WAC 388-513-1301.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, and 74.09.575.

Adopted under notice filed as WSR 01-21-098 on October 23, 2001.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Effective Date of Rule: Thirty-one days after filing.

April 9, 2002

Brian H. Lindgren, Manager  
Rules and Policies Assistance Unit

**AMENDATORY SECTION** (Amending WSR 00-01-051, filed 12/8/99, effective 1/8/00)

**WAC 388-513-1301 Definitions related to long-term care (LTC) services.** This section defines the meaning of certain terms used in chapters 388-513 and 388-515 WAC.

Within these chapters, institutional, waived, and hospice services are referred to collectively as LTC services. Other terms related to LTC services that also apply to other programs are found in the sections in which they are used. Definitions of terms used in certain rules that regulate LTC programs are as follows:

"**Add-on hours**" means additional hours the department purchases from providers to perform medically-oriented tasks for clients who require extra help because of a handicapping condition.

"**Alternate living facility (ALF)**" means one of the following community residential facilities that are contracted with the department to provide certain services:

(1) Adult family home (AFH) ((is)), a licensed family home that provides its residents with personal care and board and room for two to six adults unrelated to the person(s) providing the care.

(2) Adult residential care facility (ARC) (~~formally known~~) formerly known as a CCF) is a licensed facility that provides its residents with shelter, food, household maintenance, personal care and supervision.

(3) Adult residential rehabilitation center (ARRC) or Adult residential treatment facility (ARTF) ((is)), a licensed facility that provides its residents with twenty-four hour residential care for impairments related to mental illness.

(4) Assisted living facility (AL) ((is)), a licensed facility for aged and disabled low-income persons with functional disabilities. COPES eligible clients are often placed in assisted living.

(5) Division of developmental disabilities (DDD) group home (GH) ((is)), a licensed facility that provides its residents with twenty-four hour supervision.

(6) Enhanced adult residential care facility (EARC) ((is)), a licensed facility that provides its residents with those services provided in an ARC, in addition to those required because of the client's special needs.

~~("Annuity" means a policy, certificate, or contract that is an agreement between two or more parties to purchase a right to receive periodic income of a specified amount for a specified period of time.~~

~~"Assets" means all the income and resources of the client and the client's spouse. This includes any income and resources they are entitled to but do not receive because of action by:~~

~~(1) The client or the spouse;~~

~~(2) An individual, court or administrative body, with legal authority to act in place of or on behalf of the client or the spouse; or~~

~~(3) An individual, court or administrative body, acting at the direction or upon the request of the client or the spouse.)~~

"**Clothing and personal incidentals (CPI)**" means ~~((a standard allowance intended for clothing and other personal expenses for clients who live in a medical or alternate living facility. This allowance is sometimes referred to as the client's))~~ the same as personal needs allowance (PNA) later in this section.

"**Community alternatives program (CAP)**" means a Medicaid-waived program that provides home and community-based services as an alternative to an institution for the

mentally retarded (ICF-MR) to persons determined eligible for services from DDD.

**"Community options program entry system (COPEs)"** means a Medicaid-waivered program that provides an aged or disabled person assessed as needing nursing facility care with the option to remain at home or in an alternate living facility.

**"Community spouse (CS)"** means a person who does not ~~((receive institutional, waived, or hospice services))~~ live in a medical institution or nursing facility, and who is legally married to an institutionalized client or to a person receiving services from home and community-based waiver programs.

**"Comprehensive assessment (CA)"** means the evaluation process used by a department designated social services worker to determine the client's need for long-term care services.

**"Coordinated community AIDS service alternative (CASA)"** means a Medicaid-waivered program that provides a person with Acquired Immune Deficiency Syndrome (AIDS) or Disabled Class IV Human Immunodeficiency Virus (HIV) and at risk of hospitalization with the option to remain at home or in an alternate living facility.

**"Fair market value (FMV)"** means the price an asset may reasonably be expected to sell for on the local market at the time of transfer or assignment. A transfer of assets for love and affection is not considered a transfer for FMV.

**"Federal benefit rate (FBR)"** means the basic benefit amount the Social Security Administration (SSA) pays to clients who are eligible for the Supplemental Security Income (SSI) program.

~~("Hospice" means a Medicaid program that provides a client with a terminal illness a variety of treatment alternatives that can be received either at home or in a nursing facility.)~~

**"Institutional services"** means services paid for by Medicaid or state payment and provided in a nursing facility or equivalent care provided in a medical facility.

**"Institutional status"** means what is described in WAC 388-513-1320.

**"Institutionalized client"** means a client who has attained institutional status as described in WAC 388-513-1320.

**"Institutionalized spouse"** means a client who has attained institutional status as described in WAC 388-513-1320 and is legally married to a person who is not an institutionalized client.

**"Legally married"** means persons legally married to each other under provision of Washington state law. Washington recognizes other states' legal and common-law marriages. Persons are considered married if they are not divorced, even when they are physically or legally separated.

~~("Life estate" means an ownership interest in property limited to the owner's lifetime or, in some cases, to a lesser period. Its duration depends upon the lifetime of the owner or on the occurrence of some specific event, such as remarriage of the owner. Ordinarily, the owner of a life estate has the right of possession, to use the property, to sell interest in the~~

~~life estate, and to any income produced by the life estate. A contract establishing the life estate may restrain one or more rights of the owner.)~~

**"Likely to reside"** means there is a reasonable expectation the client will remain in a medical facility for thirty consecutive days. Once made, the determination stands, even if the client does not actually remain in the facility for that length of time.

~~("Long term care (LTC) services" means institutional, waived, and hospice services.)~~

**"Look-back period"** means the number of months prior to the month of application for LTC services that the department will consider for transfer of assets.

**"Maintenance needs amount"** means a monthly income amount a client keeps or that is allocated to a spouse or dependent family member who lives in the client's home.

~~("Medical facility" means an establishment that provides food, shelter, and medical care to four or more persons unrelated to the proprietor. (This definition does not include correctional facilities.) Medical facilities are limited to the following:~~

~~(1) A private or public medical facility licensed as a hospital and certified for Medicaid.~~

~~(2) Institution for mental disease (IMD), which is a hospital, nursing facility, or other facility of more than sixteen beds that is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care, and related services.~~

~~(3) Institution for the mentally retarded (IMR), which is an institution that is primarily for the diagnosis, treatment, or rehabilitation of persons with mental retardation and related conditions. It provides, in a protected residential setting, ongoing care, twenty-four hour supervision, evaluation, and planning to help each person function at his/her greatest ability. Includes intermediate care facilities for the mentally retarded (ICF-MR).~~

~~(4) Nursing facility (NF), which is an institution or part of an institution licensed as a nursing facility or hospital which has a contract with DSHS to provide care for Medicaid clients.~~

~~(5) Residential habilitation center (RHC), which is a state-operated facility certified to provide ICF-MR and/or nursing facility level of care for persons with developmental disabilities.)~~

**"Medically intensive children (MIC)"** program means a Medicaid-waivered program that enables medically fragile children under age eighteen to live in the community. The program allows them to obtain medical and support services necessary for them to remain at home or in a home setting instead of in a hospital. Eligibility is included in the OBRA program described in WAC 388-515-1510.

**"Noninstitutional medical assistance"** means medical benefits provided by Medicaid or state-funded programs that do not include LTC services.

**"Nursing facility turnaround document (TAD)"** means the billing document nursing facilities use to request payment for institutionalized clients.

**"Outward bound residential alternative (OBRA)"** means a Medicaid-waivered program that provides a person

approved for services from DDD with the option to remain at home or in an alternate living facility.

**"Participation"** means the amount a client is responsible to pay each month toward the total cost of care they receive each month. It is the amount remaining after subtracting allowable deductions and allocations from available monthly income.

**"Penalty period"** means a period of time for which a client is not eligible to receive LTC services.

**"Personal needs allowance (PNA)"** means a standard allowance for clothing and other personal needs for clients who live in a medical or alternate living facility. This allowance is sometimes referred to as "CPI."

**"Prouty benefits"** means special "age seventy-two" Social Security benefits available to persons born before 1896 who are not otherwise eligible for Social Security.

**"Short stay"** means a person who has entered a medical facility but is not likely to remain institutionalized for thirty consecutive days.

**"Special income level (SIL)"** means the monthly income standard for the categorically needy (CN) program that is three hundred percent of the SSI Federal Benefit Rate (FBR).

~~("SSI-related" means an aged, blind, or disabled client who meets the requirements described in WAC 388-503-0510(1).)~~

**"Swing bed"** means a bed in a medical facility that is contracted as both a hospital and a nursing facility bed.

**"Transfer of a resource or asset"** means any act or failure to act, by a person 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.

**"Uncompensated value"** means the fair market value (FMV) of an asset at the time of transfer minus the value of compensation the person receives in exchange for the asset.

**"Undue hardship"** means the person is not able to meet shelter, food, clothing, or health needs.

**"Value of compensation received"** means the consideration the purchaser pays or agrees to pay. Compensation includes:

(1) All money, real or personal property, food, shelter, or services the person receives under a legally enforceable purchase agreement whereby the person transfers the asset; and

(2) The payment or assumption of a legal debt the seller owes in exchange for the asset.

**"Veterans benefits"** means different types of benefits paid by the federal Department of Veterans Affairs (VA). Some may include additional allowances for:

(1) Aid and attendance for an individual needing regular help from another person with activities of daily living;

(2) "Housebound" for an individual who, when without assistance from another person, is confined to the home((-));

(3) Improved pension ((is)), the newest type of VA disability pension((-it is)), available to veterans and their survivors whose income from other sources (including service connected disability) is below the improved pension amount((-)); or

(4) Unusual medical expenses (UME) ((are)), determined by the VA based on the amount of unreimbursed medical expenses reported by the person who receives a needs-based benefit. The VA can use UME to reduce countable income to allow the person to receive a higher monthly VA payment, a one-time adjustment payment, or both.

**"Waivered programs/services"** means programs for which the federal government authorizes exceptions to Medicaid rules. Such programs provide to an eligible client a variety of services not normally covered under Medicaid. In Washington state, waived programs are CAP, CASA, COPES, MIC, and OBRA.

**WSR 02-09-093**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed April 17, 2002, 10:38 a.m., effective July 1, 2002]

Date of Adoption: April 17, 2002.

Purpose: Agency proposes to adopt revisions to the general reporting rules and classification plan. This includes one general reporting rule and four drywall risk classification definitions applicable to chapter 296-17 WAC for workers' compensation insurance underwritten by the Department of Labor and Industries.

Citation of Existing Rules Affected by this Order: Amending WAC 296-17-35203, 296-17-52140, 296-17-52141, 296-17-52150, and 296-17-52151.

Statutory Authority for Adoption: RCW 51.04.020, 51.16.035, 51.32.073.

Adopted under notice filed as WSR 01-23-079 [02-03-123] on January 23, 2002.

Changes Other than Editing from Proposed to Adopted Version: Proposed rule filed as WSR 01-23-079 [02-03-123] identified effective date of adopted changes as May 1, 2002. Contained in the adopted version is an effective date of July 1, 2002.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 5, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 5, Repealed 0.

Effective Date of Rule: July 1, 2002.

April 17, 2002  
Gary Moore  
Director

**AMENDATORY SECTION** (Amending WSR 01-23-059, filed 11/20/01, effective 1/1/02)

**WAC 296-17-35203 Special reporting instruction. (1)**

**Professional and semiprofessional athletic teams.** Athletes assigned to a Washington-domiciled sports team are mandatorily covered by Washington industrial insurance: Provided, That a professional athlete who is under contract with a parent team domiciled outside of the state of Washington while assigned to a team domiciled within Washington is subject to mandatory coverage by Washington industrial insurance unless the player and employer (parent team) have agreed in writing as to which state shall provide coverage in accordance with RCW 51.12.120(5).

The following rules shall apply to the written agreement:

(a) Agreement must be in writing and signed by the employer and the individual athlete.

(b) Agreement must specify the state that is to provide coverage. The state agreed upon to provide coverage must be a state in which the player's team, during the course of the season, will engage in an athletic event. For example, if the Washington-based team is a part of a league with teams in only Washington, Oregon, and Idaho, the player and the employer can agree to any of those three states to provide coverage. However, they could not agree to have California provide the coverage as this would not qualify as a state in which the player regularly performs assigned duties.

(c) The state agreed upon accepts responsibility for providing coverage and acknowledges such to the department by certified mail.

(d) Agreement and certification by the other state must be received by this department's underwriting section prior to any injury incurred by the athlete.

(e) Agreement will be for one season only commencing with the assigning of the player to a particular team. A separate agreement and certification must be on file for each additional season.

Failure to meet all of these requirements will result in the athlete being considered a Washington worker for premium and benefit purposes until such time as all requirements have been met.

Professional sports teams who are domiciled outside the state of Washington and who participate in sporting events with Washington-domiciled teams are not subject to Washington industrial insurance for their team members while in this state. These out-of-state teams are not considered employers subject to Title 51 on the basis that they are not conducting a business within this state.

(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) **Special trucking industry rules.** The following subsection shall apply to all trucking industry employers as applicable.

(a) **Insurance liability.** Every trucking industry employer operating as an intrastate carrier or a combined intrastate and interstate carrier must insure their workers' compensation insurance liability through the Washington state fund or be self-insured with the state of Washington.

Washington employers operating exclusively in interstate or foreign commerce or any combination of interstate and foreign commerce must insure their workers' compensation insurance liability for their Washington employees with the Washington state fund, be self-insured with the state of Washington, or provide workers' compensation insurance for their Washington employees under the laws of another state when such other state law provides for such coverage.

Interstate or foreign commerce trucking employers who insure their workers' compensation insurance liability under the laws of another state must provide the department with copies of their current policy and applicable endorsements upon request.

Employers who elect to insure their workers' compensation insurance liability under the laws of another state and who fail to provide updated policy information when requested to do so will be declared an unregistered employer and subject to all the penalties contained in Title 51 RCW.

(b) **Reporting.** Trucking industry employers insuring their workers' compensation insurance liability with the Washington state fund shall keep and preserve all original time records/books including supporting information from drivers' logs for a period of three calendar years plus three months.

Employers are to report actual hours worked, including time spent loading and unloading trucks, for each driver in their employ. For purposes of this section, actual hours worked does not include time spent during lunch or rest periods or overnight lodging.

Failure of employers to keep accurate records of actual hours worked by their employees will result in the department estimating work hours by dividing gross payroll wages by the state minimum wage for each worker for whom records were not kept. However, in no case will the estimated or actual hours to be reported exceed five hundred twenty hours per calendar quarter for each worker.

(c) **Exclusions.** Trucking industry employers meeting all of the following conditions are exempted from mandatory coverage.

(i) Must be engaged exclusively in interstate or foreign commerce.

(ii) Must have elected to cover their Washington workers on a voluntary basis under the Washington state fund and must have elected such coverage in writing on forms provided by the department.

(iii) After having elected coverage, withdrew such coverage in writing to the department on or before January 2, 1987.

If all the conditions set forth in (i), (ii), and (iii) of this subsection have not been met, employers must insure their workers' compensation insurance liability with the Washington state fund or under the laws of another state.

(d) Definitions. For purposes of interpretation of RCW 51.12.095(1) and administration of this section, the following terms shall have the meanings given below:

(i) "Agents" means individuals hired to perform services for the interstate or foreign commerce carrier that are intended to be carried out by the individual and not contracted out to others but does not include owner operators as defined in RCW 51.12.095(1).

(ii) "Contacts" means locations at which freight, merchandise, or goods are picked up or dropped off within the boundaries of this state.

(iii) "Doing business" means having any terminals, agents or contacts within the boundaries of this state.

(iv) "Employees" means the same as the term "worker" as contained in RCW 51.08.180.

(v) "Terminals" means a physical location wherein the business activities (operations) of the trucking company are conducted on a routine basis. Terminals will generally include loading or shipping docks, warehouse space, dispatch offices and may also include administrative offices.

(vi) "Washington" shall be used to limit the scope of the term "employees." When used with the term "employees" it will require the following test for benefit purposes (all conditions must be met).

- The individual must be hired in Washington or must have been transferred to Washington; and
- The individual must perform some work in Washington (i.e., driving, loading, or unloading trucks).

(4) **Forest, range, or timber land services—Industry rule.** Washington law (RCW 51.48.030) requires every employer to make, keep, and preserve records which are adequate to facilitate the determination of premiums (taxes) due to the state for workers' compensation insurance coverage for their covered workers. In the administration of Title 51 RCW, and as it pertains to the forest, range, or timber land services industry, the department of labor and industries has deemed the records and information required in the various subsections of this section to be essential in the determination of premiums (taxes) due to the state fund. The records so specified and required, shall be provided at the time of audit to any representative of the department who has requested them.

Failure to produce these required records within thirty days of the request, or within an agreed upon time period, shall constitute noncompliance of this rule and RCW 51.48.030 and 51.48.040. Employers whose premium computations are made by the department in accordance with (d) of this subsection are barred from questioning, in an appeal before the board of industrial insurance appeals or the courts, the correctness of any assessment by the department on any period for which such records have not been kept, preserved, or produced for inspection as provided by law.

(a) General definitions. For purpose of interpretation of this section, the following terms shall have the meanings given below:

(i) "Actual hours worked" means each workers' composite work period beginning with the starting time of day that the employees' work day commenced, and includes the entire work period, excluding any nonpaid lunch period, and ending with the quitting time each day work was performed by the employee.

(ii) "Work day" shall mean any consecutive twenty-four-hour period.

(b) Employment records. Every employer shall with respect to each worker, make, keep, and preserve original records containing all of the following information for three full calendar years following the calendar year in which the employment occurred:

- (i) The name of each worker;
- (ii) The Social Security number of each worker;
- (iii) The beginning date of employment for each worker and, if applicable, the separation date of employment for each such worker;
- (iv) The basis upon which wages are paid to each worker;
- (v) The number of units earned or produced for each worker paid on a piece-work basis;
- (vi) The risk classification(s) applicable to each worker;
- (vii) The number of actual hours worked by each worker, unless another basis of computing hours worked is prescribed in WAC 296-17-31021. For purposes of chapter 296-17 WAC, this record must clearly show, by work day, the time of day the employee commenced work, and the time of day work ended;
- (viii) A summary time record for each worker showing the calendar day or days of the week work was performed and the actual number of hours worked each work day;
- (ix) In the event a single worker's time is divided between two or more risk classifications, the summary contained in (b)(viii) of this subsection shall be further broken down to show the actual hours worked in each risk classification for the worker;
- (x) The workers' total gross pay period earnings;
- (xi) The specific sums withheld from the earnings of each worker, and the purpose of each sum withheld;
- (xii) The net pay earned by each such worker.

(c) Business, financial records, and record retention. Every employer is required to keep and preserve all original time records completed by their employees for a three-year period. The three-year period is specified in WAC 296-17-352 as the composite period from the date any such premium became due.

Employers who pay their workers by check are required to keep and preserve a record of all check registers and cancelled checks; and employers who pay their workers by cash are required to keep and preserve records of these cash transactions which provide a detailed record of wages paid to each worker.

(d) Recordkeeping - estimated premium computation. Any employer required by this section to make, keep, and preserve records containing the information as specified in (b) and (c) of this subsection, who fails to make, keep, and

preserve such records, shall have premiums calculated as follows:

(i) Estimated worker hours shall be computed by dividing the gross wages of each worker for whom records were not maintained and preserved, by the state's minimum wage, in effect at the time the wages were paid or would have been paid. However, the maximum number of hours to be assessed under this provision will not exceed five hundred twenty hours for each worker, per quarter for the first audited period. Estimated worker hours computed on all subsequent audits of the same employer that disclose a continued failure to make, keep, or preserve the required payroll and employment records shall be subject to a maximum of seven hundred eighty hours for each worker, per quarter.

(ii) In the event an employer also has failed to make, keep, and preserve the records containing payroll information and wages paid to each worker, estimated average wages for each worker for whom a payroll and wage record was not maintained will be determined as follows: The employer's total gross income for the audit period (earned, received, or anticipated) shall be reduced by thirty-five percent to arrive at "total estimated wages." Total estimated wages will then be divided by the number of employees for whom a record of actual hours worked was not made, kept, or preserved to arrive at an "estimated average wage" per worker. Estimated hours for each worker will then be computed by dividing the estimated average wage by the state's minimum wage in effect at the time the wages were paid or would have been paid as described in (d)(i) of this subsection.

(e) Reporting requirements and premium payments.

(i) Every employer who is awarded a forest, range, or timber land services contract must report the contract to the department promptly when it is awarded, and prior to any work being commenced, except as provided in (e)(iii) of this subsection. Employers reporting under the provisions of (e)(iii) of this subsection shall submit the informational report with their quarterly report of premium. The report shall include the following information:

(I) The employers' unified business identification account number (UBI).

(II) Identification of the landowner, firm, or primary contractor who awarded the contract, including the name, address, and phone number of a contact person.

(III) The total contract award.

(IV) Description of the forest, range, or timber land services work to be performed under terms of the contract.

(V) Physical location/site where the work will be performed including legal description.

(VI) Number of acres covered by the contract.

(VII) Dates during which the work will be performed.

(VIII) Estimated payroll and hours to be worked by employees in performance of the contract.

(ii) Upon completion of every contract issued by a landowner or firm that exceeds a total of ten thousand dollars, the contractor primarily responsible for the overall project shall submit in addition to the required informational report described in (e)(i) of this subsection, report the payroll and hours worked under the contract, and payment for required industrial insurance premiums. In the event that the contracted work is not completed within a calendar quarter,

interim quarterly reports and premium payments are required for each contract for all work done during the calendar quarter. The first such report and payment is due at the end of the first calendar quarter in which the contract work is begun. Additional interim reports and payments will be submitted each quarter thereafter until the contract is completed. This will be consistent with the quarterly reporting cycle used by other employers. Premiums for a calendar quarter, whether reported or not, shall become due and delinquent on the day immediately following the last day of the month following the calendar quarter.

(iii) A contractor may group contracts issued by a landowner, firm, or other contractor that total less than ten thousand dollars together and submit a combined quarterly report of hours, payroll, and the required premium payment in the same manner and periods as nonforestation, range, or timber land services employers.

(f) Out-of-state employers. Forest, range, or timber land services contractors domiciled outside of Washington state must report on a contract basis regardless of contract size for all forest, range, or timber land services work done in Washington state. Out-of-state employers will not be permitted to have an active Washington state industrial insurance account for reporting forest, range, or timber land services work in the absence of an active Washington forest, range, or timber land services contract.

(g) Work done by subcontract. Any firm primarily responsible for work to be performed under the terms of a forest, range, or timber land services contract, that subcontracts out any work under a forest, range, or timber land services contract must send written notification to the department prior to any work being done by the subcontractor. This notification must include the name, address, Social Security number, farm labor contractor number, (UBI) of each subcontractor, and the amount and description of contract work to be done by subcontract.

(h) Forest, range, or timber land services contract release - verification of hours, payroll, and premium. The department may verify reporting of contractors by way of an on-site visit to an employers' work site. This on-site visit may include close monitoring of employees and employee work hours. Upon receipt of a premium report for a finished contract, the department may conduct an audit of the firm's payroll, employment, and financial records to validate reporting. The department will notify the contractor, and the entity that awarded the contract, of the status of the contractors' account immediately after verification. The landowner, firm, or contractors' premium liability will not be released until the final report for the contract from the primary contractor and any subcontractors has been received and verified by the department.

(i) Premium liability - work done by contract. Washington law (RCW 51.12.070) places the responsibility for industrial insurance premium payments primarily and directly upon the person, firm, or corporation who lets a contract for all covered employment involved in the fulfillment of the contract terms. Any such person, firm, or corporation letting a contract is authorized to collect from the contractor the full amount payable in premiums. The contractor is in turn authorized to collect premiums from any subcontractor they may

employ his or her proportionate amount of the premium payment.

To eliminate premium liability for work done by contract permitted by Title 51 RCW, any person, firm, or corporation who lets a contract for forest, range, or timber land services work must submit a copy of the contract they have let to the department and verify that all premiums due under the contract have been paid.

Each contract submitted to the department must include within its body, or on a separate addendum, all of the following items:

- (I) The name of the contractor who has been engaged to perform the work;
- (II) The contractor's UBI number;
- (III) The contractor's farm labor contractor number;
- (IV) The total contract award;
- (V) The date the work is to be commenced; a description of the work to be performed including any pertinent acreage information;
- (VI) Location where the work is to be performed;
- (VII) A contact name and phone number of the person, firm, or corporation who let the contract;
- (VIII) The total estimated wages to be paid by the contractor and any subcontractors;
- (IX) The amount to be subcontracted out if such subcontracting is permitted under the terms of the contract;
- (X) The total estimated number of worker hours anticipated by the contractor and his/her subcontractors in the fulfillment of the contract terms;
- (j) Reports to be mailed to the department. All contracts, reports, and information required by this section are to be sent to:

The Department of Labor and Industries  
Reforestation Team 8  
P.O. Box 44168  
Tumwater, Washington 98504-4168

(k) Rule applicability. If any portion of this section is declared invalid, only that portion is repealed. The balance of the section shall remain in effect.

**(5) Logging and/or tree thinning—Mechanized operations—Industry rule.** The following subsection shall apply to all employers assigned to report worker hours in risk classification 5005, WAC 296-17-66003.

(a) Every employer having operations subject to risk classification 5005 "logging and/or tree thinning - mechanized operations" shall have their operations surveyed by labor and industries insurance services staff prior to the assignment of risk classification 5005 to their account. Annual surveys may be required after the initial survey to retain the risk classification assignment.

(b) Every employer as a prerequisite of being assigned risk classification 5005 and having exposure (work hours) which is reportable under other risk classifications assigned to the employer shall be required to establish a separate subaccount for the purpose of reporting exposure (work hours) and paying premiums under this risk classification (5005). Except as otherwise provided for in this rule, only exposure (work hours) applicable to work covered by risk classifica-

tion 5005 shall be reported in this subaccount. In the event that the employer's only other reportable exposure (work hours) is subject to one of the standard exception risk classifications, or the shop or yard risk classification then all exposure (work hours) will be reported under a single main account.

(c) Every employer assigned to report exposure (work hours) in risk classification 5005 shall supply an addendum report with their quarterly premium report which lists the name of each employee reported under this classification during the quarter, the Social Security number of such worker, the piece or pieces of equipment the employee operated during the quarter, the number of hours worked by the employee during the quarter, and the wages earned by the employee during the quarter.

**(6) Special drywall industry rule.**

~~((a) Why have we changed the way you pay premiums? Under Washington law (RCW 51.16.035), we are given the authority to establish how workers' compensation insurance rates are computed. For most industries, workers' compensation insurance rates are based on hours worked by employees. While the worker hour system works well for most industries, this method of paying premium can be unfair when a large segment of workers within an industry are not paid an hourly wage. The drywall industry is one in which many workers are paid on the basis of material installed and/or finished, (piece work), not the hours they work. To help remedy the problems caused by using work hours as the basis of how you pay premiums, and to provide greater fairness to employers engaged in drywall work, the premium for classifications 0540, 0541, 0550, and 0551 is based on material (square feet).~~

~~(b) How can I qualify for a discounted rate? For each drywall industry classification, we have established a second classification covering the same activity. The second classification carries a discounted rate. To qualify for a discounted classification and rate you are required to meet all of the following conditions:~~

~~(i) Prior to the end of the quarter that you want the discounted classifications and rates to be applied to your business, you (an owner/officer) must attend two workshops that we offer. For example, if you want the discounted classifications and rates to apply to your business for the third calendar quarter (July 1 through September 30), you (an owner/officer) must attend the two workshops by September 30. One workshop covers claims and risk management practices; the other workshop covers premium reporting and recordkeeping. The two workshops may be offered together or separately. Be sure to sign in so that you receive credit for attending the workshops.~~

~~(ii) You (an owner/officer) must provide us with a signed and completed voluntary release of information form that we may provide to you at the workshops. If we audit your account we will use this release form to obtain material and supply/purchase sales records from the material supply dealer(s) you use. This will aid us as we verify the information you supply us on your premium and supplemental reports. If we need to verify the information that you supplied us, we will send you written notice before we contact your~~

material supply dealer(s). We must receive this release form prior to the end of the quarter in which you want the discounted classifications and rates to become effective. For example, if you want the discounted classifications and rates to apply to your business for the third calendar quarter (July 1 through September 30), we must receive your signed and completed release of information form by September 30. You can complete the voluntary release form at the workshop and give it to our representative at the workshop or mail it to:

Labor and Industries  
Employer Services—Drywall Manager  
P.O. Box 44166  
Olympia, Washington 98504-4166

(iii) ~~You must submit complete and accurate premium reports when they are due and be current with all premium reports and payments. If you owe us money (premiums) for any quarter, we will not allow you to report in the discounted classifications until your premium obligations have been paid. This requirement applies to any classification assigned to your business and for any exposure (hours, square feet, etc.) which occurs. Businesses requesting the use of the discounted classifications while in field audit status shall not be assigned the discounted classifications and rates until the audit process is complete and all criteria for this rule have been met.~~

(iv) ~~You must provide us with a supplemental quarterly report which shows by employee the employee's name and Social Security number, the wages you paid them during the quarter, the basis for how they are paid, (piece rate, commission, hourly, etc.) their rate of pay per unit/hour, and a notation as to whether they are an installer, finisher, scrapper, painter, etc. This report is to be attached to and submitted with your quarterly premium report.~~

(v) ~~For any work which you subcontract to others, you must maintain the records described in WAC 296-17-31013 which requires you to keep certain information about the subcontractors you use and materials you may have supplied to the subcontractors.~~

(vi) ~~You must keep and retain the payroll and employment records described in WAC 296-17-35201.~~

~~If you do not meet all of the above conditions, we will not assign the discounted rates to your business and you will be required to pay premiums in the nondiscounted classification(s).~~

~~(e) **Can I be disqualified from using the discounted rates?** Yes, as opposed to failing to qualify because you did not meet the conditions of (b) of this subsection, your business will be disqualified from using the discounted premium rates if:~~

- ~~• You do not file premium reports on time;~~
- ~~• You fail to pay premiums on time;~~
- ~~• You under report or misclassify the work performed by your employees; or~~
- ~~• You fail to meet any other condition set forth in this rule.~~

~~(d) **How long will I be disqualified from using the discounted classifications?** If the drywall underwriter discovers your business has failed to meet the conditions as required~~

in this rule, your business will need to comply to retain using the discounted classifications. If your business does not comply timely, your business may be referred for an audit. If, as a result of an audit, your business is in noncompliance, your business will be disqualified from using the discounted classifications for three years (thirty-six months) from the period of last noncompliance. If your business does comply, we will schedule your business to be audited over the next several years to ensure continued compliance.

~~(e) **I have several businesses. If one of my businesses is disqualified from using the discounted rates will that affect my other businesses?** Yes, if you have ownership interest in a business which has been disqualified from using the discounted rates, and you also have ownership interest in other construction businesses which have separate industrial insurance accounts or subaccounts, all businesses in which you have ownership interest will be disqualified from using the discounted rates. This includes a business which you own or owned that is in bankruptcy status and for which you have not entered into a payment agreement, if you owe us any money; or money that you owe us which we wrote off as an uncollectible debt.~~

~~(f) **If I make a mistake in how I reported to you, should I correct the error?** Yes, you should send in a revised report(s) with an explanation of the error you are trying to correct to the drywall underwriter. If we audit your business, and we determine that you have under reported exposure in any classification assigned to your business, all exposure which you reported in the discounted classifications for the audit period will be reclassified to the nondiscounted classifications.~~

~~(g) **If I disagree with an audit or other decision can I still use the discounted rates while we are resolving the issue?** Yes, if you are involved in a dispute with us over the status of an independent contractor, the issue being whether an individual is a covered worker, the proper classification of work your employees performed; or under reporting; you may qualify for the discounted classifications by paying the disputed amount while the issue is under dispute. In the event the issue is resolved in your favor we will refund any moneys which you paid which were disputed. We will not pay interest on the refunded amount. If you do not pay the audit balance or disputed amount when requested or do not post an equivalent bond, you will not be permitted to use any of the discounted classifications.~~

~~(h) **I am the owner of the business, and I do some of the work myself. Can I deduct the work I do from the total square feet to be reported to you?** Yes, as an owner of the business you can deduct the amount of work that you did from the total square feet which you are going to report to us.~~

~~(i) **How do I calculate and report this deduction to you?** To claim this deduction you must send us a report which shows by job, project, site or location the total amount of material that was installed or finished at that job, project, site or location; the amount of material which you, the owner, installed and/or finished at the job, project, site or location; the hours it took you to install and/or finish the material you~~

are claiming deduction for; the total material installed and/or finished by subcontractors (including the subcontractor's legal name and Unified Business Identifier (UBI) at the job, project, site or location); the total material installed and/or finished by employees at the job, project, site or location; and the hours the employees worked by job, project, site or location. This report must accompany the quarterly report in which you are claiming a deduction. If there are several owners, you must supply this information for each owner for whom you wish to claim a deduction.)

**(a) What is the unit of exposure for drywall reporting?** Your premiums for workers installing and finishing drywall (reportable in risk classifications 0540, 0541, 0550, and 0551) are based on the amount of material installed and finished, not the number of hours worked.

The amount of material installed equals the amount of material purchased or taken from inventory for a job. No deduction can be made for material scrapped (debris). A deduction is allowed for material returned to the supplier or inventory.

The amount of material finished for a job equals the amount of material installed. No deduction can be made for a portion of the job that is not finished (base layer of double-board application or unfinished rooms).

Example: Drywall installation firm purchases 96 4' x 8' sheets of material for a job which includes some double-wall installation. The firm hangs all or parts of 92 sheets, and returns 4 sheets to the supplier for credit. Drywall finishing firm tapes, primes and textures the same job. Both firms should report 2,944 square feet (4 x 8 x 92) for the job.

**(b) I do some of the work myself. Can I deduct material I as an owner install or finish?** Yes. Owners (sole proprietors, partners, and corporate officers) who have not elected coverage may deduct material they install or finish.

When you as an owner install (including scrap) or finish (including tape and prime or texture) only part of a job, you may deduct an amount of material proportional to the time you worked on the job, considering the total time you and your workers spent on the job.

To deduct material installed or finished by owners, you must report to the department by job, project, site or location the amount of material you are deducting for this reason. You must file this report at the same time you file your quarterly report:

$$\frac{\text{Total owners hours}}{\text{owners hours} + \text{workers hours}} = \% \text{ of owner discount.}$$

$$\% \text{ of owner discount} \times (\text{total footage of job} - \text{subcontracted footage, if any}) = \text{Total owner deduction of footage.}$$

**(c) Can I deduct material installed or finished by subcontractors?** You may deduct material installed or taped by subcontractors you are not required to report as your workers. You may not deduct for material only scrapped or primed and textured by subcontractors.

To deduct material installed or taped by subcontractors, you must report to the department by job, project, site or location the amount of material being deducted. You must file this report at the same time you file your quarterly report.

You must have and maintain business records that support the number of square feet worked by the subcontractor.

**(d) I understand there are discounted rates available for the drywall industry. How do I qualify for them?** To qualify for discounted drywall installation and finishing rates, you must:

(i) Have an owner attend two workshops the department offers (one workshop covers claims and risk management, the other covers premium reporting and recordkeeping);

(ii) Provide the department with a voluntary release authorizing the department to contact material suppliers directly about the firm's purchases;

(iii) Have and keep all your industrial insurance accounts in good standing (including the accounts of other businesses in which you have an ownership interest), which includes fully and accurately reporting and paying premiums as they come due, including reporting material deducted as owner or subcontractor work;

(iv) Provide the department with a supplemental report (filed with the firm's quarterly report) showing by employee the employee's name, the wages paid them during the quarter, how they are paid (piece rate, hourly, etc.), their rate of pay, and what work they performed (installation, scrapping, taping, priming/texturing); and

(v) Maintain accurate records about work you subcontracted to others and materials provided to subcontractors (as required by WAC 296-17-31013), and about payroll and employment (as required by WAC 296-17-35201).

The discounted rates will be in effect beginning with the first quarter your business meets all the requirements for the discounted rates.

Note: If you are being audited by the department while your application for the discounted classifications is pending, the department will not make a final decision regarding your rates until the audit is completed.

**(e) Can I be disqualified from using the discounted rates?** Yes. You can be disqualified from using the discounted rates for three years if you:

(i) Do not file all reports, including supplemental reports, when due;

(ii) Do not pay premiums on time;

(iii) Underreport the amount of premium due; or

(iv) Fail to maintain the requirements for qualifying for the discounted rates.

Disqualification takes effect when a criterion for disqualification exists.

Example: A field audit in 2002 reveals that the drywall installation firm underreported the amount of premium due in the second quarter of 2001. The firm will be disqualified from the discounted rates beginning with the second quarter of 2001, and the premiums it owed for that quarter and subsequent quarters for three years will be calculated using the nondiscounted rates.

If the drywall underwriter learns that your business has failed to meet the conditions as required in this rule, your business will need to comply to retain using the discounted classifications. If your business does not comply promptly, the drywall underwriter may refer your business for an audit.

If, as a result of an audit, the department determines your business has not complied with the conditions in this rule,

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your business will be disqualified from using the discounted classifications for three years (thirty-six months) from the period of last noncompliance.

(f) If I discover I have made an error in reporting or paying premium, what should I do? If you discover you have made a mistake in reporting or paying premium, you should contact the department and correct the mistake. Firms not being audited by the department who find errors in their reporting and paying premiums, and who voluntarily report their errors and pay any required premiums, penalties and interest promptly, will not be disqualified from using the discounted rates unless the department determines they acted in bad faith.

AMENDATORY SECTION (Amending WSR 01-23-059, filed 11/20/01, effective 1/1/02)

**WAC 296-17-52140 Classification 0540.**

**0540-00 Wallboard installation, including scrapping - discounted rate (to be assigned only by the drywall underwriter)**

Applies to contractors engaged in the installation or repair of wallboard. This classification includes the installation of wallboard, drywall, or sheetrock in all types of residential or commercial buildings or structures. The process consists of cutting wallboard with a utility knife, hacksaw, or power saw to the desired size and then butting material into place and nailing or screw fastening to wood or metal wall studs. Electrical box, window, or door openings are cut out where needed. Installation may require the use of scaffolding, ladders, specialty lifts, or stilts when working at heights, including the use of T holders or hydraulic lifts to hold material being installed on ceilings. This classification also includes wallboard scrapping (picking up and discarding unused portions of wallboard remnants or scraps) at the construction site when performed by employees of the wallboard contractor.

This classification excludes delivery of materials to the construction site by material dealer employees which is to be reported separately in the applicable delivery classification; delivery and stocking of materials to the construction site when performed by employees of the wallboard contractor which is to be reported separately in classification 1101; wallboard taping (including priming and texturing when performed by employees of the wallboard contractor) which is to be reported separately in classification 0541 or 0551; wallboard scrapping by nonwallboard contractor employees which is to be reported separately in the applicable construction debris cleanup classification; plastering, stuccoing or lathing work which is to be reported separately in classification 0303; and the framing of nonbearing walls when performed by the drywall contractor which is to be reported separately in classification 0516.

~~((Special note: The basis of premium for this classification is material installed (square feet). The amount used to determine premium calculation for material installed shall be the same amount used for premium calculation of material finished for use in classification 0541 or 0551. The amount of~~

~~wallboard purchased for each job, project, site or location shall be equal to the amount of material installed or finished. For contractors to be assigned and continue to report in this classification, their account must remain in good standing and conform to the conditions specified in the special drywall industry rule.))~~

AMENDATORY SECTION (Amending WSR 01-23-059, filed 11/20/01, effective 1/1/02)

**WAC 296-17-52141 Classification 0541.**

**0541-00 Wallboard taping, including texturing and priming - discounted rate (to be assigned only by the drywall underwriter)**

Applies to contractors engaged in taping wallboard in residential or commercial buildings or structures. The process of taping occurs after wallboard, drywall, or sheetrock has been installed and involves taping the seams, and spreading joint compound over the seams and nail or screw heads. When dry, the seams are sanded to remove any rough edges. This classification includes the following activities when performed by employees of a wallboard contractor and part of the taping process which includes wallboard texturing (a putty-like material that is sprayed over the prepared wallboard in a clump-like application and smoothed with a trowel or putty knife), and wallboard priming (the application of an undercoating that may be applied either directly to the wallboard or after it has been textured). This classification also includes incidental painting when performed by employees of a wallboard contractor and part of the taping process.

This classification excludes wallboard installation which is to be reported separately in classification 0540 or 0550; wallboard priming and texturing not performed by employees of the wallboard contractor and part of the taping process which is to be reported separately in classification 0521; interior painting which is to be reported separately in classification 0521; and wallboard scrapping by nonmaterial dealer employees which is to be reported separately in classification 0540 or 0550.

~~((Special note: The basis of premium for this classification is material finished (square feet). The amount used to determine premium calculation for material finished shall be the same amount used for premium calculation of material installed for use in classification 0540 or 0550. The amount of wallboard purchased for each job, project, site or location shall be equal to the amount of material installed or finished. For contractors to be assigned, and continue to report in this classification, their account must remain in good standing and conform to the conditions specified in the special drywall industry rule.))~~

AMENDATORY SECTION (Amending WSR 01-23-059, filed 11/20/01, effective 1/1/02)

**WAC 296-17-52150 Classification 0550.**

**0550-00 Wallboard installation, including scrapping - nondiscounted rate (to be assigned only by the drywall underwriter)**

Applies to contractors engaged in the installation or repair of wallboard. This classification includes the installation of wallboard, drywall, or sheetrock in all types of residential or commercial buildings or structures. The process consists of cutting wallboard with a utility knife, hacksaw, or power saw to the desired size and then butting material into place and nailing or screw fastening to wood or metal wall studs. Electrical box, window, or door openings are cut out where needed. Installation may require the use of scaffolding, ladders, specialty lifts, or stilts when working at heights, including the use of T holders or hydraulic lifts to hold material being installed on ceilings. This classification also includes wallboard scrapping (picking up and discarding unused portions of wallboard remnants or scraps) at the construction site when performed by employees of the wallboard contractor.

This classification excludes delivery of materials to the construction site by material dealer employees which is to be reported separately in the applicable delivery classification; delivery and stocking of materials to the construction site when performed by employees of the wallboard contractor which is to be reported separately in classification 1101; wallboard taping (including priming and texturing when performed by employees of the wallboard contractor) which is to be reported separately in classification 0541 or 0551; wallboard scrapping by nonwallboard contractor employees which is to be reported separately in the applicable construction debris cleanup classification; plastering, stuccoing or lathing work which is to be reported separately in classification 0303; and the framing of nonbearing walls when performed by the drywall contractor which is to be reported separately in classification 0516.

~~((Special note: The basis of premium for this classification is material installed (square feet). The amount used to determine premium calculation for material installed shall be the same amount used for premium calculation of material finished for use in classification 0541 or 0551. The amount of wallboard purchased for each job, project, site or location shall be equal to the amount of material installed or finished. For contractors to be assigned and continue to report in this classification, their account must remain in good standing and conform to the conditions specified in the special drywall industry rule.))~~

**AMENDATORY SECTION** (Amending WSR 01-23-059, filed 11/20/01, effective 1/1/02)

**WAC 296-17-52151 Classification 0551.**

**0551-00 Wallboard taping, including texturing and priming - nondiscounted rate (to be assigned only by the drywall underwriter)**

Applies to contractors engaged in taping wallboard in residential or commercial buildings or structures. The process of taping occurs after wallboard, drywall, or sheetrock has been installed and involves taping the seams, and spreading joint compound over the seams and nail or screw heads. When dry, the seams are sanded to remove any rough edges. This classification includes the following activities when per-

formed by employees of a wallboard contractor and part of the taping process which includes wallboard texturing (a putty-like material that is sprayed over the prepared wallboard in a clump-like application and smoothed with a trowel or putty knife), and wallboard priming (the application of an undercoating that may be applied either directly to the wallboard or after it has been textured). This classification also includes incidental painting when performed by employees of a wallboard contractor and part of the taping process.

This classification excludes wallboard installation which is to be reported separately in classification 0540 or 0550; wallboard priming and texturing not performed by employees of the wallboard contractor and part of the taping process which is to be reported separately in classification 0521; interior painting which is to be reported separately in classification 0521; and wallboard scrapping by nonmaterial dealer employees which is to be reported separately in classification 0540 or 0550.

~~((Special note: The basis of premium for this classification is material finished (square feet). The amount used to determine premium calculation for material finished shall be the same amount used for premium calculation of material installed for use in classification 0540 or 0550. The amount of wallboard purchased for each job, project, site or location shall be equal to the amount of material installed or finished. For contractors to be assigned, and continue to report in this classification, their account must remain in good standing and conform to the conditions specified in the special drywall industry rule.))~~

**WSR 02-09-099**

**PERMANENT RULES**

**DEPARTMENT OF AGRICULTURE**

[Filed April 17, 2002, 11:35 a.m.]

Date of Adoption: April 17, 2002.

Purpose: To adopt rules to prevent spread of longhorned beetles of the genus *Anaplophora* and to declare quarantine restrictions in an area of know entry of the citrus longhorned beetle.

Statutory Authority for Adoption: Chapter 17.24 RCW.

Adopted under notice filed as WSR 02-06-131 on March 6, 2002.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 8, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Effective Date of Rule: Thirty-one days after filing.

April 17, 2002

William E. Brookreson

Acting Director

## LONGHORNED BEETLE QUARANTINE

### NEW SECTION

**WAC 16-470-800 Establishing quarantine for longhorned beetles of the genus *Anoplophora*.** Beetles of the genus *Anoplophora* include the citrus longhorned beetle (*Anoplophora chinensis*) and the Asian longhorned beetle (*Anoplophora glabripennis*). There are no species of *Anoplophora* native to North America. These beetles are serious pests in their native ranges in Asia and are highly invasive species which have entered and may become established in Washington State. The establishment of any species of *Anoplophora* beetle in Washington would cause reduction in native vegetation and ornamental plants and great economic loss to the forestry, nursery and agricultural industries of the state. The director of agriculture, pursuant to authorities in RCW 17.24 and RCW 15.13, has determined that the regulation and exclusion of all life stages of beetles of the genus *Anoplophora* and of any potentially infested host material is necessary to protect the environmental quality, forests and agricultural crops of the state of Washington.

### NEW SECTION

**WAC 16-470-810 Prohibiting possession, transportation or distribution of living beetles of the genus *Anoplophora*.** Possession of any living life stage of any beetle of the genus *Anoplophora*, including but not limited to citrus longhorned beetle (*Anoplophora chinensis*) and Asian longhorned beetle (*Anoplophora glabripennis*), is prohibited. Transportation or distribution of any living life stage of any beetle of the genus *Anoplophora* into or between points within the state of Washington is prohibited. Any *Anoplophora* beetle eggs, larvae, pupae, or adults should be killed at the site of discovery. Trained employees of the department are available to assist the public in identifying *Anoplophora* beetle life stages and can be reached at toll-free telephone number (800) 443-6684 or email [pestprogram@agr.wa.gov](mailto:pestprogram@agr.wa.gov).

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

### NEW SECTION

**WAC 16-470-820 What is the area under quarantine for citrus longhorned beetle?** The boundaries of the area under order are within the City of Tukwila in King County. The area under order consists of all properties lying primarily within a circle with a radius of a half mile, centered at the property immediately southwest of the intersection of Macadam Rd. S. and S. 144th St. Any property on the border of

the circle, which lies at least 50% outside the circle, is excluded from the area under quarantine for citrus longhorned beetle. A map of the area under quarantine can be obtained through a request to the department at toll-free number (800) 443-6684 or email [pestprogram@agr.wa.gov](mailto:pestprogram@agr.wa.gov).

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

### NEW SECTION

**WAC 16-470-830 Prohibition on moving living plants from the area under quarantine for citrus longhorned beetle.** (1) All species of the following genera of plants are declared to be potential host plants for citrus longhorned beetle:

- (a) Acer (maple)
- (b) Albizzia (silk tree)
- (c) Alnus (alder)
- (d) Betula (birch)
- (e) Camellia
- (f) Carya (hickory, pecan)
- (g) Castanea (chestnut)
- (h) Citrus (orange, lemon)
- (i) Cryptomeria (Japanese cedar)
- (j) Elaeagnus (wild olive)
- (k) Fagus (beech)
- (l) Ficus (fig)
- (m) Fraxinus (ash)
- (n) Hibiscus (rose of sharon, mallow)
- (o) Ilex (holly)
- (p) Juglans (walnut)
- (q) Lindera (spicebush)
- (r) Maackia (amur)
- (s) Malus (apple, crabapple)
- (t) Morus (mulberry)
- (u) Photinia
- (v) Platanus (sycamore, plane tree)
- (w) Populus (poplar; aspen, cottonwood)
- (x) Prunus (cherry, peach, apricot, plum)
- (y) Pyracantha (firethorn)
- (z) Pyrus (pear)
- (aa) Quercus (oak)
- (bb) Rhus (sumac)
- (cc) Robinia (locust)
- (dd) Rosa (rose)
- (ee) Rubus (blackberry, raspberry)
- (ff) Salix (willow)
- (gg) Sophora (pagoda tree)
- (hh) Stranvaesia
- (ii) Styrax (snowbell tree)
- (jj) Ulmus (elm)

(2) The following species are declared to be potential host plants for citrus longhorned beetle:

- (a) Eriobotrya japonicus
- (b) Fortunella marginata
- (c) Poncirus trifoliata

(3) Movement of living potential host plants with a diameter of greater than three-eighths of an inch at soil level from the area under quarantine for citrus longhorned beetle to

outside the area is prohibited, unless a permit has been issued by the department pursuant to WAC 16-470-870 below.

erwise forbidden under provisions of WAC 16-470-800 through WAC 16-470-860. These special permits shall be conditioned to minimize the risk of spreading longhorned beetle.

#### NEW SECTION

**WAC 16-470-840 Prohibition on moving wood and prunings from the area under quarantine for citrus longhorned beetle.** (1) The following articles are declared to be potential host material for citrus longhorned beetle, and their movement or transportation from the area under quarantine is prohibited:

(a) untreated hardwood grown within the area under quarantine

(b) firewood from hardwood species

(c) deadwood, stumps, tree trunks and similar portions of trees from hardwood species

(d) hardwood prunings from hardwood species with diameter of greater than three-eighths inch

(2) Materials that are not restricted by this section include:

(a) lumber not grown in the area under quarantine

(b) softwood (that is, wood from coniferous plants such as pine or Douglas fir)

(c) fruit

(d) nuts

(e) leaves

(f) wreaths

(g) finished wood products such as furniture

(h) hardwood prunings and debris with a maximum diameter of three-eighths of an inch, and

(i) wood chipped to a maximum size of five eighths of an inch.

#### NEW SECTION

**WAC 16-470-850 Exemption for articles in transit.** Articles declared in WAC 16-470-830 and WAC 16-470-840 to be potential host material for citrus longhorned beetle are exempt from the requirements of WAC 16-470-820 through WAC 16-470-870 if all the following conditions are met:

(1) The articles originate outside the quarantine area for citrus longhorned beetle,

(2) They enter the quarantine area for citrus longhorned beetle as an incidental portion of transportation to a location outside the quarantine area, and

(3) They are not unloaded or parked overnight within the quarantine area for citrus longhorned beetle.

#### NEW SECTION

**WAC 16-470-860 Disposal of articles regulated under longhorned beetle quarantine.** Any regulated articles that are in violation of this longhorned beetle quarantine are subject to destruction or other disposition in a manner prescribed by the department.

#### NEW SECTION

**WAC 16-470-870 Special permits—Longhorned beetle.** The department may issue special permits for actions oth-

**WSR 02-09-003  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 02-68—Filed April 3, 2002, 3:22 p.m., effective April 7, 2002, 7:00 p.m.]

Date of Adoption: April 3, 2002.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-32500T, 220-56-31000U and 220-56-31500A; and amending WAC 220-56-310 and 220-56-315.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: Daily limit restrictions for spot shrimp are needed to stay within state/tribal allocations and quotas as specified by federal court and Fish and Wildlife Commission policies. Gear restrictions for shrimp are needed to ensure orderly fisheries, manage within court-ordered sharing requirements and to ensure conservation. The state recreational share of spot shrimp set aside for this trial fishery has been taken. There rules are interim until permanent rules take effect.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 0, Repealed 3.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Effective Date of Rule: April 7, 2002, 7:00 p.m.

April 3, 2002

Evan Jacoby

for Jeff Koenings

Director

**NEW SECTION**

**WAC 220-56-31000U Shellfish—Daily limits.** Notwithstanding the provisions of WAC 220-56-310, effective April 20, 2002 through April 30, 2002 in all waters of Puget Sound (except Shrimp Districts) - Daily limit 10 pounds of shrimp, which may contain no more than 80 spot shrimp. Minimum spot shrimp size one and three-sixteenths inch from base of eyestalk to top rear edge of carapace.

**NEW SECTION**

**WAC 220-56-31500A Crabs, shrimp, crawfish—Unlawful acts.** Notwithstanding the provisions of WAC 220-56-315, effective April 20, 2002 through April 30, 2002, it is unlawful in waters of Puget Sound (except Shrimp Districts) to fish more than four shrimp pots from a vessel, and unlawful for any vessel to have more than four shrimp pots on board.

**REPEALER**

The following section of the Washington Administrative Code is repealed effective 7:00 p.m. April 7, 2002:

WAC 220-56-32500T Shrimp seasons - Early recreational fishery, shipwreck to Edwards point in Area 9. (02-65)

The following sections of the Washington Administrative Code are repealed effective 12:01 a.m. May 1, 2002:

WAC 220-56-31000U Shellfish—Daily limits.

WAC 220-56-31500A Crabs, shrimp, crawfish—Unlawful acts.

**WSR 02-09-009  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 02-70—Filed April 4, 2002, 3:50 p.m., effective April 6, 2002, 12:01 a.m.]

Date of Adoption: April 4, 2002.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900S; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: A management agreement for spring chinook was signed in 2001 that will allow for selective fishing for marked spring chinook in the Columbia River, while minimizing impacts to protected wild fish. The area below The Dalles Dam will provide opportunity for anglers to fish in a section of the Bonneville Pool and will not conflict with nonselective fisheries occurring in tributaries in the lower Bonneville Pool. There is insufficient time to promulgate permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or

Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Effective Date of Rule: April 6, 2002, 12:01 a.m.

April 4, 2002

J. P. Koenings

Director

NEW SECTION

**WAC 232-28-61900D Exceptions to statewide rules—Columbia River** Notwithstanding the provisions of WAC 232-28-619:

(1) Effective 12:01 a.m. April 6, 2002 until further notice, it is lawful to fish for and possess adipose fin-clipped spring chinook in those areas listed below.

Areas:

a) Those waters of the Columbia River from the I-5 Bridge upstream to 600 feet below the fish ladder at Bonneville Dam.

b) The Bonneville Reservoir upstream from the Tower Island power lines.

Waters upstream from the Interstate Bridge (Highway 197) to The Dalles Dam are closed except that bank fishing is permitted up to the downstream navigation lock wall on the Washington shore.

c) The Dalles Reservoir.

d) John Day Reservoir.

Daily limit:

a) Six chinook, no more than two of which may be adults, and all of which must be adipose fin-clipped, minimum size 12 inches in length.

(2) Effective immediately until further notice it is lawful to fish for and possess trout in those waters of the Columbia River from Bonneville Dam to Buoy 10 and The Dalles and John Day Pools. Daily limit two trout minimum size 12 inches in length. Release wild steelhead. Release wild cutthroat below Bonneville Dam.

(3) Effective immediately until further notice, it is lawful to possess adipose fin clipped spring chinook in those waters on the mainstem Columbia from the I-5 Bridge to Buoy 10. Daily limit is six chinook salmon no more than two of which may be adults and all must be adipose fin clipped, minimum size 12 inches in length.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. April 6, 2002:

WAC 232-28-61900S Exceptions to statewide rules—Columbia River. (02-31)

**WSR 02-09-021  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 02-71—Filed April 5, 2002, 3:53 p.m., effective April 16, 2002, 8:00 a.m.]

Date of Adoption: April 5, 2002.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Amending 220-52-051 and 220-52-075.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: The 2002 state/tribal Strait of Juan de Fuca shrimp harvest management plan requires adoption of harvest seasons and the prohibition on night time fishing contained in this emergency rule. The revisions to commercial shrimp logs are necessary to improve harvest data. There is insufficient time to promulgate permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Effective Date of Rule: April 16, 2002, 8:00 a.m.

April 5, 2002

J. P. Koenings

Director

NEW SECTION

**WAC 220-52-05100Y Puget Sound shrimp beam trawl fishery—Seasons.** Notwithstanding the provisions of

EMERGENCY

WAC 220-52-051, effective 8:00 a.m. April 16, 2001, until further notice it is unlawful to fish for shrimp for commercial purposes in Puget Sound except as provided for in this section:

(1) Shrimp beam trawl gear:

(a) Crustacean management area 3 outside of the shrimp districts - Open until further notice.

(2) For purposes of shrimp trawl catch reporting: 23A East is that portion of Marine Fish-Shellfish Management and Catch Reporting Area 23A, east of a line projected true north from the Dungeness lighthouse; and 23A West is that portion of Marine Fish-Shellfish Management and Catch Reporting Area 23A, west of the line described herein.

(3) It is unlawful to harvest shrimp using shrimp beam trawl gear from one hour after official sunset to one hour before official sunrise.

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

### NEW SECTION

**WAC 220-52-07500D Shellfish harvest logs.** Notwithstanding the provisions of WAC 220-52-075, effective immediately until further notice:

Vessel operators engaged in commercial harvest of shrimp, other than ocean pink shrimp with beam trawl or shrimp trawl gear must record the vessel identity, date, location fished, trawl width, Marine Fish-Shellfish Management and Catch Reporting Area, depth fished, latitude and longitude to the nearest hundredth of a minute at the beginning of each tow, tow speed, duration of tow and estimated weight of shrimp of each species caught for each tow before leaving the site where the catch was taken or before commencing a new tow, whichever occurs first. It shall be unlawful to fail to permanently record this information into the department-supplied harvest log before leaving each catch site. The fish receiving ticket serial number must be recorded onto the harvest log at the time of sale, or before leaving the last catch site of the day if the vessel operator holds a wholesale dealer license and is the original receiver of the catch. Harvest logs must be maintained and submitted in ascending consecutive order of harvest log serial numbers. Harvest logs must be submitted for each month in which fishing activity occurs and must be received by the department within ten days following any month in which fishing occurs.

**WSR 02-09-023  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 02-69—Filed April 8, 2002, 4:18 p.m., effective April 20, 2002]

Date of Adoption: April 8, 2002.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order:  
Repealing WAC 232-28-61900C; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: The Yakama Nation and WDFW fishery managers are forecasting a return of 12,300 adult hatchery and 9,500 adult wild spring chinook to the Yakima River in 2002. Approximately 56% of the total run is predicted to be hatchery supplementation fish the second and largest return to date of adult salmon from the Yakima/Klickitat fisheries project research hatchery at Cle Elum. Due to the high percentage of hatchery supplementation fish, and weaker runs of Naches and Upper Yakima River wild chinook expected this year, all wild fish will be protected from sport harvest. There is insufficient time to promulgate permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Effective Date of Rule: April 20, 2002.

April 8, 2002

J. P. Koenings

Director

by Larry Peck

### NEW SECTION

**WAC 232-28-61900C Exceptions to statewide rules—Yakima River.** Notwithstanding the provisions of WAC 232-28-619, effective 12:01 a.m. April 20, 2002 through June 16, 2002, in those waters of the Yakima River from the SR 223 Bridge at Granger (river mile 83) to the painted "closed water" boundary line 3,500 feet downstream of Roza Dam (river mile 127.2).

(a) Daily limit of two hatchery salmon. Minimum size is 12 inches in length.

(b) Night closure in effect.

(c) One, single-pointed, barbless hook with a gap from point to shank of 3/4 inch or less required for all species.

(d) Season limit of ten hatchery spring chinook from the Yakima River per fisher.

(e) Closed to all fishing within 400 feet upstream of the Yakima Ave./Terrace Heights Road Bridge, including downstream of the Roza Wasteway No. 2 fish barrier rack.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective June 17, 2002:

WAC 232-28-61900C      Exceptions to statewide rules—Yakima River.

**WSR 02-09-045**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 02-73—Filed April 12, 2002, 3:40 p.m., effective May 1, 2002]

Date of Adoption: April 12, 2002.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-56-255.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: This rule is needed to comply with regulations issued by the National Marine Fisheries Service to regulate the halibut fishery in 2002. The final rules were published in the Federal Register on March 20, 2002. There is insufficient time to promulgate permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Effective Date of Rule: May 1, 2002.

April 12, 2002  
Sara G. LaBorde  
for Jeff Koenings  
Director

#### NEW SECTION

**WAC 220-56-25500X Halibut—Seasons—Daily limits.** Notwithstanding the provisions of WAC 220-56-255, effective May 1, 2002 until further notice it is unlawful to fish for or possess halibut taken for personal use except as provided

for in this section:

(1) Catch Record Card Area 1: Open May 1, 2002 until further notice. The daily limit is the first halibut 32 inches in length or greater brought aboard the vessel.

(2) Catch Record Card Area 2:

(a) Those waters south of the Queets River, north of 47°N latitude and east of 124°40'W longitude - Open May 1, 2002 until further notice. The daily limit is one halibut of any size.

(b) All other waters of Marine Area 2 - Open May 1, 2002 until further notice. Closed to fishing for halibut 12:01 a.m. of each Friday through 11:59 p.m. each Saturday. The daily limit is one halibut of any size.

(3) Catch Record Card Areas 3 and 4: Open May 1, 2002 until further notice. Closed to fishing for halibut 12:01 a.m. of each Sunday through 11:59 p.m. of each Monday. The following area southwest of Cape Flattery is closed to halibut fishing at all times in those waters within a rectangle defined by the following corners: 48°18'N, 125°11'W; 48°18'N, 124°59'W; 48°00'N, 125°11'W; 48°00'N, 124°59'W. The daily limit is one halibut of any size.

(4) Catch Record Card Area 5: Open May 23, 2002 through July 26, 2002. Closed to fishing for halibut 12:01 a.m. of each Tuesday through 11:59 p.m. of each Wednesday. The daily limit one halibut of any size.

(5) Catch Record Card Areas 6-13: Open May 9, 2002 through July 12, 2002. Closed to fishing for halibut 12:01 a.m. of each Tuesday through 11:59 p.m. of each Wednesday. The daily limit is one halibut of any size.

(6) The possession limit is two daily limits of halibut in any form, except the possession limit aboard the fishing vessel is one daily limit.

**WSR 02-09-053**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Medical Assistance Administration)

[Filed April 12, 2002, 4:06 p.m.]

Date of Adoption: April 12, 2002.

Purpose: The Medical Assistance Administration is discontinuing enhanced payments to hospitals and trauma services centers for trauma care patients covered under the medically indigent or general assistance-unemployable programs. State funds appropriated by the legislature for the emergency medical services and trauma care systems trust account for the 2001-2003 biennium period have been exhausted.

Citation of Existing Rules Affected by this Order: Amending WAC 388-550-4800 Hospital payment method—State-only programs.

Statutory Authority for Adoption: RCW 43.88.290, 74.08.090, 74.09.035(1), and 74.09.700.

Other Authority: Washington State Omnibus Operating Budget 2001-2003.

Under 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: The legislature's 2001-03 supplemental operating budget transferred about \$6.1 million from the trauma care fund reserve to the state general fund to be used for other purposes. In addition, there was a substantial and unanticipated increase in past biennia catch-up payments during the early months of this biennium. It is necessary to suspend the enhanced payments to providers of trauma care to stay within the appropriation for the biennium. State law prohibits officers or employees of the state from intentionally overexpending any appropriation made by law.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Effective Date of Rule: Immediately.

April 12, 2002

Brian H. Lindgren, Manager  
Rules and Policies Assistance Unit

**AMENDATORY SECTION** (Amending WSR 01-16-142, filed 7/31/01, effective 8/31/01)

**WAC 388-550-4800 Hospital payment method—State-only programs.** (1) The medical assistance administration (MAA):

(a) Calculates payments to hospitals for covered services provided to eligible clients under the state-only MI and medical care services programs using one of the following payment methods:

- (i) Diagnosis-related group (DRG); or
- (ii) Ratio of costs-to-charges (RCC) methodologies; and
- (b) Calculates the respective state-only program RCC rate and cost based conversion factor (CBCF) by reducing:
  - (i) The hospital's Title XIX inpatient RCC rate by the hospital's ratable; and
  - (ii) The hospital's Title XIX DRG CBCF.

(2) To calculate ratables, MAA:

(a) Adds a hospital's Medicare and Medicaid revenues, to the value of the hospital's charity care and bad debts. MAA

deducts the hospital's low-income disproportionate share hospital (LIDSH) revenue from this total to arrive at the hospital's community care dollars; then

(b) Subtracts revenue generated by hospital-based physicians from total hospital revenue. Both revenues are as reported in the hospital's HCFA 2552 cost report; then

(c) Divides the amount derived in step (2)(a) by the amount derived in step (2)(b) to obtain the ratio of community care dollars to total revenue; then

(d) Subtracts the result of step (2)(c) from 1.000 to obtain the hospital's ratable. The hospital's Title XIX CBCF is multiplied by (1 minus the ratable), and that result is multiplied by the equivalency factor (EF) to calculate the state-only CBCF. The hospital's Title XIX RCC rate is multiplied by (1 minus the ratable) to calculate the state-only program RCC.

(e) The payments for services under the state-only MI and medical care services programs are mathematically represented as follows:

State-only program RCC = Title XIX RCC x (1 minus the ratable) x EF

State-only program CBCF = Title XIX Conversion Factor x (1 minus the ratable) x EF

(3) MAA updates each hospital's ratable annually on August 1.

(4) MAA:

(a) Uses the EF to hold the DRG reimbursement rates for the state-only programs at their current level prior to any rebasing. MAA applies the EF only to the Title XIX DRG CBCFs, not to the Title XIX RCCS. The EF does not apply when the DRG rate change is due to the application of an inflation factor.

(b) Calculates a hospital's equivalency factor as follows:  
EF = (Current state-only program CBCF divided by (Title XIX CBCF) multiplied by (1 minus the ratable))

(5) Subject to availability of funds ((W)) when a client eligible for the MI program or medical care services program has a trauma that qualifies under the trauma program, the hospital ~~((is reimbursed the full Medicaid reimbursement amount))~~ receives an enhanced payment when care has been provided in a nongovernmental hospital designated by the department of health (DOH) as a trauma services center. Subject to available funds, MAA gives an annual grant for trauma services to governmental hospitals certified by DOH.

**WSR 02-09-067**

**EMERGENCY RULES**

**DEPARTMENT OF**

**FISH AND WILDLIFE**

[Order 02-75—Filed April 15, 2002, 4:53 p.m.]

Date of Adoption: April 15, 2002.

Purpose: Commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-05100Y; and amending WAC 220-52-051.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is

EMERGENCY

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 2002 state/tribal Strait of Juan de Fuca shrimp harvest management plan requires adoption of harvest seasons and the prohibition of night time fishing contained in this emergency rule. There is insufficient time to promulgate permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Effective Date of Rule: Immediately.

April 15, 2002

Evan Jacoby

for Jeff Koenings

Director

#### NEW SECTION

**WAC 220-52-05100Z Puget Sound shrimp beam trawl fishery—Seasons.** Notwithstanding the provisions of WAC 220-52-051, effective 8:00 a.m. April 16, 2002, until further notice it is unlawful to fish for shrimp for commercial purposes in Puget Sound except as provided for in this section:

(1) Shrimp beam trawl gear:

(a) Crustacean management area 3 outside of the shrimp district - Open until further notice.

(2) For purposes of shrimp trawl catch reporting: 23A East is that portion of Marine Fish-Shellfish Management and Catch Reporting Area 23A, east of a line projected true north from the Dungeness lighthouse; and 23A West is that portion of Marine Fish-Shellfish Management and Catch Reporting Area 23A, west of the line described herein.

(3) It is unlawful to harvest shrimp using shrimp beam trawl gear from one hour after official sunset to one hour before official sunrise.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-05100Y Puget Sound shrimp beam trawl fishery—Seasons. (02-71)

WSR 02-07-007
RULES OF COURT
STATE SUPREME COURT

[March 6, 2002]

IN THE MATTER OF THE ADOPTION OF THE ) ORDER
PROPOSED NEW SET OF ENFORCEMENT ) NO. 25700-A-728
OF LAWYER CONDUCT (ELC), AND )
AMENDMENTS TO GR 1, APR 3(c), APR 8, )
APR 9, APR 11 (REGULATION 101), APR )
12.1(c), APR 14, APR 16(c), APR 17(a), APR )
18(c), NEW APR 20, NEW APR 21, NEW APR )
21.1, NEW APR 21.2, NEW APR 21.3, NEW )
APR 21.4, NEW APR 21.5, NEW APR 21.6, RPC )
1.2, RPC 1.14(c), RPC 5.5, RPC 8.1, RPC 8.4 )
AND RPC 8.5 )

The Washington State Bar Association having recom-
mended the adoption of the proposed New Set of Enforce-
ment of Lawyer Conduct (ELC), and amendments to GR 1,
APR 3(c), APR 8, APR 9, APR 11 (regulation 101), APR
12.1(c), APR 14, APR 16(c), APR 17(a), APR 18(c), New
APR 20, New APR 21, New APR 21.1, New APR 21.2, New
APR 21.3, New APR 21.4, New APR 21.5, New APR 21.6,
RPC 1.2, RPC 1.14(c), RPC 5.5, RPC 8.1, RPC 8.4 and RPC
8.5, and the Court having approved the proposed new rules
and amendments for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(f), the pro-
posed new rules and amendments as attached hereto are to be
published for comment in the Washington Reports, Washing-
ton Register, Washington State Bar Association and Office of
the Administrator for the Court's websites expeditiously.

(b) The purpose statement as required by GR 9(d), is
published solely for the information of the Bench, Bar and
other interested parties.

(c) Comments are to be submitted to the Clerk of the
Supreme Court by either U.S. Mail or Internet E-Mail by no
later than 90 days from the date published in the Washington
Reports. Comments may be sent to the following addresses:
P.O. Box 40929, Olympia, Washington 98504-0929, or
Lisa.Bausch@courts.wa.gov. Comments submitted by e-
mail message must be limited to 1500 words.

DATED at Olympia, Washington this 6th day of March
2002.

Gerry L. Alexander
Chief Justice

[ADOPT NEW SET OF RULES]

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[ADOPT NEW RULES]

**RULES FOR ENFORCEMENT OF LAWYER CONDUCT (ELC)**

**TITLE 1 - SCOPE, JURISDICTION, AND DEFINITIONS**

**ELC 1.1 SCOPE OF RULES**

These rules govern the procedure by which a lawyer may be subjected to disciplinary sanctions or actions for violation of the Rules of Professional Conduct adopted by the Washington Supreme Court.

**ELC 1.2 JURISDICTION**

Any lawyer admitted, or permitted by rule, to practice law in this state, and any lawyer specially admitted by a court of this state for a particular case, is subject to these Rules for Enforcement of Lawyer Conduct. Jurisdiction exists regardless of the lawyer's residency or authority to practice law in this state.

**ELC 1.3 DEFINITIONS**

Unless the context clearly indicates otherwise, terms used in these rules have the following meanings:

- (a) "Association" means the Washington State Bar Association.
- (b) "Bar file" means the pleadings, motions, rulings, decisions, and other formal papers filed in a proceeding.
- (c) "Board" when used alone means the Disciplinary Board.
- (d) "Chair" when used alone means the Chair of the Disciplinary Board.
- (e) "Clerk" when used alone means the Clerk to the Disciplinary Board.
- (f) "Disciplinary action" means sanctions under rule 13.1 and admonitions under rule 13.5.
- (g) "Final" means no review has been sought in a timely fashion or all appeals have been concluded.
- (h) "Grievant" means the person or entity who files a grievance, except for a confidential source under rule 5.2.
- (i) "Hearing officer" means the person assigned under rule 10.2 (a)(1) or, when a hearing panel has been assigned, the hearing panel chair.
- (j) "Mental or physical incapacity" includes, but is not limited to, insanity, mental illness, senility, or debilitating use of alcohol or drugs.
- (k) "Panel" means a hearing panel under rule 10.2 (a)(2).
- (l) "Party" means disciplinary counsel or respondent, except in rules 2.3(h) and 2.6(e) "party" also includes a grievant.
- (m) "Respondent" means a lawyer against whom a grievance is filed or a lawyer investigated by disciplinary counsel.
- (n) "APR" means the Admission to Practice Rules.
- (o) "CR" means the Superior Court Civil Rules.
- (p) "RAP" means the Rules of Appellate Procedure.
- (q) "RPC" means the Rules of Professional Conduct adopted by the Washington Supreme Court.
- (r) **Words of authority.**

(1) "May" means "has discretion to," "has a right to," or "is permitted to".

(2) "Must" means "is required to".

(3) "Should" means recommended but not required, except:

(A) in rules 2.3(h) and 2.6, "should" has the meaning ascribed to it in the Code of Judicial Conduct; and

(B) in title 12, "should" has the meaning ascribed to it in the Rules of Appellate Procedure.

**ELC 1.4 NO STATUTE OF LIMITATION**

No statute of limitation or other time limitation restricts filing a grievance or bringing a proceeding under these rules, but the passage of time since an act of misconduct occurred may be considered in determining what if any action or sanction is warranted.

**ELC 1.5 VIOLATION OF DUTIES IMPOSED BY THESE RULES**

A lawyer violates RPC 8.4(l) and may be disciplined under these rules for violating duties imposed by these rules, including but not limited to the following duties:

- respond to inquiries or requests about matters under investigation, rule 5.3(f);
- file an answer to a formal complaint or to an amendment to a formal complaint, rule 10.5;
- cooperate with discovery and comply with hearing orders, rules 10.11(g) and 5.5;
- attend a hearing and bring materials requested by disciplinary counsel, rule 10.13 (b) and (c);
- respond to subpoenas and comply with orders enforcing subpoenas, rule 10.13(e);
- notify clients and others of inability to act, rule 14.1;
- discontinue practice, rule 14.2;
- file an affidavit of compliance, rule 14.3;
- maintain confidentiality, rule 3.2(f);
- report being disciplined or transferred to disability inactive status in another jurisdiction, rule 9.2(a);
- cooperate with an examination of books and records, rule 15.2;
- notify the Association of a trust account overdraft, rule 15.4(d);
- file a declaration or questionnaire certifying compliance with RPC 1.14, rule 15.5;
- comply with conditions of probation, rule 13.8;
- comply with conditions of a stipulation, rule 9.1;
- pay restitution, rule 13.7; or
- pay costs, rule 5.3(f) or 13.9.

**TITLE 2 - ORGANIZATION AND STRUCTURE**

**ELC 2.1 SUPREME COURT**

The Washington Supreme Court has exclusive responsibility in the state to administer the lawyer discipline and disability system and has inherent power to maintain appropriate standards of professional conduct and to dispose of individual cases of lawyer discipline and disability. Persons carrying out the functions set forth in these rules act under the Supreme Court's authority.

**ELC 2.2 BOARD OF GOVERNORS**

(a) **Function.** The Board of Governors of the Association:

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(1) supervises the general functioning of the Disciplinary Board, review committees, disciplinary counsel, Association staff, and adjunct investigative counsel;

(2) makes appointments, removes those appointed, and fills vacancies as provided in these rules; and

(3) performs other functions and takes other actions provided in these rules, delegated by the Supreme Court, or necessary and proper to carry out its duties.

**(b) Limitation of Authority.** The Board of Governors has no right or responsibility to review hearing officer, hearing panel, or Disciplinary Board decisions or recommendations in specific cases.

**(c) Restriction on Representing Respondents.** Former members of the Board of Governors and former Presidents of the Association are subject to the restrictions on representing respondents in rule 2.13(b).

#### ELC 2.3 DISCIPLINARY BOARD

**(a) Function.** The Board performs the functions provided under these rules, delegated by the Board of Governors or Supreme Court, or necessary and proper to carry out its duties.

#### **(b) Membership.**

(1) *Composition.* The Board consists of not fewer than three nonlawyer members, appointed by the Court, and not fewer than one lawyer member from each congressional district, appointed by the Board of Governors.

(2) *Qualifications.* Lawyer members must have been active members of the Association for at least seven years.

(3) *Voting.* Each member, including the Chair and the Vice Chair, whether nonlawyer or lawyer, has one vote.

(4) *Quorum.* A majority of the Board members constitutes a quorum. If there is a quorum, the concurrence of a majority of those present and voting constitutes action of the Board, so long as at least seven members vote.

(5) *Leave of Absence While Grievance Is Pending.* If a grievance is filed against a lawyer member of the Board, the following procedures apply:

(A) the member initially decides whether to remain on the Board or take a leave of absence until the matter is resolved;

(B) if the member chooses to remain on the Board, the Conflicts Review Officer must promptly provide a confidential summary of the grievance to the Board of Governors with a copy to the member;

(C) the Board of Governors should then, or at any time thereafter it deems appropriate, determine if the member is so impaired from serving on the Disciplinary Board that the member should take, or continue to take, a leave of absence to protect the integrity of the discipline system. In making this determination, the Board of Governors should consider, among other things, the facts, circumstances, and nature of the misconduct alleged, the possible outcome, and the extent of public concern regarding the matter;

(D) the Board of Governors' deliberations are confidential. All materials of the Board of Governors in connection with such a matter are confidential unless released under rule 3.4 (d) or (e).

**(c) Terms of Office.** The term of office for a Board member is three years. Newly created Board positions may

be filled by appointments of less than three years, as designated by the Court or the Board of Governors, to permit as equal a number of positions as possible to be filled each year. Terms of office begin October 1 and end September 30 or when a successor has been appointed, whichever occurs later. Members may not serve more than one term except as otherwise provided in these rules. Members continue to serve until replaced, except a member's term of office ends immediately if a disciplinary sanction is imposed.

**(d) Chair.** The Board of Governors annually designates one lawyer member of the Board to act as Chair and another as Vice Chair. The Vice Chair serves in the absence of or at the request of the Chair.

**(e) Unexpired Terms.** The Board of Governors fills unexpired terms in lawyer membership on the Board. The Supreme Court fills unexpired terms in nonlawyer membership. A member appointed to fill an unexpired term will complete the unexpired term of the member replaced, and may be reappointed to a consecutive term if the unexpired term is less than 18 months.

**(f) Pro Tempore Members.** If a Board member is disqualified or unable to function, the Chair may, by written order, designate a member pro tempore. A member pro tempore must have either previously served on the Board or be appointed as an alternate Board member by the Board of Governors if a lawyer or by the Supreme Court if a nonlawyer. Only a lawyer may be appointed to substitute for a lawyer member, and only a nonlawyer to substitute for a nonlawyer member.

**(g) Meetings.** The Board meets regularly at times and places it determines. The Chair may convene special Board meetings. In the Chair's discretion, the Board may meet and act through electronic, telephonic, written, or other means of communication.

#### **(h) Disqualification.**

(1) A Board member should disqualify him or herself from a particular matter in which the member's impartiality might reasonably be questioned, including, but not limited to, instances in which:

(A) the member has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the matter;

(B) the member previously served as a lawyer or was a material witness in the matter in controversy, or a lawyer with whom the member practices law serves or has previously served as a lawyer concerning the matter, or such lawyer is or has been a material witness concerning the matter;

(C) the member knows that, individually or as a fiduciary, the member or the member's spouse or relative residing in the member's household, has an economic interest in the subject matter in controversy or in a party to the matter, or is an officer, director, or trustee of a party or has any other interest that could be substantially affected by the outcome of the matter, unless there is a remittal of disqualification under section (i);

(D) the member or the member's spouse or relative residing in the member's household, or the spouse of such a person:

(i) is a party to the matter, or an officer, director, or trustee of a party;

(ii) is acting as a lawyer in the matter;

(iii) is to the member's knowledge likely to be a material witness in the matter;

(E) the member served as a hearing officer or hearing panel member for a hearing on the matter, or served on a review committee that issued an admonition to the lawyer regarding the matter.

**(i) Remittal of Disqualification.** A member disqualified under subsection (h)(1)(C) or (h)(1)(D) may, instead of withdrawing from consideration of the matter, disclose on the record the basis of the disqualification. If, based on such disclosure, the parties and lawyers, independently of the member's participation, all agree in writing or on the record that the member's relationship is immaterial or that the member's economic interest is de minimis, the member is no longer disqualified, and may participate in the matter. If a party is not immediately available, the member may proceed on the assurance of the party's counsel that the party's consent will be subsequently given.

**(j) Counsel and Clerk.** The Executive Director of the Association, under the direction of the Board of Governors, may appoint a suitable person or persons to act as counsel and clerk to the Board, to assist the Board and the review committees in carrying out their functions under these rules.

**(k) Restriction on Representing Respondents.** Former members of the Disciplinary Board are subject to the restrictions on representing respondents in rule 2.13(b).

#### ELC 2.4 REVIEW COMMITTEES

**(a) Function.** A review committee performs the functions provided under these rules, delegated by the Board or the Chair, or necessary and proper to carry out its duties.

**(b) Membership.** The Chair appoints three or more review committees of three members each from among the Board members. Each review committee consists of two lawyers and one nonlawyer. The Chair may reassign members among the several committees on an interim or permanent basis. The Chair does not serve on a review committee.

**(c) Review Committee Chair.** The Chair of the Disciplinary Board designates one member of each review committee to act as its chair.

**(d) Terms of Office.** A review committee member serves as long as the member is on the Board.

**(e) Distribution of Cases.** The Clerk assigns matters to the several review committees under the Chair's direction, equalizing the committee's caseloads as possible.

**(f) Meetings.** A review committee meets at times and places determined by the review committee chair, under the general direction of the Chair of the Disciplinary Board. In the review committee chair's discretion, the committee may meet and act through electronic, telephonic, written, or other means of communication.

**(g) Adjunct Review Committee Members.** Notwithstanding other provisions of these rules, if deemed necessary to the efficient operation of the discipline system, the Board may authorize the Chair to appoint former Board members as adjunct review committee members for a period deemed necessary by the Chair, but those appointments terminate at the

end of the term of the Chair making the appointment. The Chair may remove adjunct review committee members when deemed appropriate. The Chair may appoint adjunct review committee members to existing review committees or may create adjunct review committees. An adjunct member has the same authority as a regular review committee member and must comply with rule 2.3 (b)(5) but is not otherwise a Board member.

#### ELC 2.5 HEARING OFFICER OR PANEL

**(a) Function.** A hearing officer or panel to whom a case has been assigned for hearing conducts the hearing and performs other functions as provided under these rules.

**(b) Qualifications.** A hearing officer must be an active member of the Association, have been an active or judicial member of the Association for at least seven years, have no record of public discipline, and have experience as an adjudicator or as an advocate in contested adjudicative hearings.

**(c) Hearing Officer Selection Panel.** The hearing officer selection panel makes recommendations to the Board of Governors for appointment, reappointment, and removal of hearing officers. The panel is appointed by the Board of Governors and includes, but is not limited to, a Board of Governors member who serves as its chair, one or more former Chairs of the Disciplinary Board, and one or more former nonlawyer members of the Disciplinary Board.

**(d) Appointment.** The Board of Governors appoints hearing officers to the hearing officer list giving consideration to recommendations of the hearing officer selection panel. The list should include as many lawyers as the Board of Governors considers necessary to carry out the provisions of these rules effectively and efficiently. In making appointments, the Board of Governors should consider diversity in gender, ethnicity, geography, and practice experience. The Board of Governors also maintains a list of nonlawyers willing to serve on hearing panels under section (h).

**(e) Terms of Appointment.** Appointment to the hearing officer list, or the list of nonlawyers, is for an initial period of one year, followed by periods of five years. Reappointment is in the Board of Governors' discretion. A hearing officer or panel member may continue to act in any matter assigned before his or her term expires. On the recommendation of the hearing officer selection panel, the Board of Governors may remove a person from the list of hearing officers or from the list of nonlawyer panel members.

**(f) Chief Hearing Officer.** The Board of Governors appoints a chief hearing officer who, in addition to hearing matters, assigns cases, monitors and evaluates the performance of hearing officers and panel members, establishes requirements for and supervises hearing officer and hearing panel member training, administers hearing officer compensation, hears prehearing motions when no hearing officer has been assigned, and performs other administrative duties necessary for an efficient and effective hearing system. If the chief hearing officer position is vacant or the chief hearing officer has recused or been disqualified from a particular matter, the Chair may, as necessary, perform the administrative duties of chief hearing officer.

(g) **Case Assignment.** The chief hearing officer assigns hearing officers to cases from the list of hearing officers appointed by the Board of Governors.

(h) **Hearing Panel.** If a hearing panel is assigned to hear a matter, the chief hearing officer appoints the panel. A panel consists of three persons, with at least one from the hearing officer list and at least one nonlawyer from the list maintained by the Board of Governors.

(i) **Training.** Hearing officers and hearing panel members must comply with training requirements established by the chief hearing officer.

#### ELC 2.6 HEARING OFFICER CONDUCT

(a) **"Hearing Officer" Includes Panel Members.** In this rule, the term "hearing officer" includes hearing panel members.

(b) **Integrity of Hearing Officer System.** The integrity and fairness of the disciplinary system requires that hearing officers observe high standards of conduct. To the extent applicable, the Code of Judicial Conduct should guide hearing officers. The following rules have been adapted from Canon 2 and Canon 3 of the Code of Judicial Conduct as particularly applicable to hearing officers, and the words "should" and "shall" have the meanings ascribed to them in those rules.

(c) **Hearing Officer's Duty To Avoid Impropriety and the Appearance of Impropriety.** Hearing officers should respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the disciplinary system. Hearing officers should not allow family, social, or other relationships to influence their conduct or judgment. Hearing officers should not lend the prestige of the hearing officer position to advance the private interests of the hearing officer or others; nor should hearing officers convey or permit others to convey the impression that they are in a special position to influence them. Hearing officers should not be members of any organization practicing discrimination prohibited by law.

(d) **Conduct of Those on Hearing Officer List.** A person on the hearing officer list should not:

- (1) testify voluntarily as a character witness in a disciplinary proceeding;
- (2) serve as an expert witness related to the professional conduct of lawyers in any proceeding; or
- (3) serve as special disciplinary counsel, adjunct investigative counsel, or respondent's counsel.

(e) **Performing Duties Impartially and Diligently.** When acting as a hearing officer, the following standards apply:

#### (1) *Adjudicative Responsibilities.*

(A) Hearing officers should be faithful to the law and maintain professional competence in it. Hearing officers should be unswayed by partisan interests, public clamor, or fear of criticism.

(B) Hearing officers should maintain order and decorum in proceedings before them.

(C) Hearing officers should be patient, dignified, and courteous to parties, witnesses, lawyers, and others with whom hearing officers deal in their official capacity, and

should require similar conduct of lawyers, and of the staff, and others subject to their direction and control.

(D) Hearing officers should accord to every person who is legally interested in a proceeding, or that person's lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceeding. Hearing officers, however, may obtain the advice of a disinterested expert on the law applicable to a proceeding before them, by amicus curiae only, if they afford the parties reasonable opportunity to respond.

(E) Hearing officers shall perform their duties without bias or prejudice.

(F) Hearing officers should dispose promptly of assigned matters.

(G) Hearing officers shall not, while a proceeding is pending or impending, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair hearing. The hearing officer shall require similar abstention on the part of personnel subject to the hearing officer's direction and control. This section does not prohibit hearing officers from making public statements in the course of their official duties or from explaining for public information the procedures of the discipline system.

#### (2) *Administrative Responsibilities.*

(A) Hearing officers should diligently discharge their administrative responsibilities.

(B) Hearing officers should require their staff and others subject to their direction and control to observe the standards of fidelity and diligence that apply to them.

#### (3) *Disciplinary Responsibilities.*

(A) Hearing officers having actual knowledge that another hearing officer has committed a violation of these rules should take appropriate action. Hearing officers having actual knowledge that another hearing officer has committed a violation of these rules that raises a substantial question as to the other hearing officer's fitness for office should take or initiate appropriate corrective action, which may include informing the appropriate authority.

(B) Hearing officers having actual knowledge that a lawyer has committed a violation of the Rules of Professional Conduct or Rules for Enforcement of Lawyer Conduct should take appropriate action. Hearing officers having actual knowledge that a lawyer has committed a violation of the Rules of Professional Conduct or Rules for Enforcement of Lawyer Conduct that raises a substantial question as to the lawyer's fitness as a lawyer should take or initiate appropriate corrective action, which may include informing the appropriate authority.

#### (4) *Disqualification.*

(A) Hearing officers should disqualify themselves in a proceeding in which their impartiality might reasonably be questioned, including but not limited to instances in which:

(i) the hearing officer has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(ii) the hearing officer previously served as a lawyer or was a material witness in the matter in controversy, or a law-

yer with whom the hearing officer previously practiced law served during such association as a lawyer concerning the matter, or such lawyer has been a material witness concerning it;

(iii) the hearing officer knows that, individually or as a fiduciary, the hearing officer or the hearing officer's spouse or member of the hearing officer's family residing in the hearing officer's household, has an economic interest in the subject matter in controversy or in a party to the proceeding, or is an officer, director or trustee of a party or has any other interest that could be substantially affected by the outcome of the proceeding, unless there is a remittal of disqualification;

(iv) the hearing officer or the hearing officer's spouse or member of the hearing officer's family residing in the hearing officer's household, or the spouse of such a person:

(a) is a party to the proceeding, or an officer, director, or trustee of a party;

(b) is acting as a lawyer in the proceeding;

(c) is to the hearing officer's knowledge likely to be a material witness in the proceeding.

(B) Hearing officers should inform themselves about their personal and fiduciary economic interests, and make a reasonable effort to inform themselves about the personal economic interests of their spouse and minor children residing in their household.

(5) *Remittal of Disqualification.* A hearing officer disqualified by the terms of subsections (e)(4)(A)(iii) or (iv) may, instead of withdrawing from the proceeding, disclose on the record the basis of the disqualification. If, based on such disclosure, the parties and lawyers, independently of the hearing officer's participation, all agree in writing or on the record that the hearing officer's relationship is immaterial or that the hearing officer's economic interest is de minimis, the hearing officer is no longer disqualified and may participate in the proceeding. When a party is not immediately available, the hearing officer may proceed on the assurance of the lawyer that the party's consent will be subsequently given.

#### ELC 2.7 CONFLICTS REVIEW OFFICER

(a) **Function.** The Conflicts Review Officer reviews grievances filed against disciplinary counsel, hearing officers, other lawyers employed by the Association, and members of the Disciplinary Board, the Board of Governors, and the Supreme Court. After obtaining the respondent lawyer's response to the grievance, the Conflicts Review Officer may dismiss the grievance, defer the investigation, or assign the grievance to special disciplinary counsel for further investigation. The Conflicts Review Officer acts independently of disciplinary counsel and the Association.

(b) **Appointment and Qualifications.** The Supreme Court, on the recommendation of the Board of Governors, appoints an active member of the Association to a three year renewable term as Conflicts Review Officer. To be eligible for appointment as Conflicts Review Officer, a lawyer must have prior experience either as a Disciplinary Board member or as disciplinary counsel or special disciplinary counsel. The Conflicts Review Officer may have no other active role in the discipline system during the term of appointment. When the Conflicts Review Officer is not available to handle a matter due to conflict of interest or other good cause, on the

recommendation of the Board of Governors, the Supreme Court will appoint a Conflicts Review Officer pro tempore for the matter.

(c) **Access to Disciplinary Information.** The Conflicts Review Officer has access to any otherwise confidential disciplinary information necessary to perform the duties required by these rules.

(d) **Compensation and Expenses.** The Association reimburses a Conflicts Review Officer for all necessary and reasonable expenses and compensates a Conflicts Review Officer at a level established by the Board of Governors.

#### ELC 2.8 DISCIPLINARY COUNSEL; SPECIAL DISCIPLINARY COUNSEL

(a) **Function.** Disciplinary counsel acts as counsel on the Association's behalf on all matters under these rules, and performs other duties as required by these rules, the Executive Director, or the Board of Governors.

(b) **Appointment.** The Executive Director of the Association, under the direction of the Board of Governors, employs a suitable member or members of the Association as disciplinary counsel. Special disciplinary counsel may be appointed whenever necessary to conduct an individual investigation or proceeding.

#### ELC 2.9 ADJUNCT INVESTIGATIVE COUNSEL

(a) **Function.** Adjunct investigative counsel performs the functions set forth in these rules.

(b) **Appointment and Term of Office.** The Board of Governors, in consultation with the Chief Disciplinary Counsel, appoints adjunct investigative counsel from among the active members of the Association, who have been active or judicial Association members for at least seven years, have no record of disciplinary misconduct, and are in good standing. In appointing adjunct investigative counsel, the Board of Governors should consider diversity in gender, ethnicity, geography, and practice experience. Each adjunct investigative counsel is appointed for a five year term on a staggered basis and may be reappointed. Adjunct investigative counsel should be trained in the investigation of discipline cases.

#### ELC 2.10 REMOVAL OF APPOINTEES

The power granted by these rules to any person, committee, or board to make any appointment includes the power to remove the person appointed whenever that person appears unwilling or unable to perform his or her duties, or for any other cause, and to fill the resulting vacancy.

#### ELC 2.11 COMPENSATION AND EXPENSES

(a) **Compensation.** The Association compensates the chief hearing officer to the extent authorized by the Board of Governors. The Association may compensate hearing officers and hearing panel members to the extent authorized by the Board of Governors. Board members and adjunct investigative counsel receive no compensation for their services.

(b) **Expenses.** The Association pays expenses incurred by hearing officers, hearing panel members, the chief hearing officer, Board members, and adjunct investigative counsel in connection with their duties, subject to any limitation established by resolution of the Board of Governors.

(c) **Special Appointments.** The Association pays the fees for counsel appointed under rules 7.7, 8.2 (c)(2), or 8.3

(d)(3) and costs or expenses reasonably incurred by these counsel.

#### ELC 2.12 EXONERATION FROM LIABILITY

(a) **Association and Its Agents.** No cause of action accrues in favor of a respondent lawyer or any other person, arising from an investigation or proceeding under these rules, against the Association, or its officers or agents (including but not limited to its staff, members of the Board of Governors, the Disciplinary Board, review committees, and hearing panels; hearing officers; disciplinary counsel; adjunct investigative counsel; adjunct review committee members; lawyers appointed under rule 7.7, 8.2 (c)(2), or 8.3 (d)(3); probation officers appointed under rule 13.8; or any other individual acting under authority of these rules) provided only that the Association or individual acted in good faith. The burden of proving bad faith in this context is on the person asserting it. The Association must defend any action against an officer or agent of the Association for actions taken in good faith under these rules, bear the costs of that defense, and indemnify the officer or agent against any such judgment.

(b) **Grievants and Witnesses.** Communications to the Association, Board of Governors, Disciplinary Board, review committee, hearing officer or panel, disciplinary counsel, adjunct investigative counsel, Association staff, or any other individual acting under authority of these rules, are absolutely privileged, and no lawsuit predicated thereon may be instituted against any grievant, witness, or other person providing information.

#### ELC 2.13 RESPONDENT LAWYER

(a) **Right to Representation.** A lawyer may be represented by counsel during any stage of an investigation or proceeding under these rules.

(b) **Restrictions on Representation of Respondent.** A former Association president, a former Board of Governors member, or a former Disciplinary Board member cannot represent a respondent lawyer in any proceeding under these rules until three years after leaving office. Service as an Adjunct Review Committee Member or as a Member Pro Tempore of the Board does not invoke this rule.

(c) **Restriction on Charging Fee To Respond to Grievance.** A respondent lawyer may not seek to charge a grievant a fee or recover costs from a grievant for responding to a grievance unless otherwise permitted by these rules.

(d) **Medical and Psychological Records.** A respondent must furnish written releases or authorizations to permit disciplinary counsel access to medical, psychiatric, or psychological records as may be relevant to the investigation or proceeding, subject to a motion to the chief hearing officer, or the hearing officer if one has been appointed, to limit the scope of the requested releases or authorizations for good cause shown.

#### TITLE 3 - ACCESS AND NOTICE

##### ELC 3.1 OPEN MEETINGS AND PUBLIC DISCIPLINARY INFORMATION

(a) **Open Meetings.** Disciplinary hearings and meetings of the Board are public. Except as otherwise provided in these rules, Supreme Court proceedings are public to the same extent as other Supreme Court proceedings. Delibera-

tions of a hearing officer or panel, board, review committee, or court, and matters made confidential by a protective order, or by other provisions of these rules, are not public.

(b) **Public Disciplinary Information.** The public has access to the following information subject to these rules:

(1) the record before a review committee and the order of the review committee in any matter that a review committee has ordered to hearing or ordered an admonition be issued;

(2) the record upon distribution to a review committee or to the Supreme Court in proceedings based on a conviction of a felony or serious crime, as defined in rule 7.1(a);

(3) the record upon distribution to a review committee or to the Supreme Court in proceedings under rule 7.2;

(4) a statement of concern to the extent provided under rule 3.4(f);

(5) the record and order upon approval of a stipulation for discipline imposing a sanction or admonition, and the order approving a stipulation to dismissal of a matter previously made public under these rules;

(6) the record before a hearing officer or panel;

(7) the record and order before the Board in any matter reviewed under rule 10.9 or title 11;

(8) the bar file and any exhibits and any Board or review committee order in any matter that the Board or a review committee has ordered to public hearing, or any matter in which disciplinary action has been taken, or any proceeding under rules 7.1-7.6;

(9) in any disciplinary matter referred to the Supreme Court, the file, record, briefs, and argument in the case;

(10) a lawyer's resignation in lieu of disbarment under rule 9.3; and

(11) any sanction or admonition imposed on a respondent.

(c) **Regulations.** Public access to file materials and proceedings permitted by this rule may be subject to reasonable regulation as to time, place, and manner of access. Certified copies of public bar file documents will be made available at the same rate as certified copies of superior court records. Uncertified copies of public bar file documents will be made available at a rate to be set by the Executive Director of the Association.

##### ELC 3.2 CONFIDENTIAL DISCIPLINARY INFORMATION

(a) **Scope of Confidentiality.** All disciplinary materials that are not public information as defined in rule 3.1(b) are confidential, and are held by the Association under the authority of the Supreme Court, including but not limited to materials submitted to a review committee under rule 8.9 or information protected by rule 3.3(b), rule 5.4(b), rule 5.1 (c)(3), a protective order under rule 3.2(e), rule 3.2(b), court order, or other applicable law (e.g., medical records, police reports, etc.).

(b) **Restriction on Release of Client Information.** Notwithstanding any other provision of this title, no information identified or known to the Association to constitute client information that a lawyer would be required to keep confidential under RPC 1.6 may be released under rule 3.4 (c) - (i) unless the client consents, including implied consent under rule 5.1(b).

**(c) Investigative Confidentiality.** During the course of an investigation or proceeding, the Chief Disciplinary Counsel may direct that otherwise public information be kept confidential if necessary to further the purposes of the investigation. At the conclusion of the proceeding, those materials become public information unless subject to a protective order.

**(d) Discipline Under Prior Rules.** Discipline imposed under prior rules of this state that was confidential when imposed remains confidential. A record of confidential discipline may be kept confidential during proceedings under these rules, or in connection with a stipulation under rule 9.1, through a protective order under section (e).

**(e) Protective Orders.** To protect a compelling interest of a grievant, witness, third party, respondent lawyer, or other participant in an investigation, on motion and for good cause shown, the Board Chair, the chair of a review committee to which a matter is assigned, or a hearing officer to whom a matter is assigned may issue a protective order prohibiting the disclosure or release of specific information, documents, or pleadings, and direct that the proceedings be conducted so as to implement the order. Filing a motion for a protective order stays the provisions of this title as to any matter sought to be kept confidential until five days after a ruling is served on the parties. The Board reviews decisions granting or denying a protective order if either the respondent lawyer or disciplinary counsel requests a review within five days of service of the decision. On review, the Board may affirm, reverse, or modify the protective order. The Board's decision is not subject to further review. A request for review by the Board stays the provisions of this title as to any matter sought to be kept confidential in that request, and the request itself is confidential until a ruling is issued.

**(f) Wrongful Disclosure or Release.** Disclosure or release, except as permitted by these rules, by any person involved with an investigation or proceeding, either as the Association's officer or agent (including, but not limited to, its staff, members of the Board of Governors, the Disciplinary Board, a review committee, hearing panels, hearing officers, disciplinary counsel, adjunct investigative counsel, a lawyer appointed under rule 7.7, or any other individual acting under authority of these rules) of any information about a pending or completed investigation or proceeding, except as permitted by these rules, may subject that person to an action for contempt of the Supreme Court. If the person is a lawyer, wrongful disclosure or release may also be grounds for discipline.

#### ELC 3.3 APPLICATION TO STIPULATIONS, DISABILITY PROCEEDINGS, AND DIVERSION CONTRACTS

**(a) Application to Stipulations.** A stipulation under rule 9.1 providing for imposition of a disciplinary sanction or admonition is confidential until approved, except that a grievant may be advised concerning a stipulation and its proposed or actual content at any time. An approved stipulation is public, unless:

- (1) it is approved before the filing of a formal complaint;
- (2) it provides for dismissal of a grievance without a disciplinary sanction or admonition; and

(3) proceedings have not been instituted for failure to comply with the terms of the stipulation.

**(b) Application to Disability Proceedings.** Disability proceedings under title 8 are confidential. However, a grievant may be advised that a lawyer against whom the grievant has complained is subject to disability proceedings. The following information is public:

- (1) that a lawyer has been transferred to disability inactive status, or has been reinstated to active status; and
- (2) that a disciplinary proceeding is deferred pending supplemental proceedings under title 8.

**(c) Diversion Contracts.** Diversion contracts and supporting affidavits and declarations under rules 6.5 and 6.6 are confidential, despite rule 3.1 (b)(1), unless admitted into evidence in a disciplinary proceeding following termination of the diversion contract for material breach. When a matter that has previously become public under rule 3.1(b) is diverted by a diversion contract, that contract and the supporting documents are confidential but the fact that the matter was diverted from discipline is public information.

#### ELC 3.4 RELEASE OR DISCLOSURE OF OTHERWISE CONFIDENTIAL INFORMATION

**(a) Disclosure of Information.** Except as provided in rule 3.2(e), the grievant, respondent lawyer, or any witness may disclose the existence of proceedings under these rules or any documents or correspondence the person received.

**(b) Investigative Disclosure.** The Association may disclose information as necessary to conduct the investigation or to keep a grievant advised of the status of a matter except as prohibited by rule 3.3(b), 5.4(b), or 5.1 (c)(3), a protective order under rule 3.2(e), other court order, or other applicable law.

**(c) Release Based upon Lawyer's Waiver.** Upon a written waiver by a lawyer, the Association may release the status of otherwise confidential disciplinary proceedings and provide copies of nonpublic information to:

(1) the Washington State Bar Association Committee of Law Examiners, the Washington State Bar Association Character and Fitness Committee, the National Conference of Bar Examiners, or the comparable body in other jurisdictions to evaluate the character and fitness of an applicant for admission to the practice of law in that jurisdiction;

(2) the Washington State Bar Association Judicial Recommendation Committee, or the comparable body in other jurisdictions, to evaluate the character and fitness of a candidate for judicial office;

(3) the Governor of the State of Washington, or of any other state, or his or her delegate, to evaluate the character and fitness of a potential nominee to judicial office; and

(4) any other agency that a lawyer authorizes to investigate the lawyer's disciplinary record.

**(d) Response to Inquiry or False or Misleading Statement.**

(1) Subject to rule 3.2(e), the President, the Board of Governors, the Executive Director, or Chief Disciplinary Counsel, or a designee of any of them, may release otherwise confidential information:

(A) to respond to specific inquiries about matters that are in the public domain; or

(B) if necessary to correct a false or misleading public statement.

(2) A respondent must be given notice of a decision to release information under this section unless the President, the Board of Governors, the Executive Director, or the Chief Disciplinary Counsel finds that notice would jeopardize serious interests of any person or the public or compromise an ongoing investigation.

**(e) Discretionary Release.** The Executive Director or the Chief Disciplinary Counsel may authorize the general or limited release of any confidential information obtained during an investigation when it appears necessary to protect the interests of clients or other persons, the public, or the integrity of the disciplinary process. A respondent must be given notice of a decision to release information under this section before its release unless the Executive Director or the Chief Disciplinary Counsel finds that notice would jeopardize serious interests of any person or the public, or that the delay caused by giving the respondent notice would be detrimental to the integrity of the disciplinary process.

**(f) Statement of Concern.**

(1) *Authority.* The Chief Disciplinary Counsel has discretion to file a statement of concern with the Clerk when deemed necessary to protect members of the public from a substantial threat, based on information from a pending investigation into a lawyer's apparent ongoing serious misconduct not otherwise made public by these rules.

(2) *Procedure.*

(A) On or before the date it is filed, a copy of the statement of concern must be served under rule 4.1 on the lawyer about whom the statement of concern has been made. The statement of concern is not public information until 14 days after service.

(B) The lawyer may at any time appeal to the Chair to have the statement of concern withdrawn.

(C) If an appeal to the Chair is filed with the Clerk under rule 4.2(a) within 14 days of service of the statement of concern, the statement of concern is not public information unless the Chair so orders and becomes public information upon issuance of the Chair's order.

(D) The Chair's decision is not subject to further review.

(E) The Chief Disciplinary Counsel may withdraw a statement of concern at any time.

**(g) Release to Judicial Officers.** Any state or federal judicial officer may be advised of the status of a confidential disciplinary grievance about a lawyer appearing before the judicial officer in a representational capacity and may be provided with requested confidential information if the grievance is relevant to the lawyer's conduct in a matter before that judicial officer. The judicial officer must maintain the confidentiality of the matter.

**(h) Cooperation with Criminal and Disciplinary Authorities.** Except as provided in rule 3.2(e), information or testimony may be released to authorities in any jurisdiction authorized to investigate alleged criminal activity or judicial or lawyer misconduct.

**(i) Release to Lawyers' Fund for Client Protection.** Information obtained in an investigation and about applications pending before the Lawyers' Fund for Client Protection

may be released to the Fund. The Fund must treat such information as confidential unless this title or the Executive Director authorizes release.

**(j) Conflicts Review Officer.** Conflicts review officers have access to any otherwise confidential disciplinary information necessary to perform their duties.

**(k) Board of Governors Access.** In furtherance of its supervisory function, and not in derogation of the foregoing, the Board of Governors has access to all confidential disciplinary information, but must maintain its confidentiality.

**ELC 3.5 NOTICE OF DISCIPLINE**

**(a) Notice to Supreme Court.** The counsel to the Board must provide the Supreme Court with:

(1) a copy of any decision imposing a disciplinary sanction when that decision becomes final;

(2) a copy of any admonition, together with the order issuing the admonition, when the admonition is accepted or otherwise becomes final; and

(3) a copy of any resignation in lieu of disbarment.

**(b) Other Notices.** The counsel to the Board must also notify the following entities of the imposition of a disciplinary sanction or admonition, a resignation in lieu of disbarment, or the filing of a statement of concern under rule 3.4(f) as follows, in such form as may appear appropriate:

(1) the lawyer discipline authority or highest court in any jurisdiction where the lawyer is believed to be admitted to practice;

(2) the chief judge of each federal district court in Washington State and the chief judge of the United States Court of Appeals for the Ninth Circuit;

(3) the National Discipline Data Bank; and

(4) the Washington State Bar News.

**(c) Preparation of Bar News Notice.** The counsel to the Board has discretion in drafting notices for publication in the Washington State Bar News, and should include sufficient information to adequately inform the public and the members of the Association about the misconduct found, the rules violated and the disciplinary action imposed. All notices should include the respondent lawyer's name, bar number, date of admission, the time frame of the misconduct, the rules violated, and the disciplinary action. The counsel to the Board must serve a copy of the draft notice on respondent and disciplinary counsel under rule 4.1 and review any comments filed with the counsel to the Board within five days of service, but counsel to the Board's decision about the content of the notice is not subject to further review.

**(d) Notices of Suspension, Disbarment, Resignation in Lieu of Disbarment, or Disability Inactive Status.** The Association must publish a notice of the disbarment, suspension, resignation in lieu of disbarment, or transfer to disability inactive status of a lawyer in the Washington State Bar News and electronic or other index or site maintained by the Association for public information. The Association must provide copies of these notices to the news media in a manner designed to notify the public in the county or region where the lawyer has maintained a practice. For a transfer to disability inactive status, no reference may be made to the specific disability.

(e) **Notice to Judges.** The Association must promptly notify the presiding judge of the superior court of the county in which the lawyer maintained a practice of the lawyer's disbarment, suspension, resignation in lieu of disbarment, or transfer to disability inactive status, and may similarly notify the presiding judge of any district court located in the county where the lawyer practiced, or the judge of any other court in which the lawyer may have practiced or is known to have practiced.

#### ELC 3.6 MAINTENANCE OF RECORDS

(a) **Permanent Records.** In any matter in which a disciplinary sanction has been imposed, the bar file and transcripts of the proceeding are permanent records. Related file materials, including investigative files, may be maintained in disciplinary counsel's discretion. Exhibits may be returned to the party supplying them, but copies should be retained where possible.

(b) **Destruction of Files.** In any matter in which a grievance or investigation has been dismissed without the imposition of a disciplinary sanction, whether following a hearing or otherwise, file materials relating to the matter may be destroyed three years after the dismissal first occurred, and must be destroyed at that time on the respondent lawyer's request unless the files are being used in an ongoing investigation or unless other good cause exists for retention. However, file materials on a matter concluded with an admonition must be retained at least five years after the admonition was issued. If disciplinary counsel opposes a request by a respondent for destruction of files under this rule, the Board rules on that request.

(c) **Retention of Docket.** If a file on a matter has been destroyed under section (b), the Association may retain a docket record of the matter for statistical purposes only. That docket record must not include the name or other identification of the respondent.

(d) **Deceased Lawyers.** Records and files relating to a deceased lawyer, including permanent records, may be destroyed at any time in disciplinary counsel's discretion.

### TITLE 4 - GENERAL PROCEDURAL RULES

#### ELC 4.1 SERVICE OF PAPERS

(a) **Service Required.** Every pleading, every paper relating to discovery, every written request or motion other than one which may be heard *ex parte*, and every similar paper or document issued by disciplinary counsel or the respondent lawyer under these rules must be served on the opposing party. If a hearing is pending and a hearing officer has been assigned, except for discovery, the party also must serve a copy on the hearing officer or panel chair or, if required by these rules, on each member of a hearing panel.

#### (b) Methods of Service.

##### (1) *Service by Mail.*

(A) Unless personal service is required or these rules specifically provide otherwise, service may be accomplished by postage prepaid mail. If properly made, service by mail is deemed accomplished on the date of mailing and is effective regardless of whether the person to whom it is addressed actually receives it.

(B) Except as provided below, service by mail must be by certified or registered mail, return receipt requested. Service may be by first class mail if:

(i) the parties so agree;

(ii) the document is a notice of dismissal by disciplinary counsel or by a review committee under rule 5.6, a notice regarding deferral under rule 5.3(c), or a request for review of any of these notices;

(iii) one or more properly made certified mailings is returned as unclaimed; or

(iv) service is on a hearing officer or panel.

(C) The address for service by mail is as follows:

(i) for the respondent, or his or her attorney of record, the address in the answer, a notice of appearance, or any subsequent document filed by the respondent or his or her attorney; or, in the absence of an answer, the respondent's address on file with the Association;

(ii) for disciplinary counsel, at the address of the Association or other address that disciplinary counsel requests.

(2) *Service by Delivery.* If service by mail is permitted, service may instead be accomplished by leaving the document at the address for service by mail.

(3) *Personal Service.* Personal service on a respondent is accomplished as follows:

(A) if the respondent is found in Washington State, by personal service in the manner required for personal service of a summons in a civil action in the superior court;

(B) if the respondent cannot be found in Washington State, service may be made either by:

(i) leaving a copy at the respondent's place of usual abode in Washington State with a person of suitable age and discretion then resident therein; or

(ii) mailing by registered or certified mail, postage prepaid, a copy addressed to the respondent at his or her last known place of abode, office address maintained for the practice of law, post office address, or address on file with the Association.

(C) if the respondent is found outside of Washington State, then by the methods of service described in (A) or (B) above.

#### (c) **Service Where Question of Mental Competence.**

If a guardian or guardian ad litem has been appointed for a respondent who has been judicially declared to be of unsound mind or incapable of conducting his or her own affairs, service under sections (a) and (b) above must also be made on the guardian or guardian ad litem.

(d) **Proof of Service.** If personal service is required, proof of service may be made by affidavit of service, sheriff's return of service, or a signed acknowledgment of service. In other cases, proof of service may also be made by certificate of a lawyer similar to that allowed by CR 5 (b)(2)(B), which certificate must state the form of mail used. Proof of service in all cases must be filed but need not be served on the opposing party.

#### ELC 4.2 FILING; ORDERS

(a) **Filing Originals.** Except in matters before the Supreme Court, the original of any pleading, motion, or other paper authorized by these rules, other than discovery, must be filed with the Clerk. Filing may be made by first class mail

and is deemed accomplished on the date of mailing. Filing of papers for matters before the Supreme Court is governed by the Rules of Appellate Procedure.

**(b) Filing and Service of Orders.** Any written order, decision, or ruling, except an order of the Supreme Court or an informal ruling issued under rule 10.8(e), must be filed with the Clerk, and the Clerk serves it on the respondent lawyer and disciplinary counsel.

#### ELC 4.3 PAPERS

All pleadings or other papers must be typewritten or printed, double spaced, on good quality 8 1/2 by 11-inch paper. The use of letter-size copies of exhibits is encouraged if it does not impair legibility.

#### ELC 4.4 COMPUTATION OF TIME

CR 6 (a) and (e) govern the computation of time under these rules.

#### ELC 4.5 STIPULATION TO EXTENSION OR REDUCTION OF TIME

Except for notices of appeal or matters pending before the Supreme Court, the respondent lawyer and disciplinary counsel may stipulate in any proceeding to extension or reduction of the time requirements.

#### ELC 4.6 SUBPOENA UNDER THE LAW OF ANOTHER JURISDICTION

Disciplinary counsel, the chief hearing officer, or the Chair may issue a subpoena for use in lawyer discipline or disability proceedings in another jurisdiction if the issuance of the subpoena has been authorized under the law of that jurisdiction and upon a showing of good cause. The subpoena may compel the attendance of witnesses and production of documents in the county where the witness resides or is employed or elsewhere as agreed by the witness. These rules apply to service, enforcement, and challenges to subpoenas issued under this rule.

#### ELC 4.7 ENFORCEMENT OF SUBPOENAS

**(a) Authority.** To enforce subpoenas issued under these rules, the Supreme Court delegates contempt authority to the Superior Courts as necessary for the Superior Courts to act under this rule.

#### **(b) Procedure.**

(1) If a person fails to obey a subpoena, or obeys the subpoena but refuses to testify or produce documents when requested, disciplinary counsel, the respondent lawyer or the person issuing the subpoena may petition the Superior Court of the county where the hearing is being conducted, where the subpoenaed person resides or is found, or where the subpoenaed documents are located, for enforcement of the subpoena. The petition must:

- (A) be accompanied by a copy of the subpoena and proof of service;
- (B) state the specific manner of the lack of compliance; and
- (C) request an order compelling compliance.

(2) Upon the filing of the petition, the Superior Court enters an order directing the person to appear before it at a specified time and place to show cause why the person has not obeyed the subpoena or has refused to testify or produce documents. A copy of the Superior Court's show cause order must be served on the person.

(3) At the show cause hearing, if it appears to the Superior Court that the subpoena was properly issued, and that the particular questions the person refused to answer or the requests for production of documents were reasonable and relevant, the Superior Court enters an order requiring the person to appear at a specified time and place and testify or produce the required documents. On failing to obey this order, the person is dealt with as for contempt of court.

### TITLE 5 - GRIEVANCE INVESTIGATIONS AND DISPOSITION

#### ELC 5.1 GRIEVANTS

**(a) Filing of Grievance.** Any person or entity may file a grievance against a lawyer admitted to practice law in this state, or against a lawyer specially admitted by a court of this state for a particular case.

**(b) Consent to Disclosure.** By filing a grievance, the grievant consents to disclosure of the content of the grievance to the respondent lawyer, or to any other person contacted during the investigation of the grievance, or to any person under rules 3.1 - 3.4, unless a protective order is issued under rule 3.2(e) or the grievance was filed under rule 5.2. By filing a grievance, the grievant also agrees that the respondent or any other lawyer contacted by the grievant may disclose to disciplinary counsel any information relevant to the investigation, unless a protective order is issued under rule 3.2(e).

**(c) Grievant Rights.** A grievant has the following rights:

- (1) to be advised promptly of the receipt of the grievance, and of the name, address, and office phone number of the person assigned to its investigation if such an assignment is made;
- (2) to have a reasonable opportunity to speak with the person assigned to the grievance, by telephone or in person, about the substance of the grievance or its status;
- (3) to receive a copy of any response submitted by the respondent, except:
  - (A) if the response refers to a client's confidences or secrets to which the grievant is not privy;
  - (B) if the response contains information of a personal and private nature about the respondent; or
  - (C) if a review committee determines that the interests of justice would be better served by not releasing the response;
- (4) to submit additional supplemental written information or documentation at any time;
- (5) to attend any hearing conducted into the grievance, subject to these rules and any protective order issued under rule 3.2(e);
- (6) to provide relevant testimony at any hearing conducted into the grievance, subject to these rules and any protective order issued under rule 3.2(e);
- (7) to be notified of any proposed decision to refer the respondent to diversion and to be given a reasonable opportunity to submit to disciplinary counsel a written comment thereon;
- (8) to be advised of the disposition of the grievance; and
- (9) to request reconsideration of a dismissal of the grievance as provided in rule 5.6(b).

**(d) Grievant Duties.** A grievant must do the following, or the grievance may be dismissed:

(1) give the person assigned to the grievance documents or other evidence in his or her possession, and witnesses' names and addresses;

(2) assist in securing relevant evidence; and

(3) appear and testify at any hearing resulting from the grievance.

#### ELC 5.2 CONFIDENTIAL SOURCES

If a person files a grievance or provides information to disciplinary counsel or the Association about a lawyer's possible misconduct or disability, and asks to be treated as a confidential source, an investigation may be conducted in the Association's name. The confidential source has neither the rights nor the duties of a grievant. Unless otherwise ordered, the person's identity may not be disclosed, either during the investigation or in subsequent formal proceedings. If the respondent lawyer requests disclosure of the person's identity, the Chair, the chair of a review committee, or a hearing officer before whom a matter is pending examines disciplinary counsel and any requested documents or file materials in camera without the presence of the respondent or respondent's counsel and may order disciplinary counsel to reveal the identity to the respondent if doing so appears necessary for the respondent to conduct a proper defense in the proceeding.

#### ELC 5.3 INVESTIGATION OF GRIEVANCE

(a) **Review and Investigation.** Disciplinary counsel must review and may investigate any alleged or apparent misconduct by a lawyer and any alleged or apparent incapacity of a lawyer to practice law, whether disciplinary counsel learns of the misconduct by grievance or otherwise. If there is no grievant, the Association may open a grievance in the Association's name.

(b) **Adjunct Investigative Counsel.** Disciplinary counsel may assign a case to adjunct investigative counsel for investigation. Disciplinary counsel assists in those investigations and monitors the performance of adjunct investigative counsel. On receiving a report of an investigation by an adjunct investigative counsel, disciplinary counsel may, as appears appropriate, request or conduct additional investigation or take any action under these rules.

#### (c) Deferral by Disciplinary Counsel.

(1) Disciplinary counsel may defer an investigation into alleged acts of misconduct by a lawyer:

(A) if it appears that the allegations are related to pending civil or criminal litigation;

(B) if it appears that the respondent lawyer is physically or mentally unable to respond to the investigation; or

(C) for other good cause, if it appears that the deferral will not endanger the public.

(2) Disciplinary counsel must inform the grievant and respondent of a decision to defer or a denial of a request to defer and of the procedure for requesting review. A grievant or respondent may request review of a decision on deferral. If review is requested, disciplinary counsel refers the matter to a review committee for reconsideration of the decision on deferral. To request review, the grievant or respondent must deliver or deposit in the mail a request for review to the Association no later than 45 days after the Association mails the notice regarding deferral.

(d) **Dismissal of Grievance Not Required.** None of the following alone requires dismissal of a grievance: the unwillingness of a grievant to continue the grievance, the withdrawal of the grievance, a compromise between the grievant and the respondent, or restitution by the respondent.

(e) **Duty To Furnish Prompt Response.** Any lawyer must promptly respond to any inquiry or request made under these rules for information relevant to grievances or matters under investigation. Upon inquiry or request, any lawyer must:

(1) furnish in writing, or orally if requested, a full and complete response to inquiries and questions;

(2) permit inspection and copying of the lawyer's business records, files, and accounts;

(3) furnish copies of requested records, files, and accounts;

(4) furnish written releases or authorizations if needed to obtain documents or information from third parties; and

(5) comply with discovery conducted under rule 5.5.

#### (f) Failure To Cooperate.

(1) *Noncooperation Deposition.* If a lawyer has not complied with any request made under section (e) or rule 2.13(d) for more than 30 days, disciplinary counsel may notify the lawyer that failure to comply within ten days may result in the lawyer's deposition or subject the lawyer to interim suspension under rule 7.2. Ten days after this notice, disciplinary counsel may serve the lawyer with a subpoena for a deposition. Any deposition conducted after the ten-day period and necessitated by the lawyer's continued failure to cooperate may be conducted at any place in Washington State.

#### (2) Costs and Expenses.

(A) Regardless of the underlying grievance's ultimate disposition, a lawyer who has been served with a subpoena under this rule is liable for the actual costs of the deposition, including but not limited to service fees, court reporter fees, travel expenses, and the cost of transcribing the deposition, if ordered by disciplinary counsel. In addition, a lawyer who has been served with a subpoena for a deposition under this rule is liable for a reasonable attorney fee of \$500.

(B) The procedure for assessing costs and expenses is as follows:

(i) Disciplinary counsel applies to a review committee by itemizing the cost and expenses and stating the reasons for the deposition.

(ii) The lawyer has ten days to respond to disciplinary counsel's application.

(iii) The review committee by order assesses appropriate costs and expenses.

(iv) Rule 13.9(e) governs Board review of the review committee order.

(3) *Grounds for Discipline.* A lawyer's failure to cooperate fully and promptly with an investigation as required by section (e) or rule 2.13(d) is also grounds for discipline.

#### ELC 5.4 PRIVILEGES

(a) **Privilege Against Self-Incrimination.** A lawyer's duty to cooperate is subject to the lawyer's privilege against self-incrimination, where applicable.

(b) **Attorney-Client Privilege.** A lawyer may not assert the attorney-client privilege or other prohibitions on revealing client confidences or secrets as a basis for refusing to provide information during the course of an investigation, but information obtained during an investigation involving client confidences or secrets must be kept confidential to the extent possible under these rules unless the client otherwise consents. Nothing in these rules waives or requires waiver of any lawyer's own privilege or other protection as a client against the disclosure of confidences or secrets.

**ELC 5.5 DISCOVERY BEFORE FORMAL COMPLAINT**

(a) **Procedure.** Before filing a formal complaint, disciplinary counsel may depose either a respondent lawyer or a witness, or issue requests for admission to the respondent. To the extent possible, CR 30 or 31 applies to depositions under this rule. CR 36 governs requests for admission.

(b) **Subpoenas for Depositions.** Disciplinary counsel may issue subpoenas to compel the respondent's or a witness's attendance, or the production of books, documents, or other evidence, at a deposition. Subpoenas must be served as in civil cases in the superior court and may be enforced under rule 4.7.

(c) **Cooperation.** Every lawyer must promptly respond to discovery requests from disciplinary counsel.

**ELC 5.6 DISPOSITION OF GRIEVANCE**

(a) **Dismissal by Disciplinary Counsel.** Disciplinary counsel may dismiss grievances with or without investigation. On dismissal, disciplinary counsel must notify the grievant of the procedure for review in this rule.

(b) **Review of Dismissal.** A grievant may request review of dismissal of the grievance by delivering or depositing in the mail a request for review to the Association no later than 45 days after the Association mails the notice of dismissal. Mailing requires postage prepaid first class mail. If review is requested, disciplinary counsel may either reopen the matter for investigation or refer it to a review committee.

(c) **Report in Other Cases.** Disciplinary counsel must report to a review committee the results of investigations except those dismissed or diverted.

(d) **Authority on Review.** In reviewing grievances under this rule, a review committee may:

- (1) affirm the dismissal;
- (2) issue an advisory letter under rule 5.7;
- (3) issue an admonition under rule 13.5;
- (4) order a hearing on the alleged misconduct; or
- (5) order further investigation as may appear appropriate.

**ELC 5.7 ADVISORY LETTER**

An advisory letter may be issued when a hearing does not appear warranted but it appears appropriate to caution a respondent lawyer concerning his or her conduct. An advisory letter may be issued by a review committee but may not be issued when a grievance is dismissed following a hearing. An advisory letter does not constitute a finding of misconduct, is not a sanction, is not disciplinary action, and is not public information.

**TITLE 6 - DIVERSION**

**ELC 6.1 REFERRAL TO DIVERSION**

In a matter involving less serious misconduct as defined in rule 6.2, before filing a formal complaint, disciplinary counsel may refer a respondent lawyer to diversion. Diversion may include

- fee arbitration;
- arbitration;
- mediation;
- law office management assistance;
- lawyer assistance programs;
- psychological and behavioral counseling;
- monitoring;
- restitution;
- continuing legal education programs; or
- any other program or corrective course of action agreed to by disciplinary counsel and respondent to address respondent's misconduct.

Disciplinary counsel may negotiate and execute diversion contracts, monitor and determine compliance with the terms of diversion contracts, and determine fulfillment or any material breach of diversion contracts, subject to review under rule 6.9.

**ELC 6.2 LESS SERIOUS MISCONDUCT**

Less serious misconduct is conduct not warranting a sanction restricting the respondent lawyer's license to practice law. Conduct is not ordinarily considered less serious misconduct if any of the following considerations apply:

- (A) the misconduct involves the misappropriation of funds;
- (B) the misconduct results in or is likely to result in substantial prejudice to a client or other person, absent adequate provisions for restitution;
- (C) the respondent has been sanctioned in the last three years;
- (D) the misconduct is of the same nature as misconduct for which the respondent has been sanctioned or admonished in the last five years;
- (E) the misconduct involves dishonesty, deceit, fraud, or misrepresentation;
- (F) the misconduct constitutes a "serious crime" as defined in rule 7.1(a); or
- (G) the misconduct is part of a pattern of similar misconduct.

**ELC 6.3 FACTORS FOR DIVERSION**

Disciplinary counsel considers the following factors in determining whether to refer a respondent lawyer to diversion:

- (A) whether the presumptive sanction under the ABA Standards for Imposing Lawyer Sanctions for the violations raised by the grievance or grievances is likely to be no more severe than reprimand or admonition;
- (B) whether participation in diversion is likely to improve the respondent's future professional conduct and accomplish the goals of lawyer discipline;
- (C) whether aggravating or mitigating factors exist; and
- (D) whether diversion was already tried.

**ELC 6.4 NOTICE TO GRIEVANT**

As provided in rule 5.1 (c)(7), disciplinary counsel must notify the grievant, if any, of the proposed decision to refer

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the respondent lawyer to diversion, and must give the grievant a reasonable opportunity to submit written comments. The grievant must be notified when the grievance is diverted and when the grievance is dismissed on completion of diversion. Such decisions to divert or dismiss are not appealable.

#### ELC 6.5 DIVERSION CONTRACT

(a) **Negotiation.** Disciplinary counsel and the respondent lawyer negotiate a diversion contract, the terms of which are tailored to the individual circumstances.

(b) **Required Terms.** A diversion contract must:

(1) be signed by the respondent and disciplinary counsel;  
 (2) set forth the terms and conditions of the plan for the respondent and, if appropriate, identify the use of a practice monitor and/or a recovery monitor and the monitor's responsibilities. If a recovery monitor is assigned, the contract must include respondent's limited waiver of confidentiality permitting the recovery monitor to make appropriate disclosures to fulfill the monitor's duties under the contract;

(3) provide for oversight of fulfillment of the contract terms. Oversight includes reporting any alleged breach of the contract to disciplinary counsel;

(4) provide that the respondent will pay all costs incurred in connection with the contract. The contract may also provide that the respondent will pay the costs associated with the grievances to be deferred; and

(5) include a specific acknowledgment that a material violation of a term of the contract renders the respondent's participation in diversion voidable by disciplinary counsel.

(c) **Amendment.** The contract may be amended on agreement of the respondent and disciplinary counsel.

#### ELC 6.6 AFFIDAVIT SUPPORTING DIVERSION

A diversion contract must be supported by the respondent lawyer's affidavit or declaration as approved by disciplinary counsel setting forth the respondent's misconduct related to the grievance or grievances to be deferred under this title. If the diversion contract is terminated due to a material breach, the affidavit or declaration is admissible into evidence in any ensuing disciplinary proceeding. Unless so admitted, the affidavit or declaration is confidential and must not be provided to the grievant or any other individual outside the Office of Disciplinary Counsel, but may be provided to a review committee or the Board considering the grievance.

#### ELC 6.7 EFFECT OF NON-PARTICIPATION IN DIVERSION

The respondent lawyer has the right to decline disciplinary counsel's offer to participate in diversion. If the respondent chooses not to participate, the matter proceeds as though no referral to diversion had been made.

#### ELC 6.8 STATUS OF GRIEVANCE

After a diversion contract is executed by the respondent lawyer and disciplinary counsel, the disciplinary grievance is deferred pending successful completion of the contract.

#### ELC 6.9 TERMINATION OF DIVERSION

(a) **Fulfillment of the Contract.** The contract terminates when the respondent lawyer has fulfilled the terms of the contract and gives disciplinary counsel an affidavit or declaration demonstrating fulfillment. Upon receipt of this affidavit or declaration, disciplinary counsel must acknowledge receipt and either dismiss any grievances deferred pending successful completion of the contract or notify the

respondent that fulfillment of the contract is disputed. The grievant cannot appeal the dismissal. Successful completion of the contract is a bar to any further disciplinary proceedings based on the same allegations.

(b) **Material Breach.** A material breach of the contract is cause for termination of the diversion. After a material breach, disciplinary counsel must notify the respondent of termination from diversion and disciplinary proceedings may be instituted, resumed, or reinstated.

(c) **Review by the Chair.** The Chair may review disputes about fulfillment or material breach of the terms of the contract on the request of the respondent or disciplinary counsel. The request must be filed with the Board within 15 days of notice to the respondent of the determination for which review is sought. Determinations by the Chair under this section are not subject to further review and are not reviewable in any proceeding.

### TITLE 7 - INTERIM PROCEDURES

#### ELC 7.1 INTERIM SUSPENSION FOR CONVICTION OF A CRIME

(a) **Definitions.**

(1) "Conviction" for the purposes of this rule occurs upon entry of a plea of guilty, unless the defendant affirmatively shows that the plea was not accepted or was withdrawn, or upon entry of a finding or verdict of guilty, unless the defendant affirmatively shows that judgment was arrested or a new trial granted.

(2) "Serious crime" includes any:

(A) felony;

(B) crime a necessary element of which, as determined by its statutory or common law definition, includes any of the following:

- interference with the administration of justice;
- false swearing;
- misrepresentation;
- fraud;
- deceit;
- bribery;
- extortion;
- misappropriation; or
- theft; or

(C) attempt, or a conspiracy, or solicitation of another, to commit a "serious crime".

(b) **Court Clerk To Advise Association of Conviction.** When a lawyer is convicted of a crime, the clerk of the court must advise the Association of the conviction, and on request provide the Association with certified copies of any order or other document showing the conviction.

(c) **Procedure upon Conviction.**

(1) If a lawyer is convicted of a felony, disciplinary counsel must file a formal complaint regarding the conviction. Disciplinary counsel must also petition the Supreme Court for an order suspending the respondent lawyer during the pendency of disciplinary proceedings. The petition for suspension may be filed before the formal complaint.

(2) If a lawyer is convicted of a crime that is not a felony, disciplinary counsel may refer the matter to a review committee to determine whether the crime is a serious crime. If so,

disciplinary counsel proceeds in the same manner as for a felony.

(3) If a lawyer is convicted of a crime that is neither a felony nor a serious crime, the review committee considers a report of the conviction in the same manner as any other report of possible misconduct by a lawyer.

(d) **Petition.** A petition to the Supreme Court for suspension under this rule must include a copy of any available document establishing the fact of conviction. If the crime is not a felony, the petition must also include a copy of the review committee order finding that the crime is a serious crime. Disciplinary counsel may also include additional facts, statements, arguments, affidavits, and documents in the petition. A copy of the petition must be personally served on the respondent, and proof of service filed with the Court.

(e) **Immediate Interim Suspension.** Upon the filing of a petition for suspension under this rule, the Court determines whether the crime constitutes a serious crime as defined in section (a).

(1) If the crime is a felony, the Court must enter an order immediately suspending the respondent from the practice of law.

(2) If the crime is not a felony, the Court conducts a show cause proceeding under rule 7.2(b) to determine if the crime is a serious crime. If the Court determines the crime is a serious crime, the Court must enter an order immediately suspending the respondent from the practice of law. If the Court determines that the crime is not a serious crime, upon being so advised, the Association processes the matter as it would any other grievance.

(3) If suspended, the respondent must comply with title 14.

(4) Suspension under this rule occurs:

(A) whether the conviction was under a law of this state, any other state, or the United States;

(B) whether the conviction was after a plea of guilty, nolo contendere, not guilty, or otherwise; and

(C) regardless of the pendency of an appeal.

(f) **Duration of Suspension.** A suspension under this rule must terminate when the disciplinary proceeding is fully completed, after appeal or otherwise.

(g) **Termination of Suspension.**

(1) *Petition and Response.* A respondent may at any time petition the Board to recommend termination of an interim suspension. Disciplinary counsel may file a response to the petition. The Chair may direct disciplinary counsel to investigate as appears appropriate.

(2) *Board Recommendation.* If either party requests, the Board must hear oral argument on the petition at a time and place and under terms as the Chair directs. The Board may recommend termination of a suspension only if the Board makes an affirmative finding of good cause to do so. There is no right of appeal from a Board decision declining to recommend termination of a suspension.

(3) *Court Action.* The Court determines the procedure for its consideration of a recommendation to terminate a suspension.

(h) **Notice of Dismissal to Supreme Court.** If disciplinary counsel has filed a petition for suspension under this rule,

and the disciplinary proceedings based on the criminal conviction are dismissed, the Supreme Court must be provided a copy of the decision granting dismissal whether or not the respondent is suspended at the time of dismissal.

#### ELC 7.2 INTERIM SUSPENSION IN OTHER CIRCUMSTANCES

##### (a) Types of Interim Suspension.

(1) *Review Committee Finding of Risk to Public.* Disciplinary counsel may petition the Supreme Court for an order suspending the respondent lawyer during the pendency of any proceeding under these rules if:

(A) it appears that a respondent's continued practice of law poses a substantial threat of serious harm to the public; and

(B) a review committee recommends an interim suspension.

(2) *Board Recommendation for Disbarment.* When the Board enters a decision recommending disbarment, disciplinary counsel must file a petition for the respondent's suspension during the remainder of the proceedings. The respondent must be suspended absent an affirmative showing that the respondent's continued practice of law will not be detrimental to the integrity and standing of the bar and the administration of justice, or be contrary to the public interest. If the Board's decision is not appealed and becomes final, the petition need not be filed, or if filed may be withdrawn.

(3) *Failure To Cooperate with Investigation.* When any lawyer fails without good cause to comply with a request under rule 5.3(f) for information or documents, or with a subpoena issued under rule 5.3(f), or fails to comply with disability proceedings as specified in rule 8.2(d), disciplinary counsel may petition the Court for an order suspending the lawyer pending compliance with the request or subpoena. If the lawyer complies with the request or subpoena, the lawyer may petition the Court to terminate the suspension on terms the Court deems appropriate.

##### (b) Procedure.

(1) *Petition.* A petition to the Court under this rule must set forth the acts of the lawyer constituting grounds for suspension, and if filed under subsection (a)(2) must include a copy of the Board's decision. The petition may be supported by documents or affidavits. A copy of the petition must be personally served on the lawyer.

(2) *Show Cause Order.* Upon filing of the petition, the Chief Justice orders the lawyer to appear before the Court on a date set by the Chief Justice, and to show cause why the petition for suspension should not be granted. Disciplinary counsel must have a copy of the order to show cause personally served on the lawyer at least five days before the scheduled show cause hearing.

(3) *Answer to Petition.* The lawyer may answer the petition. An answer may be supported by documents or affidavits. Failure to answer does not result in default or waive the right to appear at the show cause hearing.

(4) *Filing of Answer.* A copy of any answer must be filed with both the Court and disciplinary counsel at least three days before the scheduled show cause hearing.

(5) *Application of Other Rules.* If the Court enters an order suspending the lawyer, the rules relating to suspended lawyers, including title 14, apply.

#### ELC 7.3 AUTOMATIC SUSPENSION WHEN RESPONDENT ASSERTING INCAPACITY

When a respondent lawyer asserts incapacity to conduct a proper defense to disciplinary proceedings, upon receipt of appropriate documentation of the assertion, the respondent must be suspended on an interim basis by the Supreme Court pending the conclusion of the disability proceedings. However, if the hearing officer in the supplemental proceeding files a decision that the respondent is not incapacitated, on petition of either party, the Court may terminate the interim suspension.

#### ELC 7.4 STIPULATION TO INTERIM SUSPENSION

At any time a respondent lawyer and disciplinary counsel may stipulate that the respondent be suspended during the pendency of any investigation or proceeding because of conviction of a serious crime, a substantial threat of serious harm to the public, or incapacity to practice law. A stipulation must state the factual basis for the stipulation and be submitted directly to the Supreme Court for expedited consideration. Stipulations under this rule are public upon filing with the Court, but the Court may order that supporting materials are confidential. Either party may petition the Court to terminate the interim suspension, and on a showing that the cause for the interim suspension no longer exists, the Court may terminate the suspension.

#### ELC 7.5 INTERIM SUSPENSIONS EXPEDITED

(a) **Expedited Review.** Petitions seeking interim suspension under this title receive an expedited hearing, ordinarily no later than 14 days from issuance of an order to show cause.

(b) **Procedure During Court Recess.** When a petition seeking interim suspension under this title is filed during a recess of the Supreme Court, the Chief Justice, the Acting Chief Justice, or the senior Justice under SAR 10, subject to review by the full Court on motion for reconsideration, may rule on the motion for interim suspension.

#### ELC 7.6 EFFECTIVE DATE OF INTERIM SUSPENSIONS

Interim suspensions become effective on the date of the Supreme Court's order unless the order provides otherwise.

#### ELC 7.7 APPOINTMENT OF CUSTODIAN TO PROTECT CLIENTS' INTERESTS

(a) **Custodians Allowed.** The Chair, on motion by disciplinary counsel or any other interested person, may appoint one or more lawyers or Association counsel as a custodian to act as counsel for the limited purpose of protecting clients' interests whenever a lawyer has been transferred to disability inactive status, suspended, or disbarred, and fails to carry out the obligations of title 14 or fails to protect the clients' interests, or whenever a lawyer disappears or dies, unless a partner, personal representative, or other responsible person appears to be properly protecting the clients' interests. The Chair may enter orders to carry out the provisions and purposes of this rule.

(b) **Duties.** The custodian takes possession of the necessary files and records and takes action as seems indicated to protect the clients' interests or required by the Chair's orders

or these rules. Such action may include but is not limited to assuming control of trust accounts or other financial affairs. Any bank or other person honoring the authority of the custodian is exonerated from any resulting liability. In determining ownership of funds in the trust account, including by subrogation or indemnification, the custodian should act as a reasonably prudent lawyer maintaining a client trust account. The custodian may rely on a certification of ownership issued by a person who conducts audits for the Association under rule 15.1. If the client trust account does not contain sufficient funds to meet known client balances, the custodian may disburse funds on a pro rata basis.

(c) **Discharge.** On motion by disciplinary counsel or any interested person, the Chair may discharge the custodian from further duties. The Chair may also order destruction of files and records as appropriate.

(d) **Costs.** Payment of any costs incurred by the Association under this rule may be a condition of reinstatement of a disbarred lawyer or a lawyer transferred to disability inactive status, or may be ordered as restitution in a disciplinary proceeding for failure to comply with rule 14.1.

### TITLE 8 - DISABILITY PROCEEDINGS

#### ELC 8.1 ACTION ON ADJUDICATION OF INCOMPETENCY

(a) **Grounds.** The Association must automatically transfer a lawyer from active to disability inactive membership status upon receipt of a certified copy of the judgment, order, or other appropriate document demonstrating that the lawyer:

- (1) was found to be incapable of assisting in his or her own defense in a criminal action;
- (2) was acquitted of a crime based on insanity;
- (3) had a guardian (but not a limited guardian) appointed for his or her person or estate on a finding of incompetency; or

(4) was found to be mentally incapable of conducting the practice of law in any other jurisdiction.

(b) **Notice to Lawyer.** The Association must forthwith notify the disabled lawyer and his or her guardian, if one has been appointed, of the transfer to disability inactive status. The Association must also notify the Supreme Court of the transfer and provide a copy of the judgment, order, or other appropriate document on which the transfer was based.

#### ELC 8.2 DETERMINATION OF INCAPACITY TO PRACTICE LAW

(a) **Review Committee May Order Hearing.** Disciplinary counsel reports to a review committee on investigations into an active, suspended, or inactive respondent lawyer's mental or physical capacity to practice law. The committee orders a hearing if it appears there is reasonable cause to believe that the respondent does not have the mental or physical capacity to practice law. In other cases, the committee may direct further investigation as appears appropriate or dismiss the matter.

(b) **Not Disciplinary Proceedings.** Proceedings under this rule are not disciplinary proceedings.

#### (c) Procedure.

(1) *Applicable Rules.* Proceedings under this rule are conducted under the procedural rules for disciplinary proceedings.

(2) *Appointment of Counsel.* If counsel for the respondent does not appear within the time for filing an answer, the Chair must appoint a member of the Association as counsel for the respondent.

(3) *Health Records.* After a review committee orders a hearing under this rule, disciplinary counsel may require the respondent to furnish written releases and authorizations for medical, psychological, or psychiatric records as may be relevant to the inquiry, subject to a motion to the hearing officer, or if no hearing officer has been appointed, to the chief hearing officer, to limit the scope of the requested releases or authorizations for good cause.

(4) *Examination.* Upon motion, the hearing officer, or if no hearing officer has been appointed, the chief hearing officer, may order an examination by a physician of the respondent's physical condition or by a mental health professional (as defined by RCW 71.05.020) of the respondent's mental condition to assist in determining the respondent's capacity to practice law. Unless waived by the parties, the examiner must submit a report of the examination, including the results of any tests administered and any diagnosis, to the hearing officer, disciplinary counsel, and the respondent.

(5) *Hearing Officer Recommendation.* If the hearing officer or panel finds that the respondent does not have the mental or physical capacity to practice law, the hearing officer or panel must recommend that the respondent be transferred to disability inactive status.

(6) *Appeal Procedure.* The procedures for appeal and review of suspension recommendations apply to recommendations for transfer to disability inactive status.

(7) *Transfer Following Board Review.* If, after review of the decision of the hearing officer or panel, the Board finds that the respondent does not have the mental or physical capacity to practice law, it must enter an order immediately transferring the respondent to disability inactive status. The transfer is effective upon service of the order under rule 4.1.

**(d) Interim Suspension.**

(1) When a review committee orders a hearing on the capacity of a respondent to practice law, disciplinary counsel must petition the Supreme Court for the respondent's interim suspension under rule 7.2(a) unless the respondent is already suspended on an interim basis.

(2) Even if the Court previously denied a petition for interim suspension under subsection (d)(1), disciplinary counsel may petition the Court for the interim suspension of a respondent under rule 7.2 (a)(3) if the respondent fails:

(A) to appear for an independent examination under this rule;

(B) to waive health care provider-patient privilege as required by this rule; or

(C) to appear at a hearing under this rule.

**(e) Termination of Interim Suspension.** If the hearing officer or panel files a decision recommending that a respondent placed on interim suspension under this rule not be transferred to disability inactive status, upon either party's petition, the Court may terminate the interim suspension.

**ELC 8.3 DISABILITY PROCEEDINGS DURING THE COURSE OF DISCIPLINARY PROCEEDINGS**

**(a) Supplemental Proceedings on Capacity To Defend.** A hearing officer or hearing panel, or chief hearing officer if no hearing officer has been appointed, must order a supplemental proceeding on the respondent lawyer's capacity to defend the disciplinary proceedings if the respondent asserts, or there is reasonable cause to believe, that the respondent is incapable of properly defending the disciplinary proceeding because of mental or physical incapacity.

**(b) Purpose of Supplemental Proceedings.** In a supplemental proceeding, the hearing officer or panel determines if the respondent:

(1) is incapable of defending himself or herself in the disciplinary proceedings because of mental or physical incapacity;

(2) is incapable, because of mental or physical incapacity, of defending against the disciplinary charges without the assistance of counsel; or

(3) is currently unable to practice law because of mental or physical incapacity.

**(c) Not Disciplinary Proceedings.** Proceedings under this rule are not disciplinary proceedings.

**(d) Procedure for Supplemental Proceedings.**

(1) *Applicable Rules.* Proceedings under this rule are conducted under the procedural rules for disciplinary proceedings.

(2) *Deferral of Disciplinary Proceedings.* The disciplinary proceedings are deferred pending the outcome of the supplemental proceeding.

(3) *Appointment of Counsel.* If counsel for the respondent does not appear within 20 days of notice to the respondent of the issues to be considered in a supplemental proceeding under this rule, or within the time for filing an answer, the Chair must appoint a member of the Association as counsel for the respondent in the supplemental proceedings.

(4) *Health Records.* Disciplinary counsel may require the respondent to furnish written releases and authorizations for medical, psychological, or psychiatric records as may be relevant to the determination under section (b), subject to a motion to the hearing officer to limit the scope of the requested releases or authorizations for good cause. If the respondent asserted incapacity, there is a rebuttable presumption that good cause does not exist.

(5) *Examination.* Upon motion, the hearing officer may order an examination by a physician of the respondent's physical condition or by a mental health professional (as defined by RCW 71.05.020) of the respondent's mental condition to assist in the determinations to be made under section (b). Unless waived by the parties, the examiner must submit a report of the examination, including the results of any tests administered and any diagnosis, to the hearing officer, disciplinary counsel, and the respondent.

(6) *Failure To Appear or Cooperate.* If the respondent fails to appear for an independent examination, fails to waive health care provider-patient privilege as required in these rules, or fails to appear at the hearing, the following procedures apply:

(A) If the Association has the burden of proof, the hearing officer must hold a hearing and, if presented with sufficient evidence to determine incapacity, order the respondent transferred to disability inactive status. If there is insufficient evidence to determine incapacity, the hearing officer must enter an order terminating the supplemental proceedings and reinstating the disciplinary proceedings. A respondent who does not appear at the hearing may move to vacate the order of transfer under rule 10.6(c).

(B) If the respondent has the burden of proof, the hearing officer must enter an order terminating the supplemental proceedings and resuming the disciplinary proceedings.

*(7) Hearing Officer Decision.*

(A) **Capacity To Defend and Practice Law.** If the hearing officer or panel finds that the respondent is capable of defending himself or herself and has the mental and physical capacity to practice law, the disciplinary proceedings resume.

(B) **Capacity To Defend with Counsel.** If the hearing officer or panel finds that the respondent is not capable of defending himself or herself in the disciplinary proceedings but is capable of adequately assisting counsel in the defense, the supplemental proceedings are dismissed and the disciplinary proceedings resume. If counsel does not appear on behalf of the respondent within 20 days of service of the hearing officer's decision, the Chair must appoint a member of the Association as counsel for the respondent in the disciplinary proceeding.

(C) **Finding of Incapacity.** If the hearing officer or panel finds that the respondent either does not have the mental or physical capacity to practice law, or is incapable of assisting counsel in properly defending a disciplinary proceeding because of mental or physical incapacity, the hearing officer or panel must recommend that the respondent be transferred to disability inactive status. The procedures for appeal and review of suspension recommendations apply to recommendations for transfer to disability inactive status.

*(8) Transfer Following Board Review.*

(A) The Board must enter an order immediately transferring the respondent to disability inactive status if after review of a hearing officer's or panel's recommendation of transfer to disability inactive status, the Board finds that the respondent:

- (i) does not have the mental or physical capacity to practice law; or
- (ii) is incapable of assisting counsel in properly defending a disciplinary proceeding because of mental or physical incapacity.

(B) The transfer is effective upon service of the order on the respondent under rule 4.1.

(e) **Interim Suspension.** When supplemental proceedings have been ordered, disciplinary counsel must petition the Supreme Court for the respondent's interim suspension under rule 7.2 (a)(1) or seek automatic suspension under rule 7.3 unless the respondent is already suspended on an interim basis.

**ELC 8.4 APPEAL OF TRANSFER TO DISABILITY INACTIVE STATUS**

The respondent lawyer may appeal an order of transfer to disability inactive status under rule 12.3. The Board's order

remains in effect, regardless of the pendency of an appeal, unless and until reversed by the Supreme Court.

**ELC 8.5 STIPULATED TRANSFER TO DISABILITY INACTIVE STATUS**

(a) **Requirements.** At any time a respondent lawyer and disciplinary counsel may stipulate to the transfer of the respondent to disability inactive status under this title. The respondent and disciplinary counsel must sign the stipulation.

(b) **Form.** The stipulation must:

(1) state with particularity the nature of the respondent's incapacity to practice law and the nature of any pending disciplinary proceedings that will be deferred as a result of the respondent's transfer to disability inactive status;

(2) state that it is not binding on the Association as a statement of all existing facts relating to the professional conduct of the respondent and that any additional existing facts may be proved in a subsequent disciplinary proceeding; and

(3) fix the amount of costs and expenses to be paid by the respondent.

(c) **Approval.** The stipulation must be presented to the Board. The Board reviews the stipulation based solely on the record agreed to by the respondent and disciplinary counsel. The Board may either approve the stipulation or reject it. Upon approval, the transfer to disability inactive status is not subject to further review.

(d) **Stipulation Not Approved.** If the stipulation is rejected by the Board, the stipulation has no force or effect and neither it nor the fact of its execution is admissible in any pending or subsequent disciplinary proceeding or in any civil or criminal action.

**ELC 8.6 COSTS IN DISABILITY PROCEEDINGS**

When reviewing a matter under this title, the Board may authorize disciplinary counsel to seek assessment of the costs and expenses against the respondent lawyer. If the Board authorizes, disciplinary counsel may file a statement of costs within 20 days of service of the Board's order. Rule 13.9 governs assessment of these costs and expenses. The respondent is not required to pay the costs and expenses until 90 days after reinstatement to active status.

**ELC 8.7 BURDEN AND STANDARD OF PROOF**

In proceedings under rules 8.2 or 8.3, the party asserting or alleging the incapacity has the burden of establishing it by a preponderance of the evidence. If the issue of incapacity is raised by a hearing officer or panel, the Association has the burden of proof.

**ELC 8.8 REINSTATEMENT TO ACTIVE STATUS**

(a) **Right of Petition and Burden.** A respondent lawyer transferred to disability inactive status may resume active status only by Board or Supreme Court order. Any respondent transferred to disability inactive status may petition the Board for transfer to active status. The respondent has the burden of showing that the disability has been removed.

(b) **Petition.** The petition for reinstatement must:

(1) state facts demonstrating that the disability has been removed;

(2) include the name and address of each psychiatrist, psychologist, physician, or other person and each hospital or other institution by whom or in which the respondent has

been examined or treated since the transfer to disability inactive status; and

(3) be filed with the Clerk and served on disciplinary counsel.

(c) **Waiver of Privilege.** The filing of a petition for reinstatement to active status by a respondent transferred to disability inactive status waives any privilege as to treatment of any medical, psychological, or psychiatric condition during the period of disability. The respondent must furnish, if requested by the Board or disciplinary counsel, written consent to each treatment provider to divulge information and records relating to the disability.

(d) **Initial Review by Chair.** The Chair reviews the petition and any response by disciplinary counsel and directs appropriate action to determine whether the disability has been removed, including investigation by disciplinary counsel or any other person or an examination by a physician of the respondent's physical condition or by a mental health professional (as defined by RCW 71.05.020) of the respondent's mental condition.

(e) **Board Review.**

(1) The respondent must have a reasonable opportunity to review any reports of investigations or examinations ordered by the Chair and submit additional materials before the matter is submitted to the Board.

(2) On submission, the Board reviews the petition and any reports as expeditiously as possible and takes one or more of the following actions:

(A) grants the petition;

(B) directs additional action as the Board deems necessary to determine whether the disability has been removed;

(C) orders that a hearing be held before a hearing officer or panel under the procedural rules for disciplinary proceedings;

(D) directs the respondent to establish proof of competence and learning in the law, which may include certification by the bar examiners of successful completion of an examination for admission to practice;

(E) denies the petition;

(F) directs the respondent to pay the costs of the reinstatement proceedings; or

(G) approves or rejects a stipulation to reinstatement between the respondent and the Association.

(3) The petition may be denied without the respondent having an opportunity for a hearing before a hearing officer or panel only if the Board determines that a hearing is not necessary because:

(A) the respondent fails to state a prima facie case for reinstatement in the petition; or

(B) the petition does not indicate a material change of circumstance since a previous denial of a petition for reinstatement.

(f) **Petition Granted.** If the petition for reinstatement is granted, the Association immediately restores the respondent to the respondent's prior status and notifies the Supreme Court of the transfer. If a disciplinary proceeding has been deferred because of the disability transfer, the proceeding resumes upon reinstatement.

(g) **Review by Supreme Court.** If the petition for reinstatement is not granted, the respondent may appeal the Board's decision to the Supreme Court, by filing a notice of appeal with the Clerk within 15 days of service of the Board's decision on the respondent. Title 12 applies to review under this section.

**ELC 8.9 PETITION FOR LIMITED GUARDIANSHIP**

(a) **Guardian Powers and Qualifications.** A guardian may be appointed under this rule to take any action deemed advisable related to the respondent lawyer's license to practice law and any disciplinary or disability investigation or proceeding.

(b) **Referral to Review Committee.** A hearing officer or panel, the Association, the respondent, or respondent's counsel may request that a review committee authorize the filing of a petition for a limited guardianship of a respondent as described in section (a). The person requesting the petition must give notice to the parties at the time of the request. The Association and the respondent may submit declarations or affidavits relevant to the Review Committee's decision.

(c) **Review Committee Determination.** The review committee may authorize the Association to petition for the appointment of a limited guardian as described in section (a) when the review committee reasonably believes that grounds for such an appointment exist under RCW 11.88.010(2). The review committee may require the respondent to submit to any necessary examinations or evaluations and may retain independent counsel to assist in the investigation and the filing of any petition.

(d) **Action for Limited Guardianship.**

(1) Upon authorization of a review committee, the Association may file a petition in any Superior Court seeking a limited guardian to act regarding the respondent's license or any disciplinary or disability investigation or proceeding.

(2) Notwithstanding any other provisions regarding the qualifications of a guardian ad litem, any guardian ad litem appointed under this rule must be a lawyer qualified to maintain and protect the confidences and secrets of the respondent's clients.

(3) Upon application to the Superior Court, the respondent may have the matter moved to the county where the respondent is domiciled or maintains an office or another county as authorized by law.

(4) The guardianship proceedings must be sealed to the extent necessary to protect confidences and secrets of the respondent's clients or on any other basis found by the Superior Court.

(5) The costs of any guardianship are paid out of the guardianship estate, except if the guardianship estate is indigent, the Association pays the costs.

**TITLE 9 - RESOLUTIONS WITHOUT HEARING**

**ELC 9.1 STIPULATIONS**

(a) **Requirements.** Any disciplinary matter or proceeding may be resolved by a stipulation at any time. The stipulation must be signed by the respondent lawyer and approved by disciplinary counsel. The stipulation may impose terms and conditions of probation and contain any other appropriate provisions.

**(b) Form.** A stipulation must:

(1) provide sufficient detail regarding the particular acts or omissions of the respondent to permit the Board or hearing officer to form an opinion as to the propriety of the proposed resolution, and, if approved, to make the stipulation useful in any subsequent disciplinary proceeding against the respondent;

(2) set forth the respondent's prior disciplinary record or its absence;

(3) state that the stipulation is not binding on the Association as a statement of facts about the respondent's conduct, and that additional facts may be proved in a subsequent disciplinary proceeding; and

(4) fix the amount of costs and expenses to be paid by the respondent.

**(c) Approval.**

(1) *By Hearing Officer.* A hearing officer or panel may approve a stipulation disposing of a matter pending before the officer or panel, unless the stipulation requires the respondent's suspension or disbarment. This approval constitutes a final decision and is not subject to further review.

(2) *By Board.* All other stipulations must be presented to the Board. The Board reviews a stipulation based solely on the record agreed to by the respondent lawyer and disciplinary counsel. The parties may jointly ask the Chair to permit them to address the Board regarding a stipulation. Such presentations are at the Chair's discretion. The Board may approve, conditionally approve, or reject a stipulation. Regardless of the provisions of rule 3.3(a), the Board may direct that information or documents considered in reviewing a stipulation be kept confidential.

(d) **Conditional Approval.** The Board may condition its approval of a stipulation on the agreement by the respondent and disciplinary counsel to a different disciplinary action, probation, restitution, or other terms the Board deems necessary to accomplish the purposes of lawyer discipline. If the Board conditions approval of a stipulation, the stipulation as conditioned is deemed approved if, within 14 days of service of the order, or within additional time granted by the Chair, both parties serve on the Clerk written consent to the conditional terms in the Board's order.

(e) **Reconsideration.** Within 14 days of service of an order rejecting or conditionally approving a stipulation, the parties may serve on the Clerk a joint motion for reconsideration and may ask to address the Board on the motion.

(f) **Stipulation Rejected.** The Board's order rejecting a stipulation must state the reasons for the rejection. A rejected stipulation has no force or effect and neither it nor the fact of its execution is admissible in evidence in any disciplinary, civil, or criminal proceeding.

(g) **Failure To Comply.** A respondent's failure to comply with the terms of an approved stipulation may be grounds for discipline.

**ELC 9.2 RECIPROCAL DISCIPLINE AND DISABILITY INACTIVE STATUS; DUTY TO SELF-REPORT**

(a) **Duty To Self-Report Discipline or Transfer to Disability Inactive Status.** Within 30 days of being disciplined or transferred to disability inactive status in another jurisdiction,

a lawyer admitted to practice in this state must inform disciplinary counsel of the discipline or transfer.

(b) **Obtaining Order.** Upon notification from any source that a lawyer admitted to practice in this state was disciplined or transferred to disability inactive status in another jurisdiction, disciplinary counsel must obtain a certified copy of the order and file it with the Supreme Court.

(c) **Supreme Court Action.** Upon receipt of a certified copy of an order demonstrating that a lawyer admitted to practice in this state has been disciplined or transferred to disability inactive status in another jurisdiction, the Supreme Court orders the respondent lawyer to show cause within 30 days of service why it should not impose the identical discipline or disability inactive status. The Association must personally serve this order, and a copy of the order from the other jurisdiction, on the respondent under rule 4.1 (b)(3).

(d) **Deferral.** If the other jurisdiction has stayed the discipline or transfer, any reciprocal discipline or transfer in this state is deferred until the stay expires.

**(e) Discipline or Transfer To Be Imposed.**

(1) Thirty days after service of the order under section (c), the Supreme Court imposes the identical discipline or disability inactive status unless disciplinary counsel or the lawyer demonstrates, or the Court finds, that it clearly appears on the face of the record on which the discipline or disability transfer is based, that:

(A) the procedure so lacked notice or opportunity to be heard that it denied due process;

(B) the proof of misconduct or disability was so infirm that the Court is clearly convinced that it cannot, consistent with its duty, accept the finding of misconduct or disability;

(C) the imposition of the same discipline would result in grave injustice;

(D) the established misconduct warrants substantially different discipline in this state;

(E) the reason for the original transfer to disability inactive status no longer exists; or

(F) appropriate discipline has already been imposed in this jurisdiction for the misconduct.

(2) If the Court determines that any of the factors in subsection (1) exist, it enters an appropriate order. The burden is on the party seeking different discipline in this jurisdiction to demonstrate that imposing the same discipline is not appropriate.

(f) **Conclusive Effect.** Except as this rule otherwise provides, a final adjudication in another jurisdiction that a lawyer has been guilty of misconduct or should be transferred to disability inactive status conclusively establishes the misconduct or the disability for purposes of a disciplinary or disability proceeding in this state.

**ELC 9.3 RESIGNATION IN LIEU OF DISBARMENT**

(a) **Grounds.** A respondent lawyer who desires not to contest or defend against allegations of misconduct may, at any time before the answer in any disciplinary proceeding is due, resign his or her membership in the Association in lieu of further disciplinary proceedings.

(b) **Process.** The respondent first notifies disciplinary counsel that the respondent intends to submit a resignation and asks disciplinary counsel to prepare a statement of

alleged misconduct and to provide a declaration of costs. After receiving the statement and the declaration of costs, if any, the respondent may resign by submitting to disciplinary counsel a signed resignation, sworn to or affirmed under oath and notarized, that:

(1) includes disciplinary counsel's statement of the alleged misconduct and either an admission of that misconduct or a statement that while not admitting the misconduct the respondent agrees that the Association could prove by a clear preponderance of the evidence that the respondent committed violations sufficient to result in respondent's disbarment;

(2) affirmatively acknowledges that the resignation is permanent including the statement:

"I understand that my resignation is permanent and that any future application by me for reinstatement as a member of the Washington State Bar Association is currently barred. If the Supreme Court changes this rule or an application is otherwise permitted in the future, it will be treated as an application by one who has been disbarred for ethical misconduct, and that, if I file an application, I will not be entitled to a reconsideration or reexamination of the facts, complaints, allegations, or instances of alleged misconduct on which this resignation was based.";

(3) assures that the respondent will:

(A) notify all other jurisdictions in which the respondent is or has been admitted to practice law of the resignation in lieu of disbarment;

(B) seek to resign permanently from the practice of law in any other jurisdiction in which the respondent is admitted; and

(C) provide disciplinary counsel with copies of any of these notifications and any responses;

(4) assures that the respondent will:

(A) notify all other professional licensing agencies in any jurisdiction from which the respondent has a professional license that is predicated on the respondent's admission to practice law of the resignation in lieu of disbarment;

(B) seek to resign permanently from any such license; and

(C) provide disciplinary counsel with copies of any of these notifications and any responses;

(5) states that when applying for any employment or license the respondent agrees to disclose the resignation in lieu of disbarment in response to any question regarding disciplinary action or the status of the respondent's license to practice law;

(6) states that the respondent agrees to pay any restitution or additional costs and expenses ordered by the review committee, and attaches payment for costs as described in section (f) below, or states that the respondent will execute a confession of judgment or deed of trust as described in section (f); and

(7) states that when the resignation becomes effective, the respondent will be subject to all restrictions that apply to a disbarred lawyer.

(c) **Public Filing.** Upon receipt of a resignation meeting the requirements set forth above, and any executed confes-

sion of judgment or deed of trust required under section (f), disciplinary counsel promptly causes it to be filed with the Clerk as a public and permanent record of the Association.

(d) **Effect.** A resignation under this rule is effective upon its filing with the Clerk. All disciplinary proceedings against the respondent terminate except disciplinary counsel has the discretion to continue any investigations deemed appropriate under the circumstances to create a record of the respondent's actions. The Association immediately notifies the Supreme Court of a resignation under this rule and the respondent's name is forthwith stricken from the roll of lawyers. Upon filing of the resignation, the resigned respondent must comply with the same duties as a disbarred lawyer under title 14 and comply with all restrictions that apply to a disbarred lawyer. Notice is given of the resignation in lieu of disbarment under rule 3.5.

(e) **Resignation is Permanent.** Resignation under this rule is permanent. A respondent who has resigned under this rule will never be eligible to apply and will not be considered for admission or reinstatement to the practice of law nor will the respondent be eligible for admission for any limited practice of law.

(f) **Costs and Expenses.**

(A) If a respondent resigns under this rule, the expenses under rule 13.9(c) are \$1,000 for any proceedings for which an answer was not due when the respondent notified disciplinary counsel of the respondent's intent to resign under section (b). With the resignation, the respondent must pay this \$1,000 expense, plus all actual costs for which disciplinary counsel provides documentation, up to an additional \$1,000. If the respondent demonstrates inability to pay these costs and expenses, instead of paying this amount, the respondent must execute, in disciplinary counsel's discretion, a confession of judgment or a deed of trust for that amount. Disciplinary counsel may file a claim under section (g) for costs not covered by the payment, confession of judgment, or deed of trust.

(B) If at the time respondent serves the notice of intent to resign, an additional proceeding is pending against the respondent for which an answer has been filed or is due, disciplinary counsel may also file a claim under section (g) for costs and expenses for that proceeding.

(g) **Review of Costs, Expenses, and Restitution.** Any claims for restitution or for costs and expenses not resolved by agreement between disciplinary counsel and the respondent may be submitted at any time, including after the resignation, to a review committee in writing for the determination of appropriate restitution or costs and expenses. The Lawyers' Fund for Client Protection may request review including a determination by the review committee of whether any funds were obtained by the respondent by dishonesty of, or failure to account for money or property entrusted to, the respondent in connection with the respondent's practice of law or while acting as a fiduciary in a matter related to the respondent's practice of law. The review committee's order is not subject to further review and is the final assessment of restitution or costs and expenses for the purposes of rule 13.9 and may be enforced as any other order for restitution or costs and expenses. The record before the review committee and



of misconduct in the formal complaint being admitted and discipline being imposed or recommended based on the admitted charges of misconduct. If an order of default is entered, you will lose the opportunity to participate further in these proceedings unless and until the order of default is vacated on motion timely made under rule 10.6(c) of the Rules for Enforcement of Lawyer Conduct. The entry of an order of default means that you will receive no further notices regarding these proceedings except those required by rule 10.6 (b)(2).

The [hearing officer] [hearing panel] assigned to this proceeding is: [insert name, address, and telephone number of hearing officer, or name, address, and telephone number of each hearing panel member with an indication of the chair of the panel].

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

WASHINGTON STATE BAR ASSOCIATION

By \_\_\_\_\_

Disciplinary Counsel, Bar No.

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

(b) Notice When Hearing Officer or Panel Not Assigned. If no hearing officer or panel has been assigned when a formal complaint is served, disciplinary counsel serves the formal complaint and a notice to answer as in section (a), but without reference to the hearing officer or panel.

ELC 10.5 ANSWER

(a) Time to Answer. Within 20 days of service of the formal complaint and notice to answer, the respondent lawyer must file and serve an answer. Failure to file an answer as required may be grounds for discipline and for an order of default under rule 10.6. The filing of a motion to dismiss for failure to state a claim stays the time for filing an answer during the pendency of the motion.

(b) Content. The answer must contain:

(1) a specific denial or admission of each fact or claim asserted in the formal complaint in accordance with CR 8(b);

(2) a statement of any matter or facts constituting a defense, affirmative defense, or justification, in ordinary and concise language without repetition; and

(3) an address at which all further pleadings, notices, and other documents in the proceeding may be served on the respondent.

(c) Filing and Service. The answer must be filed and served under rules 4.1 and 4.2. If a hearing panel has been assigned to hear a matter, the respondent must serve each member with a copy of the answer.

ELC 10.6 DEFAULT PROCEEDINGS

(a) Entry of Default.

(1) Timing. If a respondent lawyer, after being served with a notice to answer as provided in rule 10.4, fails to file an answer to a formal complaint or to an amendment to a formal complaint within the time provided by these rules, disciplinary counsel may serve the respondent with a written motion for an order of default.

(2) Motion. Disciplinary counsel must serve the respondent with a written motion for an order of default and a copy of this rule at least five days before entry of the order of default. The motion for an order of default must include the following:

(A) the dates of filing and service of the notice to answer, formal complaint, and any amendments to the complaint; and

(B) disciplinary counsel's statement that the respondent has not timely filed an answer as required by rule 10.5 and that disciplinary counsel seeks an order of default under this rule.

(3) Entry of Order of Default. If the respondent fails to file a written answer with the Clerk within five days of service of the motion for entry of an order of default, the hearing officer, or if no hearing officer or panel has been assigned, the chief hearing officer, on proof of proper service of the motion, enters an order finding the respondent in default.

(4) Effect of Order of Default. Upon entry of an order of default, the allegations and violations in the formal complaint and any amendments to the complaint are deemed admitted and established for the purpose of imposing discipline and the respondent may not participate further in the proceedings unless the order of default is vacated under this rule.

(b) Proceedings After Entry of an Order of Default.

(1) Service. The Clerk serves the order of default and a copy of this rule under rule 4.2(b).

(2) No Further Notices. After entry of an order of default, no further notices must be served on the respondent except for copies of the decisions of the hearing officer or hearing panel and the Board.

(3) Disciplinary Proceeding. Within 60 days of the filing of the order of default, the hearing officer must conduct a disciplinary proceeding to recommend disciplinary action based on the allegations and violations established under section (a). At the discretion of the hearing officer or panel, these proceedings may be conducted by formal hearing, written submissions, telephone hearing, or other electronic means. Disciplinary counsel may present additional evidence including, but not limited to, requests for admission under rule 10.11(b), and depositions, affidavits, and declarations regardless of the witness's availability.

(c) Setting Aside Default.

(1) Motion To Vacate Order of Default. A respondent may move to vacate the order of default and any decision of the hearing officer or panel or Board arising from the default on the following grounds:

(A) mistake, inadvertence, surprise, excusable neglect, or irregularity in obtaining the default;

(B) erroneous proceedings against a respondent who was, at the time of the default, incapable of conducting a defense;

(C) newly discovered evidence that by due diligence could not have been previously discovered;

(D) fraud, misrepresentation, or other misconduct of an adverse party;

(E) the order of default is void;

(F) unavoidable casualty or misfortune preventing the respondent from defending; or

MISC.

(G) any other reason justifying relief from the operation of the default.

(2) *Time.* The motion must be made within a reasonable time and for grounds (A) and (C) within one year after entry of the default. If the respondent's motion is based on allegations of incapability of conducting a defense, the motion must be made within one year after the disability ceases.

(3) *Burden of Proof.* The respondent bears the burden of proving the grounds for setting aside the default. If the respondent proves that the default was entered as a result of a disability which made the respondent incapable of conducting a defense, the default must be set aside.

(4) *Service and Contents of Motion.* The motion must be filed and served under rules 4.1 and 4.2 and be accompanied by a copy of respondent's proposed answer to each formal complaint for which an order of default has been entered. The proposed answer must state with specificity the respondent's asserted defenses and any facts that respondent asserts as mitigation. The motion to vacate the order of default must be supported by an affidavit showing:

(A) the date on which the respondent first learned of the entry of the order of default;

(B) the grounds for setting aside the order of default; and

(C) an offer of proof of the facts that the respondent expects to establish if the order of default is vacated.

(5) *Response to Motion.* Within ten days of filing and service of the motion to vacate, disciplinary counsel may file and serve a written response.

(6) *Decision.* The hearing officer or panel decides a motion to vacate the order of default on the written record without oral argument. If the proceedings have been concluded, the chief hearing officer assigns a hearing officer or panel to decide the motion. Pending a ruling on the motion, the hearing officer or panel may order a stay of proceedings not to exceed 30 days. In granting a motion to vacate an order of default, the hearing officer or panel has discretion to order appropriate conditions.

(7) *Appeal of Denial of Motion.* A respondent may appeal to the Chair a denial of a motion to vacate an order of default by filing and serving a written notice of appeal stating the arguments against the hearing officer or panel's decision. The respondent must file the notice of appeal within ten days of service on the respondent of the order denying the motion. The appeal is decided on the written record without oral argument. Pending a ruling on the appeal, the Chair may order a stay of proceedings not to exceed 30 days. In granting a motion to vacate an order of default, the Chair has discretion to order appropriate conditions.

(8) *Decision To Vacate Is Not Subject to Interim Review.* An order setting aside an order of default is not subject to interim review.

**(d) Order of Default Not Authorized in Certain Proceedings.** The default procedure in this rule does not apply to a proceeding to inquire into a lawyer's capacity to practice law under title 8 except as provided in that title.

#### ELC 10.7 AMENDMENT OF FORMAL COMPLAINT

**(a) Right To Amend.** Disciplinary counsel may, without review committee authorization, amend a formal complaint at any time to add facts or charges that relate to matters

in the formal complaint or to the respondent lawyer's conduct regarding the pending proceedings.

**(b) Amendment with Authorization.** Disciplinary counsel must seek review committee authorization for amendments other than those under section (a). The review committee may authorize the amendment or may require that the additional facts or charges be the subject of a separate formal complaint. The Chair, with the consent of the respondent, and after consultation with the hearing officer on the previously filed matter, may consolidate the hearing on the separate formal complaint with the hearing on the other pending formal complaint against the respondent.

**(c) Service and Answer.** Disciplinary counsel serves an amendment to a formal complaint on the respondent as provided in rule 4.1 but need not serve a Notice to Answer with the amendment. Rule 10.5 governs the answer to an amendment except that any part of a previous answer may be incorporated by reference.

#### ELC 10.8 MOTIONS

**(a) Filing and Service.** Motions to the hearing officer, except motions which may be made ex parte or motions at hearing, must be in writing and filed and served as required by rules 4.1 and 4.2.

**(b) Response.** The opposing party has five days from service of a motion to respond, unless the time is shortened by the hearing officer for good cause. A request to shorten time for response to a motion may be made ex parte.

**(c) Consideration of Motion.** Upon expiration of the time for response, the hearing officer should promptly rule on the motion, with or without argument as may appear appropriate. Argument on a motion may be heard by conference telephone call.

**(d) Ruling.** A ruling on a written motion must be in writing and filed with the Clerk.

**(e) Minor Matters.** Alternatively, motions on minor matters may be made by letter to the hearing officer, with a copy to the opposing party and to the Clerk. The provisions of sections (b) and (c) apply to these motions. A ruling on such motion may also be by letter to each party with a copy to the Clerk.

**(f) Chief Hearing Officer Authority.** Before the assignment of a hearing officer or panel, the chief hearing officer may rule on any prehearing motion.

#### ELC 10.9 INTERIM REVIEW

Unless these rules provide otherwise, the Board may review any interim ruling on request for review by either party, if the Chair determines that review is necessary and appropriate and will serve the ends of justice.

#### ELC 10.10 PREHEARING DISPOSITIVE MOTIONS

**(a) Respondent Motion.** A respondent lawyer may move for dismissal of all or any portion of one or more counts of a formal complaint for failure to state a claim upon which relief can be granted.

**(b) Disciplinary Counsel Motion.** Disciplinary counsel may move for an order finding misconduct based on the pleadings. In ruling on this motion, the hearing officer or panel may find that all or some of the misconduct as alleged in the formal complaint is established, but will determine the sanction after a hearing.

(c) **Time for Motion.** A motion under this rule must be filed within 30 days of the filing of the answer to a formal complaint or amended formal complaint. A respondent may, within the time provided for filing an answer, instead file a motion under this rule. If the motion does not result in the dismissal of the entire formal complaint, the respondent must file and serve an answer to the remaining allegations within ten days of service of the ruling on the motion.

(d) **Procedure.** Rule 10.8 and CR 12 apply to motions under this rule. No factual materials outside the answer and complaint may be presented. If the motion results in dismissal of part but not all of a formal complaint, the Board must hear an interlocutory appeal of the order by either party. The appeal must be filed within 15 days of service of the order.

#### ELC 10.11 DISCOVERY AND PREHEARING PROCEDURES

(a) **General.** The parties should cooperate in mutual informal exchange of relevant non-privileged information to facilitate expeditious, economical, and fair resolution of the case.

(b) **Requests for Admission.** After a formal complaint is filed, the parties may request admissions under CR 36. Under appropriate circumstances, the hearing officer may apply the sanctions in CR 37(c) for improper denial of requests for admission.

(c) **Other Discovery.** After a formal complaint is filed, the parties have the right to other discovery under the Superior Court Civil Rules, including under CR 27-31 and 33-35, only on motion and under terms and limitations the hearing officer deems just or on the parties' stipulation.

(d) **Limitations on Discovery.** The hearing officer may exercise discretion in imposing terms or limitations on the exercise of discovery to assure an expeditious, economical, and fair proceeding, considering all relevant factors including necessity and unavailability by other means, the nature and complexity of the case, seriousness of charges, the formal and informal discovery that has already occurred, the burdens on the party from whom discovery is sought, and the possibility of unfair surprise.

#### (e) Deposition Procedure.

(1) Subpoenas for depositions may be issued under CR 45. Subpoenas may be enforced under rule 4.7.

(2) For a deposition outside Washington State, a commission need not issue, but a copy of the order of the chief hearing officer or hearing officer, certified by the officer, is sufficient to authorize the deposition.

(f) **CR 16 Orders.** The hearing officer may enter orders under CR 16.

(g) **Duty to Cooperate.** A respondent lawyer who has been served with a formal complaint must respond to discovery requests and comply with all lawful orders made by the hearing officer. The hearing officer or panel may draw adverse inferences as appear warranted by the failure of either the Association or the respondent to respond to discovery.

#### ELC 10.12 SCHEDULING HEARING

(a) **Where Held.** All disciplinary hearings must be held in Washington State, unless the respondent lawyer is not a resident of the state, or cannot be found in the state.

(b) **Scheduling of Hearing.** If possible, the parties should arrange a date, time, and place for the hearing by agreement among themselves and the hearing officer or panel members. Alternatively, at any time after the respondent has filed an answer to the formal complaint, or after the time to file the answer has expired, either party may move for an order setting a date, time, and place for the hearing. Rule 10.8 applies to this motion. The motion must state:

- the requested date or dates for the hearing;
- other dates that are available to the requesting party;
- the expected duration of the hearing;
- discovery and anything else that must be completed before the hearing; and
- the requested time and place for the hearing.

A response to the motion must contain the same information.

(c) **Scheduling Order.** The hearing officer must enter an order setting the date and place of the hearing. This order may include any prehearing deadlines the hearing officer deems required by the complexity of the case, and may be in the following form with the following timelines:

**IT IS ORDERED** that the hearing is set and the parties must comply with prehearing deadlines as follows:

1. **Witnesses.** A list of intended witnesses, including addresses and phone numbers, must be filed and served by [Hearing Date (H)]-8 weeks].

2. **Discovery.** Discovery cut-off is [H-6 weeks].

3. **Motions.** Prehearing motions, other than motions to bifurcate, must be served by [H-4 weeks]. An exhibit not ordered or stipulated admitted may not be attached to a motion or otherwise transmitted to the hearing officer unless the motion concerns the exhibit's admissibility. The hearing officer will advise counsel whether oral argument is necessary, and, if so, the date and time, and whether it will be heard by telephone. (Rule 10.15 provides the deadline for a motion to bifurcate.)

4. **Exhibits.** A list of proposed exhibits must be filed and served by [H-3 weeks].

5. **Service of Exhibits/Summary.** Copies of proposed exhibits and a summary of the expected testimony of each witness must be served on the opposing counsel by [H-2 weeks].

6. **Objections.** Objections to proposed exhibits, including grounds, must be exchanged by [H-1 week].

7. **Briefs.** Any hearing brief must be served and filed by [H-1 week]. Exhibits not ordered or stipulated admitted may not be attached to a hearing brief or otherwise transmitted to the hearing officer before the hearing.

8. **Hearing.** The hearing is set for [H] and each day thereafter until recessed by the hearing officer, at [location].

(d) **Motion for Hearing Within 120 Days.** A respondent's motion under section (b) for a hearing within 120 days must be granted, unless disciplinary counsel shows good cause for setting the hearing at a later date.

(e) **Notice.** Service of a copy of an order or ruling of the hearing officer setting a date, time, and place for the hearing constitutes notice of the hearing. The respondent must be given at least ten days notice of the hearing absent consent.

**(f) Continuance.** Either party may move for a continuance of the hearing date. The hearing officer has discretion to grant the motion for good cause shown.

#### ELC 10.13 DISCIPLINARY HEARING

**(a) Representation.** The Association is represented at the hearing by disciplinary counsel. The respondent lawyer may be represented by counsel.

**(b) Respondent Must Attend.** A respondent given notice of a hearing must attend the hearing. Failure to attend the hearing, without good cause, may be grounds for discipline. If, after proper notice, the respondent fails to attend the hearing, the hearing officer or panel:

(1) may draw an adverse inference from the respondent's failure to attend as to any questions that might have been asked the respondent at the hearing; and

(2) must admit testimony by deposition regardless of the deponent's availability. An affidavit or declaration is also admissible, if:

(A) the facts stated are within the witness's personal knowledge;

(B) the facts are set forth with particularity; and

(C) it shows affirmatively that the witness could testify competently to the stated facts.

**(c) Respondent Must Bring Requested Materials.** Disciplinary counsel may request in writing, served on the respondent at least three days before the hearing, that the respondent bring to the hearing any documents, files, records, or other written materials or things. The respondent must comply with this request and failure to bring requested materials, without good cause, may be grounds for discipline.

**(d) Witnesses.** Except as provided in subsection (b)(2) and rule 10.6, witnesses must testify under oath. Testimony may also be submitted by deposition as permitted by CR 32. Testimony must be recorded by a court reporter or, if allowed by the hearing officer, by tape recording. The parties have the right to cross-examine witnesses who testify and to submit rebuttal evidence.

**(e) Subpoenas.** The parties may subpoena witnesses, documents, or things under the terms of CR 45. A witness must promptly comply with all subpoenas issued under this rule and with all lawful orders made by the hearing officer under this rule. Subpoenas may be enforced under rule 4.7. The hearing officer or panel may additionally draw adverse inferences as appear warranted by the respondent's failure to respond.

**(f) Prior Disciplinary Record.** The respondent's record of prior disciplinary action, or the fact that the respondent has no prior disciplinary action, must be made a part of the hearing record before the hearing officer or panel files a decision.

#### ELC 10.14 EVIDENCE AND BURDEN OF PROOF

**(a) Proceedings Not Civil or Criminal.** Hearing officers should be guided in their evidentiary and procedural rulings by the principle that disciplinary proceedings are neither civil nor criminal but are sui generis hearings to determine if a lawyer's conduct should have an impact on his or her license to practice law.

**(b) Burden of Proof.** Disciplinary counsel has the burden of establishing an act of misconduct by a clear preponderance of the evidence.

**(c) Proceeding Based on Criminal Conviction.** If a formal complaint charges a respondent lawyer with an act of misconduct for which the respondent has been convicted in a criminal proceeding, the court record of the conviction is conclusive evidence at the disciplinary hearing of the respondent's guilt of the crime and violation of the statute on which the conviction was based.

**(d) Rules of Evidence.** Consistent with section (a) of this rule, the following rules of evidence apply during disciplinary hearings:

(1) evidence, including hearsay evidence, is admissible if in the hearing officer's judgment it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The hearing officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious;

(2) if not inconsistent with subsection (1), the hearing officer shall refer to the Washington Rules of Evidence as guidelines for evidentiary rulings;

(3) documents may be admitted in the form of copies or excerpts, or by incorporation by reference;

(4) Official Notice.

(A) official notice may be taken of:

(i) any judicially cognizable facts;

(ii) technical or scientific facts within the hearing officer's or panel's specialized knowledge; and

(iii) codes or standards adopted by an agency of the United States, of this state, or of another state, or by a nationally recognized organization or association.

(B) the parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material noticed and the sources thereof, including any staff memoranda and data, and they shall have an opportunity to contest the facts and material noticed. A party proposing that official notice be taken may be required to produce a copy of the material to be noticed.

**(e) APA as Guidance.** The evidence standards in this rule are based on the evidence provisions of the Washington Administrative Procedures Act, which, when not inconsistent with these standards, should be looked to for guidance. "Shall" has the meaning in this rule ascribed to it in the APA.

#### ELC 10.15 BIFURCATED HEARINGS

**(a) When Allowed.** Upon written motion filed no later than 60 days before the scheduled hearing, either party may request that the disciplinary proceeding be bifurcated. The hearing officer or panel must weigh the reasons for bifurcation against any increased cost and delay, inconvenience to participants, duplication of evidence, and any other factors, and may grant the motion only if it appears necessary to insure a fair and orderly hearing because the respondent has a record of prior disciplinary sanction or because either party would suffer significant prejudice or harm.

**(b) Procedure.**

(1) *Violation Hearing.*

(A) A bifurcated proceeding begins with an initial hearing to make factual determinations and legal conclusions as to the violations charged, including the mental state necessary for the violations. During this stage of the proceedings, evidence of a prior disciplinary record is not admissible to

prove the respondent's character or to impeach the respondent's credibility. However, evidence of prior acts of misconduct may be admitted for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

(B) At the conclusion of that hearing, the hearing officer or panel files findings and conclusions.

(i) If no violation is found, the proceedings are concluded, the findings and conclusions are the decision of the hearing officer or panel, and the sanction hearing is canceled.

(ii) If any violation is found, after the expiration of the time for a motion to amend under rule 10.16(c), or after ruling on that motion, the findings and conclusions as to those violations are not subject to reconsideration by the hearing officer.

(2) *Sanction Hearing.* If any violation is found, a second hearing is held to determine the appropriate sanction recommendation. During the sanction hearing, evidence of the existence or lack of any prior disciplinary record is admissible. No evidence may be admitted to contradict or challenge the findings and conclusions as to the violations. At the conclusion of the sanction hearing, the hearing officer or panel files findings and conclusions as to a sanction recommendation, that, together with the previously filed findings and conclusions, is the decision of the hearing officer or panel.

(3) *Timing.* If a motion for bifurcation is granted, the violation hearing is held on the date previously set for hearing. Upon granting a motion to bifurcate, the hearing officer must set a date and place for the sanction hearing. Absent extraordinary circumstances, the sanction hearing should be held no later than 45 days after the anticipated last day of the violation hearing.

#### ELC 10.16 DECISION OF HEARING OFFICER OR PANEL

(a) **Decision.** Within 20 days after the proceedings are concluded, unless extended by agreement, the hearing officer should file with the Clerk a decision in the form of findings of fact, conclusions of law, and recommendation.

(b) **Preparation of Findings.** The hearing officer or hearing panel write their own findings of fact, conclusions of law, and recommendations. At the request of the hearing officer, or without a request, either party may submit proposed findings, conclusions, and recommendation.

#### (c) **Amendment.**

(1) *Timing of Motion.* Either party may move to modify, amend, or correct the decision as follows:

(A) In a proceeding not bifurcated, within ten days of service of the decision on the respondent lawyer;

(B) In a bifurcated proceeding, within five days of service of:

(i) the violation findings of fact and conclusions of law; or

(ii) the sanction recommendation, but this motion may not seek to modify, amend, or correct the violation findings or conclusions.

(C) If a hearing panel member dissents from a decision of the majority, the five or ten day period does not begin until the written dissent is filed or the time to file a dissent has expired, whichever is sooner.

(2) *Procedure.* Rule 10.8 governs this motion, except that all members of a hearing panel must be served with the motion and any response and participate in a decision on the motion. A panel's deliberation may be conducted through telephone conference call. The hearing officer or panel should rule on the motion within 15 days after the filing of a timely response or after the period to file a response under rule 10.8(b) has expired. The ruling may deny the motion or may amend, modify, or correct the decision.

(3) *Effect of Failure To Move.* Failure to move for modification, correction, or amendment does not affect any appeal to the Board or review by the Supreme Court.

(d) **Dissent of Panel Member.** Any member of a hearing panel who dissents from the decision of the majority of the panel should file a dissent, which may consist of alternative findings, conclusions, or recommendation. A dissent should be filed within ten days of the filing of the majority's decision and becomes part of the record of the proceedings.

(e) **Panel Members Unable To Agree.** If no two panel members are able to agree on a decision, each panel member files findings, conclusions, and a recommendation, and the Board reviews the matter whether or not an appeal is filed.

(f) **When Final.** If a hearing officer or panel recommends reprimand or an admonition, or recommends dismissal of the charges, the recommendation becomes the final decision if neither party files an appeal and if the Chair does not refer the matter to the Board for consideration within the time permitted by rule 11.2 (b)(3). If the Chair refers the matter to the Board for consideration of a sua sponte review, the decision is final upon entry of an order dismissing sua sponte review under rule 11.3 or upon other Board decision under rule 11.12(g).

#### TITLE 11 - REVIEW BY BOARD

##### ELC 11.1 SCOPE OF TITLE

This title provides the procedure for Board review following a hearing officer or panel's findings of fact, conclusions of law, and recommendation. It does not apply to Board review of interim rulings under rule 10.9.

##### ELC 11.2 DECISIONS SUBJECT TO BOARD REVIEW

(a) **Decision.** For purposes of this title, "Decision" means the hearing officer or panel's findings of fact, conclusions of law, and recommendation, provided that if either party properly files a motion to amend under rule 10.16(c), the "Decision" includes the ruling on the motion, and becomes subject to Board review only upon the ruling on the motion.

(b) **Review of Decisions.** The Board reviews the following Decisions:

(1) those recommending suspension or disbarment;

(2) those in which no two members of a hearing panel are able to agree on a Decision; and

(3) all others if within 15 days of service of the Decision on the respondent:

(A) either party files a notice of appeal; or

(B) the Chair files a notice of referral for sua sponte consideration of the Decision.

**ELC 11.3 SUA SPONTE REVIEW**

(a) **Procedure.** Sua sponte review commences when the Chair files a notice of referral under rule 11.2 (b)(3)(B). Upon this filing, the Chair causes a copy to be served on the parties and schedules the matter for consideration by the Board. On consideration, the Board either issues an order for sua sponte review setting forth the issues to be reviewed or dismisses the sua sponte review. If the Board issues an order for sua sponte review, the procedures of rule 11.9(e) apply unless otherwise modified by the order, except either party may raise any issue for Board review.

(b) **Standards.** The Board uses sua sponte review only in extraordinary circumstances to prevent substantial injustice or to correct a clear error. Sua sponte review uses the same standards of review as other cases.

**ELC 11.4 TRANSCRIPT OF HEARING**

(a) **Ordering Transcript.** A hearing transcript or partial transcript may be ordered at any time by the hearing officer or panel, respondent lawyer, disciplinary counsel, or the Board. Disciplinary counsel must order the entire transcript if the hearing officer or panel recommends suspension or disbarment or if no two panel members can agree on a Decision. If a notice of appeal is filed under rule 11.2 (b)(3)(A), disciplinary counsel must order the entire transcript unless the parties agree that no transcript or only a partial transcript is necessary for review. For sua sponte review, the Chair determines the procedure for ordering the transcript if not already ordered.

(b) **Filing and Service.** The original of the transcript is filed with the Clerk. Disciplinary counsel must cause a copy of the transcript to be served on the respondent except if the respondent ordered the transcript.

(c) **Proposed Corrections.** Within ten days of service of a copy of the transcript on the respondent, or within ten days of filing the transcript if the respondent ordered the transcript, each party may file any proposed corrections to the transcript. Each party has five days after service of the opposing party's proposed corrections to file objections to those proposed corrections.

(d) **Settlement of Transcript.** If either party files objections to any proposed correction under section (c), the hearing officer, upon review of the proposed corrections and objections, enters an order settling the transcript. Otherwise, the transcript is deemed settled and any proposed corrections deemed incorporated in the transcript.

**ELC 11.5 RECORD ON REVIEW**

(a) **Generally.** The record on review consists of:

- (1) any hearing transcript or partial transcript; and
- (2) bar file documents and exhibits designated by the parties.

(b) **References to the Record.** Briefs filed under rules 11.8 and 11.9 must specifically refer to the record if available, using the designations TR for transcript of hearing, EX for exhibits, and BF for bar file documents.

(c) **Avoid Duplication.** Material appearing in one part of the record on review should not be duplicated in another part of the record on review.

(d) **No Additional Evidence.** Evidence not presented to the hearing officer or panel must not be presented to the Board.

**ELC 11.6 DESIGNATION OF BAR FILE DOCUMENTS AND EXHIBITS**

The parties designate bar file documents and exhibits for Board consideration under the procedure of RAP 9.6 with the following adaptations and modifications:

(a) **Bar File Documents.** The bar file documents are considered the clerk's papers.

(b) **Disciplinary Board and Clerk.** The Disciplinary Board is considered the appellate court and the Clerk to the Disciplinary Board is considered the trial court clerk.

(c) **Time for Designation.**

(1) *Review of Suspension or Disbarment Recommendation.* When review is under rule 11.2 (b)(1), the respondent lawyer must file and serve the respondent's designation of bar file documents and exhibits within 30 days of service of the Decision.

(2) *Review Not Involving Suspension or Disbarment Recommendation.* When review is under rule 11.2 (b)(3)(A), the party seeking review must file and serve that party's designation of bar file documents and exhibits within 15 days of filing the notice of appeal. When review is under rule 11.2 (b)(2) or 11.2 (b)(3)(B), the respondent is considered the party seeking review for designating bar file documents and exhibits.

(d) **Hearing Officer Recommendation.** The bar file documents must include the hearing officer or panel's recommendation.

**ELC 11.7 PREPARATION OF BAR FILE DOCUMENTS AND EXHIBITS**

(a) **Preparation.** The Clerk prepares the bar file documents and exhibits in the format required by RAP 9.7 (a) & (b), and distributes them to the Board. The Clerk provides the parties with a copy of the index of the bar file documents and the cover sheet listing the exhibits.

(b) **Costs.** Costs for preparing bar file documents and exhibits may be assessed as costs under rule 13.9 (b)(9).

**ELC 11.8 BRIEFS FOR REVIEWS INVOLVING SUSPENSION OR DISBARMENT RECOMMENDATION**

(a) **Caption of Briefs.** Parties should caption their briefs as follows:

[Name of Party] Brief [in Support of/in Opposition to]  
Hearing [Officer's] [Panel's] Decision  
[Name of Party] Reply Brief

(b) **Briefs in Support or Opposition.** In a matter before the Board under rule 11.2 (b)(1), each party may file a brief in support of or in opposition to the Decision, or any part of it.

(c) **Time for Filing Briefs.** Briefs, if any, must be filed as follows:

(1) The respondent lawyer must file a brief within 20 days of service on the respondent of the later of:

- (A) a copy of the hearing transcript; or
- (B) the Decision.

(2) Disciplinary counsel must file a brief within 15 days of service on disciplinary counsel of the respondent's brief, or, if no brief is filed by the respondent, within 15 days of the expiration of the period for the respondent to file a brief.

(3) The respondent may file a reply to disciplinary counsel's brief within ten days of service of that brief on the respondent.

**ELC 11.9 BRIEFS FOR REVIEWS NOT INVOLVING SUSPENSION OR DISBARMENT RECOMMENDATION**

(a) **Caption of Briefs.** The parties should caption briefs as follows:

[Name of Party] Brief in Opposition to Hearing [Officer's] [Panel's] Decision

[Name of Party] Response

[Name of Party] Reply

**(b) Brief in Opposition.**

(1) The party seeking review must file a brief in opposition to the Decision within 20 days of the later of:

(A) service on the respondent lawyer of a copy of the transcript, unless the parties have agreed that no transcript is necessary; or

(B) filing of the notice of appeal.

(2) Failure to file a brief within the required period constitutes an abandonment of the appeal.

(c) **Response.** The opposing party has 15 days from service of the statement of the party seeking review to file a brief responding to the issues raised on appeal.

(d) **Reply.** The party seeking review may file a reply to the response within ten days of service of the response.

(e) **Procedure when Both Parties Seek Review or When No Two Panel Members Can Agree.** When both parties file notices of appeal under rule 11.2 (b)(3)(A) or when no two panel members are able to agree on a Decision, the respondent is considered the party seeking review and disciplinary counsel is considered the opposing party. In that case, disciplinary counsel's response may raise any issue for Board review, and the respondent has an additional five days to file the reply permitted by section (d).

**ELC 11.10 SUPPLEMENTING RECORD ON REVIEW**

The record on review may be supplemented under the procedures of RAP 9.6 except that leave to supplement is freely granted. The Board may direct that the record be supplemented with any portion of the record before the hearing officer, including any bar file documents and exhibits.

**ELC 11.11 REQUEST FOR ADDITIONAL PROCEEDINGS**

In any brief permitted in rules 11.8 and 11.9, either party may request that an additional hearing be held before the hearing officer or panel to take additional evidence based on newly discovered evidence. A request for an additional hearing must be supported by affidavit describing in detail the additional evidence sought to be admitted and any reasons why it was not presented at the previous hearing. The Board may grant or deny the request in its discretion.

**ELC 11.12 DECISION OF BOARD**

(a) **Basis for Review.** Board review is based on the hearing officer or panel's Decision, any hearing panel member's dissent, the parties' briefs filed under rule 11.8 or 11.9, and the record on review.

(b) **Standards of Review.** The Board reviews findings of fact for substantial evidence. The Board reviews conclusions of law and recommendation de novo. Evidence not presented to the hearing officer or panel cannot be considered by the Board.

(c) **Oral Argument.** The Board hears oral argument if requested by either party or the Chair. A party's request must be filed no later than the deadline for that party to file his or her last brief, including a response or reply, under rule 11.8 or 11.9. The Chair's notice of oral argument must be filed and served on the parties no later than 14 days before the oral argument. The Chair sets the time, place, and terms for oral argument.

(d) **Action by Board.** On review, the Board may adopt, modify, or reverse the findings, conclusions, or recommendation of the hearing officer or panel. The Board may also direct that the hearing officer or panel hold an additional hearing on any issue, on its own motion, or on either party's request.

(e) **Order or Opinion.** The Board must issue a written order or opinion. If the Board amends, modifies, or reverses any finding, conclusion, or recommendation of the hearing officer or panel, the Board must state the reasons for its decision in a written order or opinion. A Board member agreeing with the majority's order or opinion may file separate concurring reasons. A Board member dissenting from the majority's order or opinion may set forth in writing the reasons for that dissent. The decision should be prepared as expeditiously as possible and consists of the majority's opinion or order together with any concurring or dissenting opinions. None of the opinions or orders may be filed until all opinions are filed. A copy of the complete decision is served by the Clerk on the parties.

**(f) Procedure to Amend, Modify, or Reverse if No Appeal.**

(1) If the Board intends to amend, modify, or reverse the hearing officer or panel's recommendation in a matter that has not been appealed to the Board by either party, the Board issues a notice of intended decision.

(2) Either party may, within 15 days of service of this notice, file a request that the Board reconsider the intended decision.

(3) If a request is filed, the Board reconsiders its intended decision and the intended decision has no force or effect. The Chair determines the procedure for the Board's reconsideration, including whether to grant requests for oral argument.

(4) If no timely request for reconsideration is filed, the Board forthwith issues an order adopting the intended decision effective on the date of the order. If a party files a timely request for reconsideration, the Board issues an order or opinion after reconsideration under section (e).

(g) **Decision Final Unless Appealed.** The Board's decision is final if neither party files a notice of appeal nor a petition for review within the time permitted by title 12 or upon the Supreme Court's denial of a petition for discretionary review.

**ELC 11.13 CHAIR MAY MODIFY REQUIREMENTS**

Upon written motion filed with the Clerk by either party, for good cause shown, the Chair may modify the time periods in title 11, and make other orders as appear appropriate to assure fair and orderly Board review. However, the time period for filing a notice of appeal in rule 11.2 (b)(3)(A) may not be extended or altered.

**TITLE 12 - REVIEW BY SUPREME COURT****ELC 12.1 APPLICABILITY OF RULES OF APPELLATE PROCEDURE**

The Rules of Appellate Procedure serve as guidance for review under this title except as to matters specifically dealt with in these rules.

**ELC 12.2 METHODS OF SEEKING REVIEW**

**(a) Two Methods for Seeking Review of Board Decisions.** The methods for seeking Supreme Court review of Board decisions entered under rule 11.12(e) are: review as a matter of right, called "appeal", and review with Court permission, called "discretionary review". Both "appeal" and "discretionary review" are called "review".

**(b) Power of Court Not Affected.** This rule does not affect the Court's power to review any Board decision recommending suspension or disbarment and to exercise its inherent and exclusive jurisdiction over the lawyer discipline and disability system. The Court notifies the respondent lawyer and disciplinary counsel of the Court's intent to exercise sua sponte review within 90 days of the Court receiving notice of the decision under rule 3.5(a), rule 7.1(h), or otherwise.

**ELC 12.3 APPEAL**

**(a) Respondent's Right to Appeal.** The respondent lawyer has the right to appeal a Board decision recommending suspension or disbarment. There is no other right of appeal.

**(b) Notice of Appeal.** To appeal, the respondent must file a notice of appeal with the Clerk within 15 days of service of the Board's decision on the respondent.

**ELC 12.4 DISCRETIONARY REVIEW**

**(a) Decisions Subject to Discretionary Review.** Board decisions under rule 11.12(e) not recommending suspension or disbarment are subject to Supreme Court review only through discretionary review. The Court accepts discretionary review only if:

- (1) the Board's decision is in conflict with a Supreme Court decision;
- (2) a significant question of law is involved;
- (3) there is no substantial evidence in the record to support a material finding of fact on which the Board's decision is based; or
- (4) the petition involves an issue of substantial public interest that the Court should determine.

**(b) Petition for Review.** Either party may seek discretionary review by filing a petition for review with the Court within 25 days of service of the Board's decision.

**(c) Content of Petition; Answer; Service; Decision.** A petition for review should be substantially in the form prescribed by RAP 13.4(c) for petitions for Supreme Court review of Court of Appeals decisions. References in that rule to the Court of Appeals are considered references to the Board. The appendix to the petition or an appendix to an answer or reply may additionally contain any part of the record, including portions of the transcript or exhibits, to which the party refers. RAP 13.4 (d) - (h) govern answers and replies to petitions for review and related matters including service and decision by the Court.

**(d) Acceptance of Review.** The Court accepts discretionary review of a Board decision by granting a petition for

review. Upon acceptance of review, the same procedures apply to matters subject to appeal and matters subject to discretionary review.

**ELC 12.5 RECORD TO SUPREME COURT**

**(a) Transmittal.** The Clerk should transmit the record to the Supreme Court within 30 days of the filing of the notice of appeal, service of the order accepting review, or filing of the transcript of oral argument before the Board, if any.

**(b) Content.** The record transmitted to the Court consists of:

- (1) the notice of appeal, if any;
  - (2) the Board's decision;
  - (3) the record before the Board;
  - (4) the transcript of any oral argument before the Board;
- and

(5) any other portions of the record before the hearing officer, including any bar file documents or exhibits, that the Court deems necessary for full review.

**(c) Notice to Parties.** The Clerk serves each party with a list of the portions of the record transmitted.

**(d) Transmittal of Cost Orders.** Within ten days of entry of an order assessing costs under rule 13.9(e), the Clerk should transmit it to the Court as a separate part of the record, together with the supporting statements of costs and expenses and any exceptions or reply filed under rule 13.9(d).

**(e) Additions to Record.** Either party may at any time move the Court for an order directing the transmittal of additional portions of the record to the Court.

**ELC 12.6 BRIEFS**

**(a) Brief Required.** The party seeking review must file a brief stating his or her objections to the Board's decision.

**(b) Time for Filing.** The brief of the party seeking review should be filed with the Supreme Court within 30 days of service under rule 12.5(c) of the list of portions of the record transmitted to the Court.

**(c) Answering Brief.** The answering brief of the other party should be filed with the Court within 30 days after service of the brief of the party seeking review.

**(d) Reply Brief.** A reply brief of a party seeking review should be filed with the Court within the sooner of 20 days after service of the answering brief or 14 days before oral argument. A reply brief should be limited to a response to the issues in the brief to which the reply brief is directed.

**(e) Briefs When Both Parties Seek Review.** When both the respondent lawyer and disciplinary counsel seek review of a Board decision, the respondent is deemed the party seeking review for the purposes of this rule. In that case, disciplinary counsel may file a brief in reply to any response the respondent has made to the issues presented by disciplinary counsel, to be filed with the Court the sooner of 20 days after service of the respondent's reply brief or 14 days before oral argument.

**(f) Form of Briefs.** Briefs filed under this rule must conform as nearly as possible to the requirements of RAP 10.3 and 10.4. Bar file documents should be abbreviated BF, the transcript or partial transcript of the hearing should be abbreviated TR, and exhibits should be abbreviated EX.

**(g) Reproduction and Service of Briefs by Clerk.** The Supreme Court clerk reproduces and distributes briefs as provided in RAP 10.5.

#### ELC 12.7 ARGUMENT

**(a) Rules Applicable.** Oral argument before the Supreme Court is conducted under title 11 of the Rules of Appellate Procedure, unless the Court directs otherwise.

**(b) Priority.** Disciplinary proceedings have priority and are set upon compliance with the above rules.

#### ELC 12.8 EFFECTIVE DATE OF OPINION

**(a) Effective when Filed.** An opinion in a disciplinary proceeding takes effect when filed unless the Court specifically provides otherwise.

**(b) Motion for Reconsideration.** A motion for reconsideration may be filed as provided in RAP 12.4, but the motion does not stay the judgment unless the Court enters a stay.

#### ELC 12.9 VIOLATION OF RULES

Sanctions for violation of these rules may be imposed on a party under RAP 18.9. Upon dismissal under that rule of a review sought by a respondent lawyer and expiration of the period to file objections under RAP 17.7, or upon dismissal of review by the Court if timely objections are filed, the Board's decision is final.

### TITLE 13 - SANCTIONS AND REMEDIES

#### ELC 13.1 SANCTIONS AND REMEDIES

Upon a finding that a lawyer has committed an act of misconduct, one or more of the following may be imposed:

**(a) Sanctions.**

- (1) Disbarment;
- (2) Suspension under rule 13.3; or
- (3) Reprimand.

**(b) Admonition.** An admonition under rule 13.5.

**(c) Remedies.**

- (1) Restitution;
- (2) Probation;
- (3) Limitation on practice;
- (4) Requirement that the lawyer attend continuing legal education courses;
- (5) Assessment of costs; or
- (6) Other requirements consistent with the purposes of lawyer discipline.

#### ELC 13.2 EFFECTIVE DATE OF SUSPENSIONS AND DISBARMENTS

Suspensions and disbarments are effective on the date set by the Supreme Court's order, which will ordinarily be seven days after the date of the order. If no date is set, the suspension or disbarment is effective on the date of the Court's order.

#### ELC 13.3 SUSPENSION

**(a) Term of Suspension.** A suspension must be for a fixed period of time not exceeding three years.

**(b) Reinstatement.**

(1) After the period of suspension, the Association administratively returns the suspended respondent lawyer to the respondent's status before the suspension without further order by the Court upon:

(A) the respondent's compliance with all current licensing requirements; and

(B) disciplinary counsel's certification that the respondent has complied with any specific conditions ordered, and has paid any costs or restitution ordered or is current with any costs or restitution payment plan.

(2) A respondent may ask the Chair to review an adverse determination by disciplinary counsel regarding compliance with the conditions for reinstatement, payment of costs or restitution, or compliance with a costs or restitution payment plan. On review, the Chair may modify the terms of the payment plan if warranted. The Chair determines the procedure for this review. The Chair's ruling is not subject to further review. If the Chair determines that the Board should review the matter, the Chair directs the procedure for Board review and the Board's decision is not subject to further review.

#### ELC 13.4 REPRIMAND

**(a) Administration.** The Board of Governors personally administers a reprimand to a respondent lawyer. The respondent must appear at a time and place directed by the Board of Governors to receive the reprimand. A reprimand is given privately, and the respondent may not make any statement. A reprimand is deemed administered at the time it is scheduled whether or not the respondent appears as required. Failure to appear after proper notice may be grounds for discipline.

**(b) Notice and Review of Contents.** Not less than 20 days before the reprimand is to be administered, the Association must serve the respondent with notice of the time and place for the reprimand and a copy of the proposed reprimand. Within five days of service of the notice, the respondent may file a request for review of the content of the proposed reprimand. This request stays the administration of the reprimand. The Disciplinary Board reviews the proposed reprimand in light of the decision or stipulation imposing the reprimand and may take any appropriate action. The Board's action is not subject to further review. If no request is received, the reprimand is administered at the time and place set.

#### ELC 13.5 ADMONITION

**(a) By a Review Committee.**

(1) A review committee may issue an admonition when investigation of a grievance shows misconduct.

(2) A respondent lawyer may protest either the review committee's or the Board's prehearing issuance of an admonition by filing a notice to that effect with the Clerk within 30 days of service of the admonition. Upon receipt of a timely protest, the admonition is rescinded, and the grievance is deemed ordered to hearing.

**(b) Following a Hearing.** A hearing officer or panel may recommend that a respondent receive an admonition following a hearing.

**(c) By Stipulation.** The parties may stipulate to an admonition under rule 9.1.

**(d) Effect.** An admonition is admissible in subsequent disciplinary or disability proceedings involving the respondent. Rule 3.6(b) governs destruction of file materials relating to an investigation or hearing concluded with an admonition, including the admonition.

(e) **Action on Board Review.** Upon review under title 11, the Board may dismiss, issue an admonition, or impose sanctions or other remedies under rule 13.1.

(f) **Signing of Admonition.** The review committee chair signs an admonition issued by a review committee. The Disciplinary Board Chair or the Chair's designee signs all other admonitions.

#### ELC 13.6 DISCIPLINE FOR CUMULATIVE ADMONITIONS

(a) **Grounds.** A lawyer may be subject to sanction or other remedy under rule 13.1 if the lawyer receives three admonitions within a five year period.

(b) **Procedure.** Upon being presented with evidence that a respondent lawyer has received three admonitions within a five year period, a review committee may authorize the filing of a formal complaint based solely on the provisions of this rule. A proceeding under this rule is conducted in the same manner as any disciplinary proceeding. The issues in the proceeding are whether the respondent has received three admonitions within a five year period and, if so, what sanction or other remedy should be recommended.

#### ELC 13.7 RESTITUTION

(a) **Restitution May Be Required.** A respondent lawyer who has been sanctioned under rule 13.1 or admonished under rule 13.5(b) may be ordered to make restitution to persons financially injured by the respondent's conduct.

#### (b) Payment of Restitution.

(1) A respondent ordered to make restitution must do so within 30 days of the date on which the decision requiring restitution becomes final, unless the decision provides otherwise or the respondent enters into a periodic payment plan with disciplinary counsel.

(2) Disciplinary counsel may enter into an agreement with a respondent for a reasonable periodic payment plan if:

(A) the respondent demonstrates in writing present inability to pay restitution and

(B) disciplinary counsel consults with the persons owed restitution.

(3) A respondent may ask the Chair to review an adverse determination by disciplinary counsel of the reasonableness of a proposed periodic payment plan for restitution. The Chair directs the procedure for this review. The Chair's ruling is not subject to further review. If the Chair determines that the Board should review the matter, the Chair directs the procedure for Board review and the Board's decision is not subject to further review.

(c) **Failure To Comply.** A respondent's failure to make restitution when ordered to do so, or to comply with the terms of a periodic payment plan may be grounds for discipline.

#### ELC 13.8 PROBATION

(a) **Conditions of Probation.** A respondent lawyer who has been sanctioned under rule 13.1 or admonished under rule 13.5(b) may be placed on probation for a fixed period of two years or less.

(1) Conditions of probation may include, but are not limited to requiring:

(A) alcohol or drug treatment;

(B) medical care;

(C) psychological or psychiatric care;

(D) professional office practice or management counseling; or

(E) periodic audits or reports.

(2) Upon disciplinary counsel's request, the Chair may appoint a suitable person to supervise the probation. Cooperation with a person so appointed is a condition of the probation.

(b) **Failure To Comply.** Failure to comply with a condition of probation may be grounds for discipline and any sanction imposed must take into account the misconduct leading to the probation.

#### ELC 13.9 COSTS AND EXPENSES

(a) **Assessment.** The Association's costs and expenses may be assessed as provided in this rule against any respondent lawyer who is ordered sanctioned or admonished.

(b) **Costs Defined.** The term "costs" for the purposes of this rule includes all monetary obligations, except attorney fees, reasonably and necessarily incurred by the Association in the complete performance of its duties under these rules, whether incurred before or after the filing of a formal complaint. Costs include, by way of illustration and not limitation:

(1) court reporter charges for attending and transcribing depositions or hearings;

(2) process server charges;

(3) necessary travel expenses of hearing officers, hearing panel members, disciplinary counsel, adjunct investigative counsel, or witnesses;

(4) expert witness charges;

(5) costs of conducting an examination of books and records or an audit under title 15;

(6) costs incurred in supervising probation imposed under rule 13.8;

(7) telephone toll charges;

(8) fees, costs, and expenses of a lawyer appointed under rule 8.2 or rule 8.3;

(9) costs of copying materials for submission to a review committee, a hearing officer or panel, or the Board; and

(10) compensation provided to hearing officers or panel members under rule 2.11.

(c) **Expenses Defined.** "Expenses" for the purposes of this rule means a reasonable charge for attorney fees and administrative costs. Expenses assessed under this rule may equal the actual expenses incurred by the Association, but in any case cannot be less than the following amounts:

(1) for an admonition that is accepted under rule 13.5(a), \$750;

(2) for a matter that becomes final without review by the Board, \$1,500;

(3) for a matter that becomes final following Board review, without appeal to the Supreme Court, a total of \$2,000;

(4) for a matter appealed to the Supreme Court or in which the Court accepts discretionary review but not requiring briefing, a total of \$2,500; and

(5) for a matter appealed to the Supreme Court or in which the Court accepts discretionary review in which briefing is required, a total of \$3,000.

**(d) Statement of Costs and Expenses, Exceptions, and Reply.**

(1) *Timing.* Disciplinary counsel must file a statement of costs and expenses with the Clerk within 20 days from any of the following events:

(A) an admonition is accepted;

(B) the decision of a hearing officer or panel or the Board imposing an admonition or a sanction becomes final;

(C) a notice of appeal from a Board decision is filed and served; or

(D) the Supreme Court accepts or denies discretionary review of a Board decision.

(2) *Content.* A statement of costs and expenses must state with particularity the nature and amount of the costs claimed and also state the expenses requested. Disciplinary counsel must sign the statement, and this signature constitutes a certification that all reasonable attempts have been made to insure the statement's accuracy.

(3) *Service.* The Clerk serves a copy of the statement on the respondent.

(4) *Exceptions.* The respondent may file exceptions no later than 20 days from service of the statement of costs and expenses.

(5) *Reply.* Disciplinary counsel may file a reply no later than ten days from service of any exceptions.

**(e) Assessment.** The Chair enters an order assessing costs and expenses after the expiration of the time for filing exceptions or replies.

**(f) Review of Chair's Decision.**

(1) *Matters Reviewed by Court.* In matters reviewed by the Supreme Court under title 12, the Chair's decision is subject to review only by the Court.

(2) *All Other Matters.* In all other matters, the following procedures apply:

(A) *Request for Review by Board.* Within 20 days of service on the respondent of the order assessing costs and expenses, either party may file a request for Board review of the order.

(B) *Board Action.* Upon the timely filing of a request, the Board reviews the order assessing costs and expenses, based on the Association's statement of costs and expenses and any exceptions or reply, the decision of the hearing officer or panel or of the Board, and any written statement submitted by either party within the time directed by the Chair. The Board may approve or modify the order assessing costs and expenses. The Board's decision is final when filed and not subject to further review.

**(g) Assessment in Matters Reviewed by the Court.** When a matter is reviewed by the Court as provided in title 12, any order assessing costs and expenses entered by the Chair under section (e) and the statement of costs and expenses and any exceptions or reply filed in the proceeding are included in the record transmitted to the Court. Upon filing of an opinion by the Court imposing a sanction or admonition, costs and expenses may be assessed in favor of the Association under the procedures of RAP Title 14, except that "costs" as used in that title means any costs and expenses allowable under this rule.

**(h) Assessment Discretionary.** Assessment of any or all costs and expenses may be denied if it appears in the interests of justice to do so.

**(i) Payment of Costs and Expenses.**

(1) A respondent ordered to pay costs and expenses must do so within 30 days of the date on which the assessment becomes final, unless the order assessing costs and expenses provides otherwise or the respondent enters into a periodic payment plan with disciplinary counsel.

(2) The respondent must pay interest on any amount not paid within 30 days of the date the assessment is final at the maximum rate permitted under RCW 19.52.020.

(3) Disciplinary counsel may enter into an agreement with a respondent for a reasonable periodic payment plan if the respondent demonstrates in writing present inability to pay assessed costs and expenses.

(A) Any payment plan entered into under this rule must provide for interest at the maximum rate permitted under RCW 19.52.020.

(B) A respondent may ask the Chair to review an adverse determination by disciplinary counsel regarding specific conditions for a periodic payment plan. The Chair directs the procedure for this review. The Chair's ruling is not subject to further review. If the Chair determines that the Board should review the matter, the Chair directs the procedure for Board review, and the Board's decision is not subject to further review.

**(j) Failure to Comply.** A respondent's failure to pay costs and expenses when ordered to do so or to comply with the terms of a periodic payment plan may be grounds for discipline.

**(k) Costs in Other Cases.** Rule 9.1 governs costs and expenses in cases resolved by stipulation. Rule 8.6 governs assessment of costs and expenses in disability proceedings.

**(l) Money Judgment for Costs and Expenses.** After the assessment of costs and expenses is final, upon application by the Association, the Supreme Court commissioner or clerk may enter a money judgment on the order for costs and expenses if the respondent has failed to pay the costs and expenses as provided by this rule. The Association must serve the application for a money judgment on the respondent under rule 4.1. The respondent may file an objection with the commissioner or clerk within 20 days of service of the application. The sole issue to be determined by the commissioner or clerk is whether the respondent has complied with the duty to pay costs and expenses under this rule. The commissioner or clerk may enter a money judgment in compliance with RCW 4.64.030 and notify the Association and the respondent of the judgment. On application, the commissioner or clerk transmits the judgment to the clerk of the superior court in any county selected by the Association and notifies the respondent of the transmittal. The clerk of the superior court files the judgment as a judgment in that court without payment of a filing fee.

**TITLE 14 - DUTIES ON SUSPENSION OR DISBARMENT  
ELC 14.1 NOTICE TO CLIENTS AND OTHERS; PROVIDING  
CLIENT PROPERTY**

**(a) Providing Client Property.** A lawyer who has been suspended from the practice of law, disbarred, or transferred

to disability inactive status must provide each client or the client's substituted counsel upon request with the client's assets, files, and other documents in the lawyer's possession, regardless of any possible claim of lien under RCW 60.40.

**(b) Notice if Suspended for 60 Days or Less.** A lawyer who has been suspended for 60 days or less under rule 13.3 must within ten days of the effective date of the suspension:

(1) notify every client involved in litigation or administrative proceedings, and counsel for each adverse party (or the adverse party directly if not represented by counsel), of the suspension, the reason therefor, and of the lawyer's consequent inability to act as a lawyer after the effective date of the suspension, and advise each of these clients to seek prompt substitution of another lawyer. If the client does not substitute counsel within ten days of this notice, the lawyer must advise the court or agency of the lawyer's inability to act; and

(2) notify all other clients of the suspension, the reason therefor, and consequent inability to act during the suspension. The notice must advise the client to seek legal advice elsewhere if needed during the suspension.

**(c) Notice if Otherwise Suspended or Disbarred.** A lawyer who has been disbarred or suspended for more than 60 days, for nonpayment of dues, or under title 7 or APR 11 must within ten days of the effective date of the disbarment or suspension:

(1) notify every client of the lawyer's inability to act as the client's lawyer and the reason therefor, and advise the client to seek legal advice elsewhere;

(2) advise every client involved in litigation or administrative proceedings to seek the prompt substitution of another lawyer. If the client does not substitute counsel within ten days of being notified of the lawyer's inability to act, the lawyer must advise the court or agency of the lawyer's inability to act; and

(3) notify counsel for each adverse party in pending litigation or administrative proceedings, or the adverse party directly if not represented by counsel, of the lawyer's inability to act further on the client's behalf.

**(d) Notice if Transferred to Disability Inactive Status.** A lawyer transferred to disability inactive status, or his or her guardian if one has been appointed, must give all notices required by section (c), except that the notices need not refer to disability.

**(e) Address of Client.** All notices to lawyers, adverse parties, courts, or agencies as required by sections (b), (c), or (d) must contain the client's name and last known address, unless doing so would disclose a confidence or secret of the client. If the name and address are omitted, the client must be advised that so long as his or her address remains undisclosed and no new lawyer is substituted, the client may be served by leaving papers with the clerk of the court under CR 5 (b)(1) in pending superior court actions, and that comparable provisions may allow similar service in other court proceedings or administrative actions.

#### ELC 14.2 LAWYER TO DISCONTINUE PRACTICE

A disbarred or suspended lawyer, or a lawyer transferred to disability inactive status, must not practice law after the effective date of the disbarment, suspension, or transfer to disability inactive status, and also must take whatever steps

necessary to avoid any reasonable likelihood that anyone will rely on him or her as a lawyer authorized to practice law. This rule does not preclude a disbarred or suspended lawyer, or a lawyer transferred to disability inactive status, from disbursing assets held by the lawyer to clients or other persons or from providing information on the facts and the lawyer's theory of a case and its status to a succeeding lawyer, provided that the suspended or disbarred lawyer not be involved in any discussion regarding matters occurring after the date of the suspension or disbarment. The lawyer must provide this information on request and without charge.

#### ELC 14.3 AFFIDAVIT OF COMPLIANCE

Within 25 days of the effective date of a lawyer's disbarment, suspension, or transfer to disability inactive status, the lawyer must serve on disciplinary counsel an affidavit stating that the lawyer has fully complied with the provisions of this title. The affidavit must also provide a mailing address where communications to the lawyer may thereafter be directed. The lawyer must attach to the affidavit copies of the form letters of notification sent to the lawyer's clients and opposing counsel or parties and copies of letters to any court, together with a list of names and addresses of all clients and opposing counsel or parties to whom notices were sent. The affidavit is a confidential document except the lawyer's mailing address is treated as a change of mailing address under APR 13(b).

#### ELC 14.4 LAWYER TO KEEP RECORDS OF COMPLIANCE

A lawyer who has been disbarred, suspended, or transferred to disability inactive status must maintain written records of the various steps taken by him or her under this title, so that proof of compliance will be available in any subsequent proceeding.

#### TITLE 15 - AUDITS AND TRUST ACCOUNT OVERDRAFT NOTIFICATION

##### ELC 15.1 AUDIT AND INVESTIGATION OF BOOKS AND RECORDS

The Board and its Chair have the following authority to examine, investigate, and audit the books and records of any lawyer to ascertain and obtain reports on whether the lawyer has been and is complying with RPC 1.14:

**(a) Random Examination.** The Board may authorize examinations of the books and records of any lawyer or law firm selected at random. Only the lawyer or law firm's books and records may be examined in an examination under this section.

**(b) Particular Examination.** Upon receipt of information that a particular lawyer or law firm may not be in compliance with RPC 1.14, the Chair may authorize an examination limited to the lawyer or law firm's books and records. Information may be presented to the Chair without notice to the lawyer or law firm. Disclosure of this information is subject to rules 3.1 - 3.4.

**(c) Audit.** After an examination under section (a) or (b), if the Chair determines that further examination is warranted, the Chair may order an appropriate audit of the lawyer's or firm's books and records, including verification of the information in those records from available sources.

**ELC 15.2 COOPERATION OF LAWYER**

Any lawyer or firm who is subject to examination, investigation, or audit under rule 15.1 must cooperate with the person conducting the examination, investigation, or audit, subject only to the proper exercise of any privilege against self-incrimination, by:

- (a) producing forthwith all evidence, books, records, and papers requested for the examination, investigation, or audit;
- (b) furnishing forthwith any explanations required for the examination, investigation, or audit;
- (c) producing written authorization, directed to any bank or depository, for the person to examine, investigate, or audit trust and general accounts, safe deposit boxes, and other forms of maintaining trust property by the lawyer in the bank or depository.

**ELC 15.3 DISCLOSURE**

The examination and audit report are only available to the Board, disciplinary counsel, and the lawyer or firm examined, investigated, or audited, and to the Board of Governors on its request, unless a disciplinary proceeding is commenced in which case the disclosure provisions of title 3 apply.

**ELC 15.4 TRUST ACCOUNT OVERDRAFT NOTIFICATION****(a) Overdraft Notification Agreement Required.**

Every bank, credit union, savings and loan association, or qualified public depository referred to in RPC 1.14(c) will be approved as a depository for lawyer trust accounts if it files with the Disciplinary Board an agreement, in a form provided by the Board, to report to the Board if any properly payable instrument is presented against a lawyer trust account containing insufficient funds, whether or not the instrument is honored. The agreement must apply to all branches of the financial institution and cannot be canceled except on 30 days' notice in writing to the Board. The Board annually publishes a list of approved financial institutions.

**(b) Overdraft Reports.**

(1) The overdraft notification agreement must provide that all reports made by the financial institution must contain the following information:

- (A) the identity of the financial institution;
- (B) the identity of the lawyer or law firm;
- (C) the account number; and
- (D) either:
  - (i) the amount of overdraft and date created; or
  - (ii) the amount of the returned instrument(s) and the date returned.

(2) The financial institution must provide the information required by the notification agreement within five banking days of the date the item(s) was paid or returned unpaid.

(c) **Costs.** Nothing in these rules precludes a financial institution from charging a particular lawyer or law firm for the reasonable cost of producing the reports and records required by this rule, but those charges may not be a transaction cost charged against funds payable to the Legal Foundation of Washington under RPC 1.14 (c)(1).

(d) **Notification by Lawyer.** Every lawyer who receives notification that any instrument presented against his or her trust account was presented against insufficient funds, whether or not the instrument was honored, must promptly notify the Office of Disciplinary Counsel of the Association

of the information required by section (b). The lawyer must include a full explanation of the cause of the overdraft.

**ELC 15.5 DECLARATION OR QUESTIONNAIRE**

(a) **Questionnaire.** The Association annually sends each active lawyer a written declaration or questionnaire designed to determine whether the lawyer is complying with RPC 1.14. Each active lawyer must complete, execute, and deliver to the Association this declaration or questionnaire by the date specified in the declaration or questionnaire.

(b) **Noncompliance.** Failure to file the declaration or questionnaire by the date specified in section (a) is grounds for discipline. This failure also subjects the lawyer who has failed to comply with this rule to a full audit of his or her books and records as provided in rule 15.1(c), upon request of disciplinary counsel to a review committee. A copy of any request made under this section must be served on the lawyer. The request must be granted on a showing that the lawyer has failed to comply with section (a) of this rule. If the lawyer should later comply, disciplinary counsel has discretion to determine whether an audit should be conducted, and if so the scope of that audit. A lawyer audited under this section is liable for all actual costs of conducting such audit, and also a charge of \$100 per day spent by the auditor in conducting the audit and preparing an audit report. Costs and charges are assessed in the same manner as costs under rule 5.3(f).

**ELC 15.6 REGULATIONS**

The Disciplinary Board may adopt regulations regarding the powers in this title subject to the approval of the Board of Governors and the Supreme Court.

**TITLE 16 - EFFECT OF THESE RULES ON PENDING PROCEEDINGS****ELC 16.1 EFFECT ON PENDING PROCEEDINGS**

These rules and any subsequent amendments will apply in their entirety, on the effective date as ordered by the Supreme Court, to any pending matter or investigation that has not yet been ordered to hearing. They will apply to other pending matters except as would not be feasible or would work an injustice. The hearing officer or panel chair assigned to hear a matter, or the Chair in a matter pending before the Board, may rule on the appropriate procedure with a view to insuring a fair and orderly proceeding.

*Related Changes to the*  
**RULES OF PROFESSIONAL CONDUCT**

**RPC 1.2 SCOPE OF REPRESENTATION**

- (a) [No Change].
- (b) [No Change].
- (c) [No Change].
- (d) [No Change].
- (e) [No Change].

(f) A lawyer shall not willfully purport to act as a lawyer for any person without the authority of that person.

**RPC 1.14 PRESERVING IDENTITY OF FUNDS AND PROPERTY OF A CLIENT**

- (a) [No Change].
- (b) [No Change].

(c) Each trust account referred to in section (a) shall be an interest-bearing trust account in any bank, credit union or savings and loan association, selected by a lawyer in the exercise of ordinary prudence, authorized by federal or state law to do business in Washington and insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, the Washington Credit Union Share Guaranty Association, or the Federal Savings and Loan Insurance Corporation, or which is a qualified public depository as defined in RCW 39.58.010(2), which bank, credit union, savings and loan association or qualified public depository has filed an agreement with the Disciplinary Board pursuant to rule ~~13.4~~ 15.4 of the ~~Rules for Lawyer Discipline~~ Rules for Enforcement of Lawyer Conduct. Interest-bearing trust funds shall be placed in accounts in which withdrawals or transfers can be made without delay when such funds are required, subject only to any notice period which the depository institution is required to reserve by law or regulation.

- (1) [No Change].
- (2) [No Change].
- (3) [No Change].
- (4) [No Change].
- (5) [No Change].
- (6) [No Change].
- (d) [No Change].

#### RPC 5.5 UNAUTHORIZED PRACTICE OF LAW

A lawyer shall not:

- (a) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; ~~or~~
- (b) assist a person who is not a member of the Bar in the performance of activity that constitutes the unauthorized practice of law; ~~;~~

(c) permit his or her name to be used as a lawyer by another person who is not a lawyer authorized to practice law in the state of Washington;

(d) engage in any of the following with an individual who is a disbarred or suspended lawyer or who has resigned in lieu of disbarment:

- (1) practice law with or in cooperation with such an individual;
- (2) maintain an office for the practice of law in a room or office occupied or used in whole or in part by such an individual;
- (3) permit such an individual to use the lawyer's name for the practice of law;
- (4) practice law for or on behalf of such an individual;
- (5) practice law under any arrangement or understanding for division of fees or compensation of any kind with such an individual; or
- (e) engage in the practice of law while on inactive status, or while suspended from the practice of law for any cause.

#### RPC 8.1 BAR ADMISSION MATTERS

An applicant for admission to the Bar, or a lawyer in connection with a bar admission application, or an application for reinstatement, shall not:

- (a) knowingly make a false statement of material fact; or
- (b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or

knowingly fail to respond to a lawful demand for information from an admissions authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.

#### RPC 8.4 MISCONDUCT

It is professional misconduct for a lawyer to:

- (a) [No Change].
- (b) [No Change].
- (c) [No Change].
- (d) [No Change].

(e) State or imply an ability to influence improperly a government agency or official; ~~or~~

(f) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; ~~;~~

(g) Commit a discriminatory act prohibited by state law on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, or marital status, where the act of discrimination is committed in connection with the lawyer's professional activities. In addition, it is professional misconduct to commit a discriminatory act on the basis of sexual orientation if such an act would violate this rule when committed on the basis of sex, race, age, creed, religion, color, national origin, disability or marital status. This rule shall not limit the ability of a lawyer to accept, decline, or withdraw from the representation of a client in accordance with RPC 1.15; ~~or~~

(h) In representing a client, engage in conduct that is prejudicial to the administration of justice toward judges, other parties and/or their counsel, witnesses and/or their counsel, jurors, or court personnel or officers, that a reasonable person would interpret as manifesting prejudice or bias on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, or marital status. This rule does not restrict a lawyer from representing a client by advancing material factual or legal issues or arguments; ~~;~~

(i) Commit any act involving moral turpitude, or corruption, or any unjustified act of assault or other act which reflects disregard for the rule of law, whether the same be committed in the course of his or her conduct as a lawyer, or otherwise, and whether the same constitutes a felony or misdemeanor or not; and if the act constitutes a felony or misdemeanor, conviction thereof in a criminal proceeding shall not be a condition precedent to disciplinary action, nor shall acquittal or dismissal thereof preclude the commencement of a disciplinary proceeding;

(j) Willfully disobey or violate a court order directing him or her to do or cease doing an act which he or she ought in good faith to do or forbear;

(k) Violate his or her oath as an attorney;

(l) Violate a duty or sanction imposed by or under the Rules for Enforcement of Lawyer Conduct in connection with a disciplinary matter; including, but not limited to, the duties catalogued at ELC 1.5;

(m) Violate the Code of Judicial Conduct; or

(n) Engage in conduct demonstrating unfitness to practice law.

**RULE 8.5 JURISDICTION**

(a) A lawyer licensed or admitted for any purpose to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction although engaged in practice elsewhere.

(b) A lawyer may be subjected to disciplinary sanctions or actions in this jurisdiction on the basis of suspension, disbarment or other disciplinary sanction by competent authority in any other state, federal or foreign jurisdiction.

*Related Changes to the*  
**ADMISSION TO PRACTICE RULES**

**APR 3. APPLICANTS TO TAKE THE BAR EXAMINATION**

(a) [No Change].

(b) [No Change].

(c) **Exceptions.** The Board of Governors may, in its discretion, withhold permission for an otherwise qualified person to sit for the bar examination, until completion of an inquiry into the applicants character and fitness, if the applicant (i) has ever been convicted of a "serious crime" as defined in ~~RLD 3-1(h)~~ ELC 7.1 (a)(2), or (ii) has ever been disbarred or is presently suspended from the practice of law for disciplinary reasons in any jurisdiction, or (iii) has previously been denied admission to the Bar in this or any other jurisdiction for reasons other than failure to pass a bar examination. The Board of Governors may also withhold permission to sit for the bar examination where for any other reason there are serious and substantial questions regarding the present moral character or fitness of the applicant. The Board of Governors may refer such matters to the Character and Fitness Committee for investigation and hearing pursuant to rule 7.

(d) [No Change].

**APR 8. SPECIAL ADMISSIONS**

(a) [No Change].

(b) [No Change].

(c) **Exception for Indigent Representation.** A member in good standing of the Bar of another state or territory of the United States or of the District of Columbia, who is eligible to take the bar examination in this state, while rendering service in either a bar association or governmentally sponsored legal services organization or in a public defenders office or similar program providing legal services to indigents and only in that capacity, may, upon application and approval, practice law and appear as a lawyer before the courts of this state in any matter, litigation, or administrative proceeding, subject to the following conditions and limitations:

(1) Application to practice under this rule shall be made to the Board of Governors, and the applicant shall be subject to the ~~Rules for Lawyer Discipline~~ Rules for Enforcement of Lawyer Conduct and to the Rules of Professional Conduct.

(2) [No Change].

(3) [No Change].

(4) [No Change].

(d) **Exception for Educational Purposes.** A lawyer who is enrolled and in good standing as a postgraduate student or as a faculty member in a program of an approved law

school in this state, involving clinical work in the courts or in the practice of law, may apply to the Board of Governors for admission to the limited practice of law by paying an investigation fee and by presenting satisfactory proof of (i) admission to the practice of law and current good standing in any state or territory of the United States or the District of Columbia, and (ii) compliance with the requirements of rule 3 (b)(1), and (iii) good moral character.

(1) [No Change].

(2) The practice of an applicant admitted under this section shall be (i) limited to the period of time the applicant actively participates in the program, (ii) limited to the clinical work of the particular course of study in which the applicant is enrolled or teaching, (iii) free of charge for the services so rendered, and (iv) subject to the Rules of Professional Conduct and the ~~Rules for Lawyer Discipline~~ Rules for Enforcement of Lawyer Conduct.

(3) [No Change].

(4) [No Change].

(e) **Exception for Emeritus Membership.** A lawyer admitted to the practice of law in a state or territory of the United States or the District of Columbia, including Washington State, may apply to the Board of Governors for a limited license to practice law as an emeritus member in this state when the lawyer is otherwise fully retired from the practice of law. An emeritus member shall provide legal services for a qualified legal services provider as defined in part (2) below. The lawyer shall apply by (i) filing an application in the form and manner that may be prescribed by the Board of Governors; (ii) presenting satisfactory proof of admission by examination to the practice of law and current good standing in any state or territory of the United States or the District of Columbia, provided that if a disciplinary sanction has been imposed upon the lawyer within 15 years immediately preceding the filing of the application for emeritus status, the Board of Governors shall have the discretion to accept or reject the application; (iii) presenting satisfactory proof of active legal experience as defined in APR 3(b) for at least 5 of the 10 years immediately preceding the filing of the application for lawyers admitted in Washington and for at least 10 of the 15 years immediately preceding the filing of the application for lawyers only admitted to practice in jurisdictions other than Washington; (iv) filing certification from a qualified legal services provider as defined in part (2) below that the applicant's practice of law will comply with the terms of this rule; (v) paying such fee as may be set by the Board of Governors with approval of the Supreme Court; (vi) complying with training requirements as may be prescribed by the Board of Governors; and (vii) furnishing whatever additional information or proof that may be required in the course of investigating the applicant.

(1) [No Change].

(2) [No Change].

(3) [No Change].

(4) The practice of a lawyer admitted under this section shall be subject to the Rules of Professional Conduct, the ~~Rules for Lawyer Discipline~~ Rules for Enforcement of Lawyer Conduct, and to all other laws and rules governing lawyers admitted to the bar of this state. Jurisdiction shall con-

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tinue whether or not the lawyer retains the limited license and irrespective of the residence of the lawyer.

(5) [No Change].

(6) [No Change].

(7) [No Change].

**(f) Exception for House Counsel.** A lawyer admitted to the practice of law in a state or territory of the United States or the District of Columbia may apply to the Board of Governors for a limited license to practice law as in-house counsel in this state when the lawyer is employed in Washington as a lawyer exclusively for a profit or not for profit corporation, including its subsidiaries and affiliates, association, or other business entity, that is not a government entity, and whose lawful business consists of activities other than the practice of law or the provision of legal services. The lawyer shall apply by (i) filing an application in the form and manner that may be prescribed by the Board of Governors, (ii) presenting satisfactory proof of (I) admission by examination to the practice of law and current good standing in a state of territory of the United States or the District of Columbia and (II) good moral character, (iii) filing an affidavit from an officer, director, or general counsel of the applicant's employer in this state attesting to the fact the applicant is employed as a lawyer for the employer, including its subsidiaries and affiliates, and the nature of the employment conforms to the requirements of this rule, (iv) paying such fee as may be set by the Board of Governors with approval of the Supreme Court, and (v) furnishing whatever additional information or proof that may be required in the course of investigating the applicant. The lawyer must also pass the Professional Responsibility portion of the Washington bar examination.

(1) [No Change].

(2) [No Change].

(3) [No Change].

(4) [No Change].

(5) The practice of a lawyer admitted under this section shall be subject to the Rules of Professional Conduct, the ~~Rules for Lawyer Discipline~~ Rules for Enforcement of Lawyer Conduct, and to all other laws and rules governing lawyers admitted to the active practice of law in this state. Jurisdiction shall continue whether or not the lawyer retains the limited license and irrespective of the residence of the lawyer.

(6) [No Change].

(7) [No Change].

#### APR 9. LEGAL INTERNS

(a) [No Change].

(b) [No Change].

**(c) Scope of Practice.** A legal intern shall be authorized to engage in the limited practice of law, in civil and criminal matters, only as authorized by the provisions of this rule. A legal intern shall be subject to the Rules of Professional Conduct and the ~~Rules for Lawyer Discipline~~ Rules for Enforcement of Lawyer Conduct as adopted by the Supreme Court and to all other laws and rules governing lawyers admitted to the Bar of this state, and shall be personally responsible for all services performed as an intern. Upon recommendation of the Disciplinary Board, a legal intern may be precluded from sitting for the bar examination or from being admitted as a

member of the Bar Association within the discretion of the Board of Governors. Any such intern barred from the bar examination or from recommendation for admission by the Board of Governors shall have the usual rights of appeal to the Supreme Court.

(1) [No Change].

(2) [No Change].

(3) [No Change].

(4) [No Change].

(5) [No Change].

(6) [No Change].

**(d) Supervising Lawyer.** The supervising lawyer shall be an active member of the Bar Association in good standing, provided that if a disciplinary sanction has been imposed upon the lawyer within the 5 years immediately preceding approval of the application, the Board of Governors shall have the discretion to accept or reject the lawyer as a supervising lawyer. The supervising lawyer shall have been actively engaged in the practice of law in the State of Washington or elsewhere for at least 3 years at the time the application is filed.

(1) [No Change].

(2) [No Change].

(3) [No Change].

(4) [No Change].

(5) The failure of a supervising lawyer, or lawyer acting as a supervising lawyer, to provide adequate supervision or to comply with the duties set forth in this rule shall be grounds for disciplinary action pursuant to the ~~Rules for Lawyer Discipline~~ Rules for Enforcement of Lawyer Conduct.

(6) [No Change].

(7) [No Change].

(e) [No Change].

#### APR 11 CONTINUING LEGAL EDUCATION

**Regulation 101. Definitions** As used in these Regulations, the following definitions shall apply:

(a) - (n) [No Change].

(o) "Ethics" shall include discussion, analysis, interpretation, or application of the Rules of Professional Conduct, ~~Rules for Lawyer Discipline~~ Rules for Enforcement of Lawyer Conduct, Code of Judicial Conduct, judicial decisions interpreting these rules, and ethics opinions published by bar associations relating to these rules, as well as the general subject of standards of professional conduct expected of lawyers acting in the representation of clients and in the public interest.

(p) [No Change].

#### APR 12.1 PRESERVING IDENTITY OF FUNDS AND PROPERTY IN TRANSACTIONS CLOSED BY LIMITED PRACTICE OFFICERS

(a) [No Change].

(b) [No Change].

(c) Each trust account referred to in section (b) shall be an interest-bearing trust account in any bank, credit union or savings and loan association, selected by a certified closing officer or the closing firm by which he or she is employed to perform closing services in the exercise of ordinary prudence, authorized by federal or state law to do business in Washing-

ton and insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or the Washington Credit Union Share Guaranty Association, or which is a qualified public depository as defined in RCW 39.58.010(2), or which bank, credit union, savings and loan association or qualified public depository has filed an agreement with the Disciplinary Board pursuant to rule ~~43-4~~ 15.4 of the ~~Rules for Lawyer Discipline~~ Rules for Enforcement of Lawyer Conduct. Interest-bearing trust funds shall be placed in accounts in which withdrawals or transfers can be made without delay when such funds are required, subject only to any notice period which the depository institution is required to reserve by law or regulation. Such account, if established in the name of the closing firm, must reference the name(s) of the certified closing officer(s) whose services are engaged in connection with the real or personal property closing activities of the closing firm.

- (1) [No Change].
- (2) [No Change].
- (3) [No Change].
- (4) [No Change].
- (d) [No Change].

#### APR 14 LIMITED PRACTICE RULE FOR FOREIGN LAW CONSULTANTS

- (a) [No Change].
- (b) [No Change].
- (c) **Procedure.**

(1) The Board of Governors shall approve or disapprove applications for admission of Foreign Law Consultants. Additional proof of any facts stated in the application may be required by the Board. In the event of the failure or refusal of the applicant to furnish any information or proof, or to answer any inquiry of the Board pertinent to the pending application, the Board may deny the application. Upon approval of the application by the Board of Governors, the Board shall recommend to the Supreme Court the admission of the applicant for the purposes herein stated. The Supreme Court may enter an order admitting to practice those applicants it deems qualified, conditioned upon such applicants:

- (i) Taking and filing with the Clerk of the Supreme Court the Oath of Attorney pursuant to rule 5; and
- (ii) Paying to the Bar Association its membership fee for the current year in the maximum amount required of active members; and
- (iii) Filing with the Bar Association in writing his or her address in the State of Washington, or the name and address of his or her registered agent as provided in APR 5(e), together with a statement that the applicant has read the Rules of Professional Conduct and ~~Rules for Lawyer Discipline~~ Rules for Enforcement of Lawyer Conduct, is familiar with their contents and agrees to abide by them.

(2) Upon the entry of an order of admission, the filing of the required materials and payment of the membership fee, the applicant shall be enrolled as a Foreign Law Consultant and shall be entitled to the limited practice of law as specified by this rule.

- (d) [No Change].

(e) **Disciplinary Provisions.** A Foreign Law Consultant shall be subject to the ~~Rules for Lawyer Discipline~~ Rules for

Enforcement of Lawyer Conduct and the Rules of Professional Conduct as adopted by the Supreme Court and to all other laws and rules governing lawyers admitted to the Bar of this state. Jurisdiction shall continue whether or not the Consultant retains the authority for the limited practice of law in this state, and regardless of the residence of the Consultant.

- (f) [No Change].
- (g) [No Change].
- (h) [No Change].

#### APR 16 MEDIATION PROGRAM

- (a) [No Change].
- (b) [No Change].

(c) **Confidentiality.** Mediation under this rule shall be confidential, and communications made or materials submitted in, or in connection with, the mediation proceeding will be privileged and confidential as provided by RCW 5.60.070, provided that no party to the mediation will be precluded from filing or pursuing a grievance under the ~~Rules for Lawyer Discipline~~ Rules for Enforcement of Lawyer Conduct.

- (d) [No Change].
- (e) [No Change].

#### APR 17 SUSPENSION FROM PRACTICE

(a) **Suspension from Practice.** The Washington State Bar Association shall request that the Supreme Court suspend a member from the practice of law upon the execution of written findings from an adjudicative process that: (1) the member is more than six months delinquent in noncompliance with a valid and enforceable order entered by a court of competent jurisdiction requiring the member to pay child support, and (2) the member has had the opportunity for an adjudicative proceeding to contest the issue of compliance with the child support order, and (3) there are currently no good faith negotiations for a repayment agreement or other modification of the order, and (4) there are no pending judicial or administrative proceedings to determine whether child support is delinquent. A member shall be considered in compliance with an order of child support if the member is current with a payment arrangement pursuant to an order which contemplates payments for past due child support. The hearing will be held, on actual notice to the member of no less than sixty days. The hearing shall otherwise be conducted pursuant to and in accordance with the ~~Rules for Lawyer Discipline~~ Rules for Enforcement of Lawyer Conduct but will be for an administrative suspension only so long as the conditions set forth above exist.

- (b) [No Change].
- (c) [No Change].
- (d) [No Change].

#### APR 18 ADMISSION OF LAWYERS LICENSED IN OTHER STATES OR TERRITORIES OF THE UNITED STATES OR THE DISTRICT OF COLUMBIA TO PRACTICE LAW IN WASHINGTON

- (a) [No Change].
- (b) [No Change].
- (c) **Procedure.**

(1) The Board of Governors shall approve or disapprove applications for admission of lawyers admitted to the practice

of law in other states or territories of the United States or the District of Columbia. The Board may require additional proof of any facts stated in the application. In the event of the failure or refusal of the applicant to furnish any information or proof, or to answer any inquiry of the Board pertinent to the pending application, the Board may deny the application. Upon approval of the application by the Board of Governors, the Board shall recommend to the Supreme Court the admission of the applicant for the purposes herein stated. The Supreme Court may enter an order admitting to practice those applicants it deems qualified, conditioned upon such applicant:

(i) Taking and filing with the Clerk of the Supreme Court the Oath of Attorney pursuant to rule 5; and

(ii) Paying to the Bar Association its membership fee for the current year in the maximum amount required of active members; and

(iii) Filing with the Bar Association in writing his or her address in the State of Washington, together with a statement that the applicant has read the Rules of Professional Conduct and ~~Rules for Lawyer Discipline~~ Rules for Enforcement of Lawyer Conduct, is familiar with their contents and agrees to abide by them.

(2) [No Change].

[NEW RULE]

APR 20 CHARACTER AND FITNESS COMMITTEE

(a) **Membership.**

(1) *Composition.* The Committee shall consist of not less than three nonlawyer members, appointed by the Supreme Court, and not less than one lawyer member from each congressional district, appointed by the Board of Governors.

(2) *Qualifications.* Lawyer members must have been active members of the Bar Association for at least 7 years.

(3) *Quorum.* A majority of the Committee members shall constitute a quorum. Given a quorum, the concurrence of a majority of those present shall constitute action of the Committee.

(4) *Disqualification.* In the event a grievance is made to the Bar Association alleging an act of misconduct by a lawyer member of the committee, such member shall take a leave of absence from the Committee until the matter is resolved, unless otherwise directed by the Board of Governors.

(5) *Voting.* Each member, whether nonlawyer or lawyer, shall have one vote.

(b) **Terms of Office.** The term of office for a member of the Committee shall be 3 years. Newly created Committee positions may be filled by appointments of less than 3 years, as designated by the court or the Board of Governors, to permit as equal a number of positions as possible to be filled each year. All terms of office begin October 1 and end September 30 or when a successor has been appointed, whichever occurs later. Members may not serve more than one term except as otherwise provided in these rules. Members heretofore appointed shall continue to serve until replaced.

(c) **Committee Chair.** The Board of Governors shall annually designate one lawyer member of the Committee to act as chair and another as vice-chair. The vice-chair shall

serve in the absence of or at the request of the Committee chair.

(d) **Vacancies.** Vacancies in lawyer membership on the Committee and in the office of the Committee chair and the vice-chair shall be filled by the Board of Governors. Vacancies in nonlawyer membership shall be filled by the Supreme Court. A person appointed to fill a vacancy shall complete the unexpired term of the person he or she replaces, and if that unexpired term is less than 18 months he or she may be reappointed to a consecutive term.

(e) **Pro Tempore Members.** When a member of the Committee is disqualified or unable to function on a case for good cause, the chair of the Committee may, by written order, designate a member pro tempore to sit with the Committee to hear and determine the cause. A member pro tempore may be appointed from among those persons who have previously served as members of the Character and Fitness Committee, or from among lawyers appointed as alternate Board members by the Board of Governors and nonlawyers appointed as alternate Committee members by the Supreme Court. A lawyer shall be appointed to substitute for a lawyer member of the Committee, and a nonlawyer to substitute for a nonlawyer member of the Board.

(f) **Authority of Committee.** The Committee shall have the power and authority to:

(1) Accept referrals from the Executive Director of the Bar Association by concerning itself with matters of character and fitness bearing upon the qualification of applicants for reinstatement.

(2) Review each Petition for Reinstatement to practice law in the state of Washington.

(3) Investigate matters relevant to the reinstatement of any applicant and conduct hearings concerning such matters.

(4) The committee's recommendation to grant the application shall be forwarded to the Supreme Court. The Committee's recommendation to deny the application may be forwarded to the Disciplinary Board for review upon request of the applicant. All recommendations shall contain findings of fact, conclusions of law, and rationale for the recommendation.

(5) Perform such other functions and take such other actions as provided in these rules or as may be delegated to it by the Board of Governors or Supreme Court, or as may be necessary and proper to carry out its duties.

(g) **Meetings.** The Committee shall hold meetings at such times and places as it may determine. Where the chair of the Committee determines that prompt action is necessary for protection of the public, and that circumstances do not permit a full meeting of the Committee, the Committee may vote on a matter otherwise ready for review without meeting together, through telephone or written communication.

(h) **Clerk.** The Executive Director of the Bar Association, under the direction of the Board of Governors, may appoint a suitable person or persons to act as clerk to the Committee, and to assist the Committee in carrying out its functions under these rules.

## [NEW RULE]

## APR 21 REINSTATEMENT AFTER DISBARMENT

## [NEW RULE]

## APR 21.1 RESTRICTIONS ON REINSTATEMENT

(a) **When Petition May Be Filed.** No petition for reinstatement shall be filed within a period of 5 years after disbarment or within a period of 2 years after an adverse decision of the Supreme Court upon a former petition, or within a period of 1 year after an adverse recommendation of the Character and Fitness Committee of the Washington State Bar Association on a former petition when that recommendation is not submitted to the Supreme Court. If prior to disbarment the lawyer was suspended from the practice of law pursuant to the provisions of Title 7 of the Rules for Enforcement of Lawyer Conduct, or any comparable rule, the period of such suspension shall be credited toward the 5 years referred to above.

(b) **When Reinstatement May Occur.** No disbarred lawyer may be reinstated sooner than 6 years following disbarment. If prior to disbarment the lawyer was suspended from the practice of law pursuant to the provisions of Title 7 of the Rules for Enforcement of Lawyer Conduct, or any comparable rule, the period of such suspension shall be credited toward the 6 years referred to above.

(c) **Payment of Obligations.** No disbarred lawyer may file a petition for reinstatement until costs and expenses assessed pursuant to these rules, and restitution ordered as provided herein, have been paid and until amounts paid out of any program maintained by the Bar Association to indemnify clients against losses caused by the conduct of the petitioner have been repaid to the Bar Association, or until periodic payment plans for costs and expenses, restitution and repayment to the indemnity program have been entered into by agreement between the respondent lawyer and disciplinary counsel. A respondent lawyer may seek review by the Chair of the Disciplinary Board of an adverse determination by disciplinary counsel regarding the reasonableness of any such proposed periodic payment plan. Such review will proceed as directed by the Chair of the Disciplinary Board and the decision of the Chair of the Disciplinary Board is final unless the Chair of the Disciplinary Board determines that the matter should be reviewed by the Disciplinary Board, in which case the Disciplinary Board review will proceed as directed by the Chair and the decision of the Board will be final.

## [NEW RULE]

## APR 21.2 REVERSAL OF CONVICTION

If a lawyer has been disbarred solely because of his or her conviction of a crime and the conviction is later reversed and the charges dismissed on their merits, the Supreme Court may in its discretion, upon direct application by the lawyer, enter an order reinstating the lawyer to active status. At the time such direct application is filed with the court a copy shall be filed with the Bar Association.

## [NEW RULE]

## APR 21.3 PETITIONS AND INVESTIGATIONS

(a) **Form of Petition.** A petition for reinstatement as a member of the Bar Association after disbarment shall be in writing in such form as the Character and Fitness Committee

may prescribe. The petition shall be filed with the Character and Fitness Committee. The petition shall set forth the age, residence and address of the petitioner, the date of disbarment, and a concise statement of facts claimed to justify reinstatement. The petition shall be accompanied by the total fees required of a lawyer applicant under these rules.

(b) **Investigations.** The Character and Fitness Committee may in its discretion refer the petition for reinstatement for investigation and report to the Character and Fitness Committee by disciplinary counsel, adjunct investigative counsel, or by such other person or persons as may be determined by the Character and Fitness Committee.

(c) **Proceedings Public.** A petition for reinstatement after disbarment shall be a public proceeding from the time the petition is filed.

## [NEW RULE]

## APR 21.4 HEARING BEFORE CHARACTER AND FITNESS COMMITTEE

(a) **Notice.** The Character and Fitness Committee may fix a time and place for a hearing on the petition, and shall serve notice thereof 10 days prior to the hearing upon the petitioner and upon such other persons as may be ordered by the Character and Fitness Committee. Notice of the hearing shall also be published at least once in the Washington State Bar News or such other newspaper or periodical as the Character and Fitness Committee may direct. Such published notice shall contain a statement that a petition for reinstatement has been filed and shall give the date fixed for the hearing.

(b) **Statement in Support or Opposition.** On or prior to the date of hearing, anyone wishing to do so may file with the Character and Fitness Committee a written statement for or against the petition, such statements to set forth factual matters showing that the petitioner does or does not meet the requirements of rule 21.5(a).

## [NEW RULE]

## APR 21.5 ACTION BY CHARACTER AND FITNESS COMMITTEE

(a) **Requirements for Favorable Recommendation.** Reinstatement may be recommended by the Character and Fitness Committee only upon an affirmative showing that the petitioner possesses the qualifications and meets the requirements as set forth in these rules for lawyer applicants, and that his or her reinstatement will not be detrimental to the integrity and standing of the judicial system or to the administration of justice, or be contrary to the public interest.

(b) **Action on Committee Recommendation.** The recommendation of the Character and Fitness Committee shall be served upon the petitioner. If the Committee recommends reinstatement, the record and recommendation shall be transmitted to the Supreme Court for disposition. If the Committee recommends against reinstatement, the record and recommendation shall be retained in the office of the Bar Association unless the petitioner requests that it be submitted to the Disciplinary Board by filing with the Clerk of the Disciplinary Board a request for Disciplinary Board review within 15 days of service of the recommendation of the Character and Fitness Committee. If the petitioner so requests, the record

and recommendation shall be transmitted to the Disciplinary Board for disposition and the review will be conducted under the procedure of rules 11.9 and 11.12 of the Rules for Enforcement of Lawyer Conduct. If the petitioner does not so request, the bar examination fee shall be refunded to the petitioner, but the petitioner shall still be responsible for payment of the costs incidental to the reinstatement proceeding as directed by the Character and Fitness Committee.

**(c) Action on Disciplinary Board Recommendation.**

The recommendation of the Disciplinary Board shall be served upon the petitioner. If the Disciplinary Board recommends reinstatement, the record and recommendation shall be transmitted to the Supreme Court for disposition. If the Disciplinary Board recommends against reinstatement, the record and recommendation shall be retained in the office of the Bar Association unless the petitioner requests that it be submitted to the Supreme Court. If the petitioner so requests, the record and recommendation shall be transmitted to the Supreme Court for disposition. If the petitioner does not so request, the bar examination fee shall be refunded to the petitioner, but the petitioner shall still be responsible for payment of the costs incidental to the reinstatement proceeding as directed by the Disciplinary Board under the procedure of rule 13.9 of the Rules for Enforcement of Lawyer Conduct.

**[NEW RULE]**

**APR 21.6 ACTION ON SUPREME COURT'S DETERMINATION**

**(a) Petition Approved.** If the petition for reinstatement is granted by the Supreme Court, the reinstatement shall be subject to the petitioner's taking and passing the bar examination and paying the costs incidental to the reinstatement proceeding as directed by the Supreme Court.

**(b) Petition Denied.** If the petition for reinstatement is denied, the bar examination fee shall be refunded to the petitioner, but the petitioner shall still be responsible for payment of the costs incidental to the reinstatement proceeding.

***Related Changes to the  
GENERAL RULES***

**GR 1 CLASSIFICATION SYSTEM FOR COURT RULES**

**PART I. RULES OF GENERAL APPLICATION**

General Rules	GR
Code of Judicial Conduct	CJC
Discipline Rules for Judges	DRJ
Board for Judicial Administration-Rules	BJAR
<del>Rules of Professional Conduct</del>	<del>RPC</del>
Admission to Practice Rules	APR
<del>Rules for Lawyer Discipline</del>	<del>RLD</del>
<u>Rules of Professional Conduct</u>	<u>RPC</u>
<u>Rules for Enforcement of Lawyer Conduct</u>	<u>ELC</u>
Judicial Information System Committee Rules	JISCR
Rules of Evidence	ER

- PART II. [No Change]
- PART III. [No Change]
- PART IV. [No Change]

**PART V. [No Change]**

**COMMENTS TO  
*Proposed*  
RULES FOR ENFORCEMENT OF LAWYER CONDUCT (ELC)  
and Related Amendments to the  
RULES OF PROFESSIONAL CONDUCT (RPC) ADMISSION TO  
PRACTICE RULES (APR)  
and  
GENERAL RULES (GR)**

**Prepared by  
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Reporter, Discipline 2000 Task Force**

**General Comments**

These proposed Rules for Enforcement of Lawyer Conduct (ELC) are to replace the Rules for Lawyer Discipline (RLD) that were adopted in 1983. These proposed rules were developed by the Discipline 2000 Task Force of the Washington State Bar Association and the Washington Supreme Court. The Report of the Task Force is available at <http://www.wsba.org/2001/2dk/report.htm>, or by contacting the Reporter for the Task Force, Randy Beitel, Senior Disciplinary Counsel, Washington State Bar Association, 2101 Fourth Avenue, 4th Fl., Seattle, WA 98121, (206) 727-8257, [randyb@wsba.org](mailto:randyb@wsba.org).

The ELCs are based on the RLDs, but include significant substantive, structural, and style changes. The substantive changes are designed to improve the operation of the lawyer discipline system and enhance the confidence of the public and the profession in the discipline system. The Discipline 2000 Task Force reviewed the *ABA Model Rules for Lawyer Disciplinary Enforcement* (1996 ed., as amended February 1999) and the *ABA Standards for Imposing Lawyer Sanctions* (1991 ed., as amended February 1992) that provide an alternative structure for a discipline system. The Task Force has recommended keeping the basic system established by the RLDs, but has used these ABA model rules for guidance in developing a number of the proposed changes. However, many of the proposed substantive changes are not based on model rules. They are based instead on the considered experience of the Discipline 2000 Task Force participants.

In developing the ELCs, the Task Force went through a three-step process. The Task Force first considered substantive changes by preparing rule changes to the RLDs. These may be viewed at the above website address. A second step was to take the RLDs with all of the proposed substantive changes and reorganize the rules to present more clearly how a matter progresses through the discipline system. To the extent feasible, the rules that provide substantive authority and duties were placed in the context of the action that is authorized or the duty that is established rather than in a listing of the actor's authority and duties. This is particularly the case for the rules that previously listed the authority and duty of the Disciplinary Board [RLD 2.3(f)], the Review Committees [RLD 2.4(d)], and Disciplinary Counsel [RLD 2.6 (b),(c) & (d)], as well as the rules that previously listed the rights and duties of grievants [RLD 2.9] and respondent lawyers [RLD

MISC.

2.8 (a) & (b)]. The thirteen titles of the RLDs have been reorganized into sixteen titles of the proposed ELCs. To the extent possible, these titles, and the rules within them, have been placed in chronological and logical order. The product of this second step may also be viewed at the above website address. The third step was to take the reorganized rules, now being referred to as the ELCs, and to work on clarifying the language. The product of this third step is referred to as the clarified version of the ELCs, and it is this version that accompanies these comments.

The clarification and style changes are to improve readability and provide consistency. In large part we have followed the *Guidelines for drafting and Editing Court Rules*, 169 F.R.D. 176 (1996) used by the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States. This resulted in a number of stylistic conventions:

- **Words of Authority.** We have generally eliminated the use of the word "shall," because it was used inconsistently in the RLDs. As indicated in ELC 1.3(r), we generally used "must" to indicate "is required to" and "may" to indicate "has discretion to," "is permitted to," or "has a right to." "Should" is generally used to indicate "recommended but not required." There are exceptions, most notably in the hearing officer standards at ELC 2.6(d). Because these are taken from the Code of Judicial Conduct that uses both the "shall" command and the "should" command to distinguish different duties, we have used "shall" and "should" as they are in the CJC. The other exception is that in Title 12 dealing with Supreme Court review, "should" has the same meaning as it is given in the RAPs.
- **Active Voice, Present Tense, Singular.** We have made numerous changes to put the rules into active voice, with a present tense and the singular whenever possible without changing the meaning of the rule.
- **Sentence Length.** We have attempted to keep the sentences short and direct, although this was not always possible.
- **Verbosity.** We have found that many words and phrases are unnecessary, and that nothing is lost by deleting them.
- **Syntax.** We have carefully examined clauses that state modifications, conditions and exceptions, to determine whether these are best put at the beginning or end of a sentence, or whether the sentence can be restructured without the clause.
- **Organization.** We have reorganized various sections to locate related matters together and to provide a logical and chronological flow. We have also added some additional enumeration to make long sections visually easier to grasp. In some instances, we have used bullet points to make a list easier to read. We have only used bullet points where there is little need to cite the specific bulleted information, e.g. ELC 1.5.

- **Definitions.** We have expanded the definitions section at ELC 1.3 to include a number of terms that are used throughout the ELCs.
- **Terminology.** The term "chairperson" has been replaced with the more succinct term "chair."

#### TITLE 1 - SCOPE, JURISDICTION, AND DEFINITIONS ELC 1.1 SCOPE OF RULES.

This rule is derived from the introductory language and section (i) of RLD 1.1. The substantive grounds for discipline, previously located in RLD 1.1 (a) - (h) and RLD 1.1 (j) - (p), have been deleted to eliminate duplication between the Rules of Professional Conduct (RPC) and this rule, consolidating into the Rules of Professional Conduct all of the substantive provisions related to lawyer conduct. The former sections of RLD 1.1 are relocated as follows:

- (a). Relocated to a new RPC 8.4(i).
- (b). Relocated to a new RPC 8.4(j).
- (c). Language as to violation of oath relocated to a new RPC 8.4(k). Language regarding violation of duties as a lawyer deleted as being vague and obsolete language that has not established definition.
- (d). Relocated to a new RPC 1.2(f).
- (e). Relocated to a new RPC 5.5(c).
- (f). Incorporated into amendment to RPC 8.1.
- (g). Relocated to a new RPC 8.5(b).
- (h). Relocated to a new RPC 5.5(d).
- (i). Incorporated into ELC 1.1.
- (j). Incorporated into ELC 1.5 and a new RPC 8.4(l).
- (k). Relocated to a new RPC 8.4(m).
- (l). Relocated to a new RPC 5.5(e).
- (m). Incorporated into ELC 1.5 and a new RPC 8.4(l).
- (n). Incorporated into ELC 1.5 and a new RPC 8.4(l).
- (o). Deleted in favor of duplicated provision in RPC 8.4(a).
- (p). Relocated to a new RPC 8.4(n).

#### ELC 1.2 JURISDICTION.

This rule is derived from RLD 1.2, with modifications to coordinate with the language of rule 8.5 of the Rules of Professional Conduct. The Task Force added the "or permitted by rule" language to include persons such as military JAG officers who may be permitted to represent some military personnel in state courts without any actual admission by a Washington court.

#### ELC 1.3 DEFINITIONS.

Sections (a), (b), (c), and (k) are derived from RLD 12.15 with no substantive change. Section (f) is derived from RLD 11.2(a) with no substantive change. Section (j) is derived from RLD 10.2 with the change that "excessive use of alcohol or drugs" is changed to "debilitating use of alcohol or drugs." Other definitions in this section are new, but are intended only to improve the clarity of the rules, not to effect substantive changes to the rules.

#### ELC 1.4 NO STATUTE OF LIMITATION.

This rule is derived from RLD 12.10 with no substantive change.

#### ELC 1.5 VIOLATION OF DUTIES IMPOSED BY THESE RULES.

This rule is derived from RLD 1.1 (j), (m) and (n) with no substantive changes.

**TITLE 2 - ORGANIZATION AND STRUCTURE****ELC 2.1 SUPREME COURT.**

This rule is derived from RLD 2.1 with no substantive change.

**ELC 2.2 BOARD OF GOVERNORS.**

Sections (a) and (b) of this rule are derived from RLD 2.2 with no substantive change. Section (c) is derived from RLD 12.5 with no substantive change.

Cross Reference Note: RLD 12.14 that provided for the Board of Governors or the Disciplinary Board to establish priorities for processing investigations and proceedings has been deleted in favor of the general provisions of ELC 2.2 for the Board of Governors to supervise the general functioning of the discipline system.

**ELC 2.3 DISCIPLINARY BOARD.**

Section (a) is derived from RLD 2.3 (f)(9) with no substantive change.

Section (b) is derived from RLD 2.3(a) with the following substantive clarifications and changes:

Subsection (b)(3) is derived from RLD 2.3 (a)(5), with the clarification that the Chair and Vice Chair of the Board can vote.

Section (b)(4) is derived from RLD 2.3 (a)(3), modified to clarify that the quorum is not lost when a member recuses from a particular matter; however, a minimum of seven members must vote for the Board to take action.

Section (b)(5) is derived from RLD 2.3 (a)(4), modified to provide that when a grievance is filed against a member of the Board, that member has the discretion to decide whether to remain on the Board during the pendency of the grievance, unless the Board of Governors acts to direct the member to take a leave of absence. The rule provides for the Conflicts Review Officer [ELC 2.7] to provide a confidential summary of the grievance to the Board of Governors and indicates factors for the Board of Governors to consider.

Section (c) is derived from RLD 2.3(b) with no substantive change.

Section (d) is derived from RLD 2.3(c) with no substantive change.

Section (f) is derived from RLD 2.3(e), but clarified to provide for pro tempore members to be appointed to consider all matters during the period that the member is disqualified or unable to serve, without the need for appointment on individual cases.

Section (g) is derived from RLD 2.3(g), but is modified to give the Chair greater discretion in convening meetings.

A new Section (h) is added to provide standards for when Board members should disqualify themselves from matters. The new subsection adds provisions modeled after those portions of Canon 2 and Canon 3 of the Code of Judicial Conduct that are relevant to a volunteer board. In addition the RLD 6.7(c) prohibition on a Board member reviewing a matter that the member heard as a hearing officer or participated in a review committee ordering an admonition is added as subsection (h)(1)(E).

A new section (i) allows for remittal of the disqualification and is modeled after the remittal provision in Canon 3 of the Code of Judicial Conduct.

Section (j) is derived from RLD 2.3(h) with the position of Counsel to the Board added to the position of Clerk to the Board.

Section (k) is derived from RLD 12.5 with no substantive change.

**Cross Reference Note:**

Much of ELC 2.3 is derived from RLD 2.3, but consistent with the reorganization of the rules to present more clearly how a matter progresses through the discipline system, the specific substantive authority previously set out in RLD 2.3(f) have been moved to the following titles:

RLD 2.3 (f)(1) is moved to ELC 11.2, ELC 8.2(c), and ELC 8.3(d).

RLD 2.3 (f)(2) is moved to ELC 11.2.

RLD 2.3 (f)(3) is moved to ELC 11.3.

RLD 2.3 (f)(4) is moved to ELC 9.1 (c)(2).

RLD 2.3 (f)(5) is moved to ELC 10.9.

RLD 2.3 (f)(6), providing for Board review of dismissals by review committees, is eliminated.

RLD 2.3 (f)(7) is moved to ELC 2.5(f) where this duty is transferred to the Chief Hearing Officer.

RLD 2.3 (f)(8) is moved to APR 20.6(c).

**ELC 2.4 REVIEW COMMITTEES.**

Section (a) is derived from RLD 2.4 (d)(6) with no substantive change.

Section (b) is derived from RLD 2.4(a) with no substantive change.

Section (c) is derived from RLD 2.4(b) with no substantive change.

Section (d) is derived from RLD 2.4(c) with no substantive change.

Section (e) is derived from RLD 2.4(e) with no substantive change.

Section (f) is derived from RLD 2.4(f) with no substantive change.

Section (g) is a new provision to allow former Board members to be appointed as adjunct Review Committee members to assist the Board when necessary.

**Cross Reference Note:**

Much of ELC 2.4 is derived from RLD 2.4, but consistent with the reorganization of the rules to present more clearly how a matter progresses through the discipline system, the provisions on specific substantive authority previously set out in RLD 2.4(d) have been moved to the following titles:

RLD 2.4 (d)(1) is moved to ELC 5.6 (c) & (d).

RLD 2.4 (d)(2) is moved to ELC 5.3(c).

RLD 2.4 (d)(3) is moved to ELC 8.2(a).

RLD 2.4 (d)(4) is moved to ELC 5.6.

RLD 2.4 (d)(5) is moved to ELC 7.1.

**ELC 2.5 HEARING OFFICER OR PANEL.**

This rule is derived from RLD 2.5.

Section (a) is derived from RLD 2.5(e) with no substantive change.

Section (b) is derived from RLD 2.5(b), with the additional qualification of no record of public discipline.

Section (c) is a new provision.

Section (d) is derived from RLD 2.5 (a) & (b) with no substantive change.

Section (e) is derived from RLD 2.5(d), modified to provide that the initial term of appointment is for one year. This section also provides a clarification for the means of removing a hearing officer from the list.

Section (f) is a new provision for a Chief Hearing Officer.

Section (g) is a new provision for hearing officers to be assigned by the Chief Hearing Officer.

Section (h) is derived from RLD 2.5(c), with a modification to require that a hearing panel always include a non-lawyer.

Section (i) is a new provision.

#### **ELC 2.6 HEARING OFFICER CONDUCT.**

This is a new rule based on the provisions of Canon 2 and Canon 3 of the Code of Judicial Conduct to the extent those provisions are applicable to hearing officers. In addition to those provisions, hearing officers are prohibited from testifying voluntarily as character witnesses in disciplinary proceedings or serving in any proceeding as an expert witness related to the professional conduct of lawyers. Additionally, hearing officers may not serve as special disciplinary counsel, adjunct investigative counsel or respondent's counsel.

#### **ELC 2.7 CONFLICTS REVIEW OFFICER.**

This is a new rule establishing a Conflicts Review Officer to provide the initial review of grievances filed against lawyers holding positions in the discipline system. This includes bar grievances against members of the Supreme Court, but does not include any matter over which the Commission on Judicial Conduct has sole jurisdiction. Following review by the Conflicts Review Officer, any matter needing further investigation is to be assigned to Special Disciplinary Counsel. These procedures are intended to further public confidence in the self-regulation system of the profession.

#### **ELC 2.8 DISCIPLINARY COUNSEL; SPECIAL DISCIPLINARY COUNSEL.**

Section (a) is derived from RLD 2.6(a), RLD 2.6 (b)(5), and RLD 2.6 (b)(6) with no substantive change.

Section (b) is derived from RLD 2.6(a) with no substantive change.

#### ***Cross Reference Note:***

Much of ELC 2.8 is derived from RLD 2.6, but consistent with the reorganization of the rules to present more clearly how a matter progresses through the discipline system, the provisions on specific substantive authority previously set out in RLD 2.6 have been moved to the following titles:

RLD 2.6 (b)(1) is moved to ELC 5.3(a).

RLD 2.6 (b)(2) is moved to ELC 5.3(b).

RLD 2.6 (b)(3) is moved to ELC 5.6(c).

RLD 2.6 (b)(4) is moved to ELC 5.6 (d)(5).

RLD 2.6(c) is moved to ELC 5.6.

RLD 2.6(d) is moved to ELC 5.5.

#### **ELC 2.9 ADJUNCT INVESTIGATIVE COUNSEL.**

This rule is derived from RLD 2.7 with the following changes: The term "Special District Counsel" is changed to the more descriptive "Adjunct Investigative Counsel" to avoid confusion between Special District Counsel and Special Disciplinary Counsel. Consistent with the reorganization

of the rules to more clearly describe the process by which a matter progresses through the discipline system, the specific substantive provisions in RLD 2.7(b) have been moved to ELC 5.3(b). The reference to "practicing in the district" that had been in RLD 2.7(a) is deleted to reflect that these positions are no longer organized by Congressional District. The provision for investigating grievances that are brought against disciplinary counsel in RLD 2.7 (b)(3) is deleted as the result of the new provisions in ELC 2.7 for a Conflicts Review Officer.

#### **ELC 2.10 REMOVAL OF APPOINTEES.**

This rule is derived from RLD 12.7 with no substantive change.

#### **ELC 2.11 COMPENSATION AND EXPENSES.**

This rule is derived from RLD 12.4, modified to provide that although the Chief Hearing Officer is to be compensated, compensation of other hearing officers is left to the discretion of the Board of Governors.

#### **ELC 2.12 EXONERATION FROM LIABILITY.**

This rule is derived from RLD 12.11. The language has been modified to reflect that the provisions for the Lawyers' Assistance Program and peer counselors have been moved to APR 19 (b)(3), and to provide for a uniform exoneration provision for all WSBA programs by including an indemnification provision, e.g. APR 1(c), APR 16 (e)(1), and APR 19 (b)(3)(i).

#### **ELC 2.13 RESPONDENT LAWYER.**

Section (a) is derived from RLD 2.8(e) with no substantive change.

Section (b) is derived from RLD 12.5 with no substantive change.

Section (c) is a new provision.

Section (d) is derived from RLD 2.8 (a)(4). The language is modified to clarify that the scope is limited to records relevant to the investigation or proceeding, and to provide that upon motion, the hearing officer or chief hearing officer may limit the scope of the requested releases or authorizations.

#### ***Cross Reference Note:***

Much of ELC 2.13 is derived from RLD 2.8, but consistent with the reorganization of the rules to present more clearly how a matter progresses through the discipline system, many of the specific rights and duties previously set out in RLD 2.8 have been moved to the following titles:

RLD 2.8(a) is moved to ELC 5.3(e).

RLD 2.8(b) is moved to ELC 5.3(f).

RLD 2.8(c) is moved to ELC 5.4(a).

RLD 2.8(d) is moved to ELC 5.4(b).

#### **TITLE 3 - ACCESS AND NOTICE**

#### **ELC 3.1 OPEN MEETINGS AND PUBLIC DISCIPLINARY INFORMATION.**

Section (a) is derived from RLD 11.1(a) with no substantive change.

Section (b) is derived from RLD 11.1(b), 11.1(c) and RLD 11.2(a). The rule has been modified to remove from the list of public disciplinary information [RLD 11.1 (c)(1)] the record of a matter being submitted to a review committee by disciplinary counsel with a recommendation that a hearing be ordered or an admonition be issued. This provision is elimi-

nated to remove the anomaly that matters may become public which may ultimately be dismissed by the review committee. In addition, the language of various subsections have been modified to clarify that the order of a review committee or the Board is public when the record or stipulation being considered by the review committee or Board becomes public. The rule is further clarified that when the Board or hearing officer approves a stipulation to dismissal of a matter that has previously been made public, the order, but not the stipulation or the record supporting the stipulation becomes public. The language of the rule is also clarified to provide that materials that become public upon submission to a review committee or the Board become public at the point the materials are actually distributed to the review committee or the Board.

Section (c) is derived from RLD 11.1(s) with no substantive change.

**Cross Reference Note:**

ELC 3.1, 3.2, 3.3 and 3.4 are derived from RLD 11.1, which has been restructured into four rules as follows:

RLD 11.1(a) is moved to ELC 3.1(a).

RLD 11.1(b) is eliminated.

RLD 11.1(c) is moved to ELC 3.1(b), ELC 3.2(c).

RLD 11.1(d) is moved to ELC 3.2(a), ELC 3.4(b), ELC 3.4(k).

RLD 11.1(e) is moved to ELC 3.1(a).

RLD 11.1(f) is moved to ELC 3.4(f).

RLD 11.1(g) is moved to ELC 3.2(e).

RLD 11.1(h) is moved to ELC 3.3(a).

RLD 11.1(i) is moved to ELC 3.4(a).

RLD 11.1(j) is moved to ELC 3.4(d).

RLD 11.1(k) is moved to ELC 3.4(g).

RLD 11.1(l) is moved to ELC 3.4(h).

RLD 11.1(m) is moved to ELC 3.4(d).

RLD 11.1(n) is moved to ELC 3.4(c).

RLD 11.1(o) is moved to ELC 3.4(e).

RLD 11.1(p) is moved to ELC 3.3(b).

RLD 11.1(q) is moved to APR 21.3(c).

RLD 11.1(r) is moved to ELC 3.3(c).

RLD 11.1(s) is moved to ELC 3.1(c).

RLD 11.1(t) is moved to ELC 3.4(i).

RLD 11.1(u) is moved to ELC 3.2(f).

**ELC 3.2 CONFIDENTIAL DISCIPLINARY INFORMATION.**

Section (a) is derived from RLD 11.1(c) and RLD 11.1(d) with no substantive change.

Section (b) is a new provision. Use of the term "released" is consistent with the distinction in these rules between disclosure and release of information. Disclosure by the Association refers to use of information in the course of an investigation or proceeding. Release by the Association refers to disseminating information outside the disciplinary system.

Section (c) is derived from RLD 11.1(c) with no substantive change.

Section (d) is derived from RLD 11.2(f) with no substantive change.

Section (e) is derived from RLD 11.1(g) with no substantive change.

Section (f) is derived from RLD 11.1(u) with no substantive change.

**ELC 3.3 APPLICATION TO STIPULATIONS, DISABILITY PROCEEDINGS, AND DIVERSION CONTRACTS.**

Section (a) is derived from RLD 11.1(h) with no substantive change.

Section (b) is derived from RLD 11.1(p) related to disability proceedings, with the substantive change to make public the fact of a disability transfer public and to make public the fact that a previously public disciplinary proceeding has been held in abeyance for a disability inquiry. However, in neither instance would the record or proceedings of the disability inquiry be public.

Section (c) is derived from RLD 11.1(r) with no substantive change.

**ELC 3.4 RELEASE OR DISCLOSURE OF OTHERWISE CONFIDENTIAL INFORMATION.**

As applied to the Association, these rules distinguish between a disclosure of information and a release of information. Disclosure by the Association refers to use of information in the course of an investigation or proceeding. Release by the Association refers to disseminating information outside the disciplinary system.

Section (a) is derived from RLD 11.1(i) with no substantive change.

Section (b) is derived from the second sentence of RLD 11.1(d) with no substantive change.

Section (c) is derived from RLD 11.1(n) with no substantive change.

Section (d) is derived from RLD 11.1(j) and RLD 11.1(m), with the substantive change of a provision for notice to the respondent lawyer, unless that would jeopardize serious interests.

Section (e) is derived from RLD 11.1(o) with no substantive change.

Section (f) is derived from RLD 11.1(f), with a clarification that a statement of concern is not public until 14 days after it is served on the lawyer.

Section (g) is derived from RLD 11.1(k) with no substantive change.

Section (h) is derived from RLD 11.1(l), with the addition of release to judicial disciplinary authorities.

Section (i) is derived from RLD 11.1(t) with no substantive change.

Section (j) is a new provision related to the Conflicts Review Officer under ELC 2.7.

Section (k) is derived from RLD 11.1(d) with no substantive change.

**ELC 3.5 NOTICE OF DISCIPLINE.**

Section (a) is derived from RLD 11.2(b), modified to include notices of the new resignation in lieu of disbarment, ELC 9.3.

Section (b) is derived from RLD 11.2(c), modified to include notices of the new resignation in lieu of disbarment, ELC 9.3.

Section (c) is a new provision for guidelines for drafting of Washington State Bar News discipline notices and provides the respondent an opportunity to comment on the draft.

Section (d) is derived from RLD 11.2(d) and RLD 8.4(a), but provides for publication in the Washington State Bar News, listing on the WSBA Website and notices to the news media in lieu of the paid legal notices previously used for

notice of suspension, disbarment or transfer to disability inactive. The rule is also changed to allow a transfer to disability inactive to be stated as such, but with no reference to the specific disability. The rule also includes notices of the new resignation in lieu of disbarment, ELC 9.3.

Section (e) is derived from RLD 8.4(b), modified to include notices of the new resignation in lieu of disbarment, ELC 9.3.

#### **ELC 3.6 MAINTENANCE OF RECORDS**

This rule is derived from RLD 12.8, with no substantive change other than that section (b) is modified to require matters concluded by an admonition be retained for at least five years, to coordinate with ELC 13.6 that allows cumulative discipline for three admonitions in five years.

### **TITLE 4 - GENERAL PROCEDURAL RULES**

#### **ELC 4.1 SERVICE OF PAPERS.**

This rule is derived from RLD 12.1, and the last sentence of RLD 12.2(a), but reorganized so that the various methods of service, previously found in both section (a) and section (b), are consolidated into a section (b). There are no substantive changes except that the service by mail provisions in subsection (b)(1)(A) are clarified with a new provision as to when service by mail is deemed accomplished. The provisions regarding service of a request for a review of a dismissal in RLD 12.1(d) have been moved to ELC 5.6(b).

#### **ELC 4.2 FILING; ORDERS.**

This rule is derived from RLD 12.2. The rule is modified to clarify that filing is with the Clerk, and that orders are served on the respondent by the Clerk.

#### **ELC 4.3 PAPERS.**

This rule is derived from RLD 12.3 with no substantive change.

#### **ELC 4.4 COMPUTATION OF TIME.**

This rule is derived from RLD 12.12 with no substantive change.

#### **ELC 4.5 STIPULATION TO EXTENSION OR REDUCTION OF TIME.**

This rule is derived from RLD 12.13, but modified to include reduction of time as well as extension of time.

#### **ELC 4.6 SUBPOENA UNDER THE LAW OF ANOTHER JURISDICTION.**

This is a new rule, modeled after ABA Model Rules for Lawyer Disciplinary Enforcement, Rule 14(G), to authorize subpoenas to assist the disciplinary proceedings of other jurisdictions.

#### **ELC 4.7 ENFORCEMENT OF SUBPOENAS.**

This is a new rule by which the Supreme Court delegates to the Superior Court the contempt power necessary to enforce disciplinary subpoenas under a system modeled after the Washington Administrative Procedures Act provisions for Superior Court enforcement of administrative agency subpoenas.

### **TITLE 5 - GRIEVANCE INVESTIGATIONS AND DISPOSITION**

#### **ELC 5.1 GRIEVANTS.**

Section (a) is a new provision.

The rest of this rule is based on RLD 2.9 as follows:

Section (b) is derived from RLD 2.9(c) with no substantive change.

Section (c) is derived from RLD 2.9(a) with a modification at ELC 5.1 (c)(6) to clarify that the grievant's right to testify at a disciplinary hearing is limited to providing relevant testimony.

Section (d) is derived from RLD 2.9(b) with no substantive change.

The only portion of RLD 2.9 that was not included in this rule is RLD 2.9(d) which has been moved to ELC 5.3(d).

#### **ELC 5.2 CONFIDENTIAL SOURCES.**

This rule is derived from RLD 12.9, modified to clarify that a confidential source will have neither the rights nor the duties of a grievant.

#### **ELC 5.3 INVESTIGATION OF GRIEVANCE.**

This rule is derived from a number of provisions in the RLDs related to the investigation of grievances that have been reorganized to present more clearly how a matter progresses through the discipline system.

Section (a) is derived from RLD 2.6 (b)(1), with a modification to include alleged or apparent incapacity of a lawyer to practice law.

Section (b) is derived from RLD 2.6 (b)(1)&(2) and from RLD 2.7 (b)&(c) with no substantive change.

Section (c) is derived from RLD 2.4 (d)(2), modified to provide that disciplinary counsel first determines whether an investigation should be deferred, with either party having the ability to ask for review of that decision by a review committee.

Section (d) is derived from RLD 2.9(d) with no substantive change.

Section (e) is derived from RLD 2.8(a) with no substantive change.

Section (f) is derived from RLD 2.8(b), modified to increase the attorney fees for a non-cooperation deposition from \$200 to \$500, and to provide for a new interim suspension procedure under ELC 7.2 for failing to cooperate with a disciplinary investigation.

#### **ELC 5.4 PRIVILEGES.**

Section (a) is derived from RLD 2.8(c) with no substantive change.

Section (b) is derived from RLD 2.8(d), modified to clarify that the rule does not waive or require waiver of a lawyer's own privilege as a client.

#### **ELC 5.5 DISCOVERY BEFORE FORMAL COMPLAINT.**

This rule is derived from RLD 2.6(d), modified to clarify the duty of every lawyer to respond to discovery requests from disciplinary counsel, eliminate an obsolete reference to lawyer member of the Disciplinary Board issuing subpoenas and provide for enforcement of discovery subpoenas in Superior Court under the provisions of ELC 4.7.

#### **ELC 5.6 DISPOSITION OF GRIEVANCE.**

Section (a) is derived from RLD 2.6(c) with no substantive change.

Section (b) is derived from RLD 2.6(c) and RLD 2.4 (d)(4), but is modified to reflect elimination of the appeal to the full Disciplinary Board from a decision of a review committee affirming the dismissal of a grievance by disciplinary counsel, previously provided by RLD 2.3 (f)(6).

Section (c) is derived from RLD 2.6 (b)(3), modified for the option of diversion.

Section (d) is derived from RLD 2.4 (d)(1)&(4) with no substantive change. The Discipline 2000 Task Force considered whether the rules should provide a standard for a review committee to use in deciding whether to order a matter to hearing. The Task Force recommended not to impose a standard in the rule.

#### **ELC 5.7 ADVISORY LETTER.**

This rule is derived from RLD 5.6 with no substantive change other than to delete a reference to the Disciplinary Board made obsolete by the elimination of Board review of dismissals by a review committee under RLD 2.3 (f)(6).

### **TITLE 6 — DIVERSION**

#### **ELC 6.1 REFERRAL TO DIVERSION.**

This section is derived from RLD 14.1 and RLD 2.6(e) with no substantive change.

#### **ELC 6.2 LESS SERIOUS MISCONDUCT.**

This section is derived from RLD 14.2 with no substantive change.

#### **ELC 6.3 FACTORS FOR DIVERSION.**

This section is derived from RLD 14.4 with no substantive change.

#### **ELC 6.4 NOTICE TO GRIEVANT.**

This section is derived from RLD 14.3 with no substantive change.

#### **ELC 6.5 DIVERSION CONTRACT.**

This section is derived from RLD 14.5 with no substantive change.

#### **ELC 6.6 AFFIDAVIT SUPPORTING DIVERSION.**

This section is derived from RLD 14.6 with no substantive change.

#### **ELC 6.7 EFFECT OF NON-PARTICIPATION IN DIVERSION.**

This section is derived from RLD 14.7 with no substantive change.

#### **ELC 6.8 STATUS OF GRIEVANCE.**

This section is derived from RLD 14.8 with no substantive change.

#### **ELC 6.9 TERMINATION OF DIVERSION.**

This section is derived from RLD 14.9 with no substantive change.

### **TITLE 7 - INTERIM PROCEDURES**

#### **ELC 7.1 INTERIM SUSPENSION FOR CONVICTION OF A CRIME.**

This section is derived from RLD 3.1, with no substantive change, but reorganized to combine the definitions found in RLD 3.1(b) and RLD 3.1(i) in a definitions section (a). As a result, section (b) is derived from RLD 3.1(a).

#### **ELC 7.2 INTERIM SUSPENSION IN OTHER CIRCUMSTANCES.**

This rule is derived from RLD 3.2. RLD 3.2(a) and RLD 3.2(b) become subsections (1) and (2) of ELC 7.2(a). Subsection (a)(1) is modified to conform to the standard for interim suspension contained in the ABA Model Rules for Lawyer Discipline Enforcement (1996 ed.), Rule 20. The language in RLD 3.2(a) regarding a respondent lawyer who alleges the inability to conduct a proper defense is deleted in favor of the new ELC 7.3. New language is added at subsection (a)(3) providing for interim suspension based on a lawyer failing without good cause to comply with investigation requests for information or documents or the failure of a law-

yer to comply with a subpoena issued in a investigation. This new procedure is designed to provide a summary resolution of non-cooperation matters without the need to involve a review committee or the Disciplinary Board.

Section (b) is derived from RLD 3.2 (c), (d), (e), (f) & (g), with no substantive change.

#### **ELC 7.3 AUTOMATIC SUSPENSION WHEN RESPONDENT ASSERTING INCAPACITY.**

This is a new rule, providing for automatic interim suspension when a respondent lawyer asserts incapacity to conduct a proper defense in disciplinary proceedings. Following such an assertion, it would be inconsistent to allow the lawyer to continue practicing in the interim.

#### **ELC 7.4 STIPULATION TO INTERIM SUSPENSION.**

This is a new rule providing a procedure for a lawyer and disciplinary counsel to present a stipulation for interim suspension directly to the Supreme Court. Due to the agreed nature of such matters, the rule provides for expedited consideration.

#### **ELC 7.5 INTERIM SUSPENSIONS EXPEDITED.**

This rule is derived from RLD 3.3 with no substantive change.

#### **ELC 7.6 EFFECTIVE DATE OF INTERIM SUSPENSIONS.**

This new rule clarifies the effective date of interim suspensions.

#### **ELC 7.7 APPOINTMENT OF CUSTODIAN TO PROTECT CLIENTS' INTERESTS.**

This rule is derived from RLD 8.6. The title of this rule and section (a) are modified to distinguish the role of custodian from that of counsel.

Section (a) is modified to allow appointment of the WSBA as the custodian.

Section (b) is modified to allow the custodian to rely on determinations by the WSBA auditor as to ownership of client funds, and to allow pro rata distribution when necessary.

A new section (c) is added to provide for discharging the custodian and destruction of files and records.

Section (d) is derived from RLD 8.6(b) with no substantive change.

### **TITLE 8 - DISABILITY PROCEEDINGS**

#### **ELC 8.1 ACTION ON ADJUDICATION OF INCOMPETENCY.**

This rule is derived from RLD 10.1 with no substantive change; however the rule title is modified to reflect more accurately the provisions of the rule.

#### **ELC 8.2 DETERMINATION OF INCAPACITY TO PRACTICE LAW.**

This rule is derived from parts of RLD 10.2, which has been divided into two separate rules. ELC 8.2 contains the procedures for determining a lawyer's capacity to practice law, unrelated to the lawyer's capacity to defend a disciplinary proceeding. Procedures related to the issue of a respondent lawyer's capacity to defend a disciplinary proceeding are contained in ELC 8.3.

Section (a) is derived from RLD 2.4 (d)(3) and RLD 10.2(a), modified by restating the standard as whether the lawyer "does not have adequate mental or physical capacity to practice law," rather than the list of specific conditions previously found in the rule. This change in terminology is made throughout the Title and is not intended to either

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expand or contract the scope of these proceedings, but is only intended to update the usage. Section (a) is also modified to provide that it is appropriate to initiate such an inquiry regarding not only lawyers on active status but also regarding lawyers who are suspended or inactive and may return to active status.

Section (b) is derived from the first sentence of RLD 10.2(c) with no substantive change.

Subsection (c)(1) is derived from the first sentence of RLD 10.2(c) with no substantive change.

Subsection (c)(2) is derived from RLD 10.2(d) with no substantive change.

Subsection (c)(3) is new language providing a procedure for obtaining releases for the relevant medical, psychological or psychiatric records of the lawyer, along with a procedure for the lawyer to seek to limit the scope of the requested releases.

Subsection (c)(4) is new language providing for an order from a hearing officer or the Chief Hearing Officer to obtain an examination.

Subsection (c)(5) is derived from the third sentence of RLD 10.2(c) with no substantive change.

Subsection (c)(6) is derived from the last portion of the third sentence of RLD 10.2(c) and RLD 10.2(f) with no substantive change.

Subsection (c)(7) is derived from RLD 10.2(e) with no substantive change.

Section (d) is new language, based generally on RLD 3.2(a), but setting forth specific procedures for seeking interim suspension in a matter under this rule.

Section (e) is a new provision providing for termination of an interim suspension under this rule.

#### **ELC 8.3 DISABILITY PROCEEDINGS DURING THE COURSE OF DISCIPLINARY PROCEEDINGS.**

This rule is derived in part from RLD 10.2, to the extent that rule dealt with a respondent lawyer's capacity to defend an ongoing disciplinary proceeding.

Section (a) is derived from the portion of RLD 10.2(b) related to a respondent lawyer's capacity to defend a disciplinary proceeding.

Section (b) is a new provision that clarifies the purpose of supplemental proceedings, as previously set forth in RLD 10.2 (b)&(e).

Section (c) is derived from a portion of the first sentence of RLD 10.2(c) with no substantive change.

Section (d) sets forth the procedure for supplemental proceedings:

Subsection (d)(1) is derived from a portion of the first sentence of RLD 10.2(c) with no substantive change.

Subsection (d)(2) is derived from a portion of the second sentence of RLD 10.2(c) with no substantive change.

Subsection (d)(3) is derived from RLD 10.2(d) with no substantive change.

Subsection (d)(4) is a new provision for obtaining health records in a proceeding under this rule, subject to review by the hearing officer.

Subsection (d)(5) is a new provision for an examination upon an order by the hearing officer.

Subsection (d)(6) is a new provision to deal with failure of a respondent lawyer to appear or cooperate in obtaining health records or an examination under this rule.

Subsection (d)(7) is derived from the third sentence of RLD 10.2(c), but is modified to set forth the hearing officer's options more specifically. In particular, this subsection clarifies that a hearing officer may find that the respondent does not have the capacity to defend himself or herself, but does have the capacity to defend with counsel.

Subsection (d)(8) is derived from RLD 10.2(e), modified to clarify that the standard is not whether a lawyer can defend the disciplinary proceeding but whether the lawyer is incapable of assisting counsel in properly defending the disciplinary proceeding.

Section (e) is derived from the second and third sentences of RLD 10.2(b), modified to include the new interim suspension rule, ELC 7.3.

#### **ELC 8.4 APPEAL OF TRANSFER TO DISABILITY INACTIVE STATUS.**

This rule is derived from RLD 10.2(f) with no substantive change.

#### **ELC 8.5 STIPULATED TRANSFER TO DISABILITY INACTIVE STATUS.**

This is a new procedure for a lawyer and disciplinary counsel to stipulate to transfer to disability inactive status, subject to approval by the Disciplinary Board of the stipulation. Because these are agreed proceedings, there is no requirement of notice for such a stipulation to be presented to the Board.

#### **ELC 8.6 COSTS IN DISABILITY PROCEEDINGS.**

This is a new provision allowing the Disciplinary Board discretion to authorize disciplinary counsel to seek assessment of costs in a disability inquiry.

#### **ELC 8.7 BURDEN AND STANDARD OF PROOF.**

This is a new provision to clarify the burden and standard of proof in disability proceedings.

#### **ELC 8.8 REINSTATEMENT TO ACTIVE STATUS.**

This rule is derived from RLD 10.3 with certain modifications:

Section (b) is a provision previously in RLD 10.3(c), modified to require the lawyer to identify all professionals, hospitals or institutions who have examined or treated the lawyer since the transfer to disability inactive status.

Section (d) is modified to allow disciplinary counsel to respond to a reinstatement petition before it is considered by the Chair.

Section (e) is modified to provide that any hearing is before a hearing officer or panel, not the Board, and that such hearings are conducted under the procedural rules for disciplinary hearings. Section (e) is also modified to allow a stipulation providing for reinstatement.

#### **ELC 8.9 PETITION FOR LIMITED GUARDIANSHIP.**

This is a new rule authorizing a limited guardianship for taking action with respect to a lawyer's license or any disability or disciplinary proceeding. This procedure is necessary for some individuals whose disability makes it impossible for even appointed counsel to represent them in disability or disciplinary proceedings.

**TITLE 9 - RESOLUTIONS WITHOUT HEARING****ELC 9.1 STIPULATIONS.**

This rule is derived from RLD 4.14, with the following modifications:

Section (c) is modified to permit a hearing officer to approve a stipulation disposing of a matter not involving a suspension or disbarment. The hearing officer's order approving such a stipulation is a final order, with no sua sponte review by the Disciplinary Board. Section (c) is also amended to allow a respondent and disciplinary counsel to jointly request an oral presentation to the Disciplinary Board regarding a proposed stipulation.

Section (c) is modified and a new section (d) added to allow the Disciplinary Board to conditionally approve a stipulation which is effective if both the respondent and disciplinary counsel agree to the modified terms of the stipulation. The provision allows the parties to seek reconsideration, including an oral presentation.

Section (e) is a new provision for a joint motion for reconsideration.

Section (f) is derived from RLD 4.14(d), modified to require the Disciplinary Board to state the reasons for rejection of a stipulation.

Section (g) is derived from RLD 4.14(e) with no substantive change.

**ELC 9.2 RECIPROCAL DISCIPLINE AND DISABILITY INACTIVE STATUS; DUTY TO SELF-REPORT.**

This rule is derived from RLD 12.6, with modifications to closely parallel the ABA Model Rule for Lawyer Disciplinary Enforcement, Rule 22. The rule is expanded to include reciprocal disability inactive proceedings.

A new section (a) is added, creating a duty to report being disciplined or transferred to disability inactive status in another jurisdiction.

A new section (b) clarifies that disciplinary counsel is responsible for obtaining and presenting to the Supreme Court a certified copy of orders from another jurisdiction regarding a Washington lawyer.

Section (c) is derived from RLD 12.6(a) with no substantive change other than including transfers to disability inactive status.

Section (d) is derived from RLD 12.6(b) with no substantive change other than including transfers to disability inactive status.

A new section (e) adds the specific procedures recommended by the ABA Model Rule. Subsections (e)(1)(A)-(E) are derived from Subsections 22 (D)(1)-(5) of the Model Rule, with language changes to reflect the style and usage conventions of the ELCs, but with no substantive difference.

Subsection (e)(1)(F) is a new provision, not in the Model Rule, designed to preclude reciprocal discipline from being based on more severe reciprocal discipline that has been imposed by another jurisdiction, when the discipline in the other jurisdiction was based on the jurisdiction that has already been imposed by Washington.

Section (f) is derived from RLD 12.6(c) with no substantive change other than including transfers to disability inactive status.

**ELC 9.3 RESIGNATION IN LIEU OF DISBARMENT.**

Currently resignation when discipline is pending is allowed only upon the permission of the Board of Governors, pursuant to Article II, Section D of the WSBA Bylaws. This new rule allows a respondent lawyer to resign in lieu of disbarment at any time before the respondent lawyer's answer is due, provided the respondent complies with a number of conditions.

**TITLE 10 - HEARING PROCEDURES****ELC 10.1 GENERAL PROCEDURE.**

Section (a) is derived from RLD 4.1(a), but is amended to provide for a motion to determine the collateral estoppel effect of a judgment, and to acknowledge those dispositive motions allowed under ELC 10.10.

Section (b) is derived from RLD 4.1(b) with no substantive change.

Section (c) is derived from RLD 4.2(c) with no substantive change.

**ELC 10.2 HEARING OFFICER OR PANEL.**

Section (a) is derived from RLD 4.2(a) but uses the term assignment of a hearing officer rather than appointment to distinguish assignment to a case from appointment to the Hearing Officer Panel. The rule is modified to provide that the Chief Hearing Officer rather than the Disciplinary Board Chair will assign hearing officers. The rule is also modified to provide that ordinarily a single hearing officer will be assigned rather than a panel. The rule allows disciplinary counsel or the respondent to seek assignment of a hearing panel by motion and establishes criteria to be considered. Section (b) is derived from RLD 4.2(b), but is modified to provide a disqualification system that is modeled after the system for affidavits of prejudice in use in the Superior Courts, but with the modification that the first request for removal is not based on cause or alleged prejudice.

**&ELC 10.3 COMMENCEMENT OF PROCEEDINGS.**

Section (a) is derived from RLD 4.3, sections (a), (b), (c) and (f), modified to reflect that the specific grounds for discipline are no longer set forth in RLD 1.1. Prior discipline is not ordinarily required to be pled, and in the instance of a bifurcated proceeding, is not admissible at the violations hearing [ELC 10.15 (b)(1)(A)]. Subsection (a)(4) recognizes the exception when a count is based on RPC 8.4(n) for conduct demonstrating unfitness to practice to law in which case the prior discipline record may be pled and introduced into evidence to prove the violation.

Section (b) is derived from RLD 4.3(e) with no substantive change.

Section (c) is derived from RLD 4.3(d) with a modification to allow a hearing officer or panel to consolidate matters for hearing.

**ELC 10.4 NOTICE TO ANSWER.**

This rule is derived from RLD 4.4.

Section (a) is modified to provide that the answer must be filed with the Clerk and served on any hearing officer and disciplinary counsel. The formatting of the Notice of Default Procedure in section (a) is changed to provide greater readability.

Section (b) is modified to remove any impediment to disciplinary counsel taking action such as moving for default or

pursing discovery when no hearing officer has been assigned, as the Chief Hearing Officer is available to hear motions related to such matters under ELC 2.5(f) and ELC 10.6 (a)(3).

#### **ELC 10.5 ANSWER.**

This rule is derived from RLD 4.5. Section (a) is derived from RLD 4.5(c), modified to provide that filing a motion to dismiss for failure to state a claim will stay the time period for filing an answer.

Section (b) is derived from RLD 4.5(a) with no substantive change.

Section (c) is derived from RLD 4.5(b) with no substantive change.

#### **ELC 10.6 DEFAULT PROCEEDINGS.**

This rule is derived from RLD 4.10A.

Section (a) is modified to provide for service of the motion for an order of default rather than service of a notice of motion, to provide for a copy of this rule to be served with the motion, and to provide the same five days notice as provided for other motions rather than the 20 days notice required by RLD 4.10A. The rule is modified to allow the Chief Hearing Officer to rule on motions for default when no hearing officer has been assigned. The rule also clarifies the effect of an order of default.

Section (b) is modified to provide for the Clerk to serve the order of default along with a copy of the rule, and to provide that the disciplinary proceeding following an order of default is limited to determining the appropriate discipline recommendation. Section (b) is also modified to clarify that the disciplinary proceeding that follows entry of an order of default need not be a formal hearing, at the discretion of the hearing officer.

Section (d) is modified to clarify that the provision that the default proceedings outlined in the rule may not be used in ELC Title 8 proceedings and is not intended to alter or modify any of the provisions specifically set forth in that title.

#### **ELC 10.7 AMENDMENT OF FORMAL COMPLAINT.**

This rule is derived from RLD 4.6.

Section (a) is modified to correct an error made in the 1992 amendments that changed the term "complaint" to the term "grievance" throughout the rules. The term "formal complaint" is used to avoid any confusion.

Section (c) is modified to clarify that a notice to answer is not required when serving an amendment to a formal complaint.

#### **ELC 10.8 MOTIONS.**

Sections (a) through (e) of this rule are derived from RLD 4.8 with no substantive change.

Section (f) is a new provision.

#### **ELC 10.9 INTERIM REVIEW.**

This rule is derived from RLD 2.3 (f)(5) with no substantive change.

#### **ELC 10.10 PREHEARING DISPOSITIVE MOTIONS.**

This is a new section that allows two prehearing dispositive motions. A respondent may bring a motion to dismiss for failure to state a claim upon which relief can be granted. Disciplinary counsel may bring a motion for a finding of misconduct based on the pleadings. All such motions must be filed no later than 30 days after the filing of the answer. The prohibition against summary judgment motions is retained at ELC 10.1(a).

#### **ELC 10.11 DISCOVERY AND PREHEARING PROCEDURES.**

Section (a) is a new provision.

Section (b) is derived from RLD 4.7(b) with no substantive change.

Section (c) is derived from RLD 4.7(c) and RLD 4.7(a), modified to require stipulation of the parties or hearing officer authorization for all depositions.

Section (d) is derived from RLD 4.7(d), modified to provide factors for the hearing officer or chief hearing officer to consider in ruling on discovery matters.

Subsection (e)(1) is derived from RLD 4.7(a)(4), modified to provide for enforcement of deposition subpoenas under ELC 4.7.

Subsection (e)(2) is derived from RLD 4.7(a)(3), modified to include orders by the chief hearing officer.

Section (f) is a new provision to allow orders under CR 16 for pre-trial administrative matters.

Section (g) is derived from RLD 4.7(e), modified to provide that an adverse inference may be drawn from either party's failure to respond to discovery and to reflect that grounds for discipline are now referenced in ELC 1.5.

#### **ELC 10.12 SCHEDULING HEARING.**

Section (a) is derived from RLD 4.10(a) with no substantive change.

Section (b) is derived from RLD 4.10(b) with no substantive change.

Section (c) is derived from the last sentence of RLD 4.10(b), modified to provide possible deadlines and a possible form for the scheduling order.

Section (d) is derived from RLD 4.10(c) with no substantive change.

Section (e) is derived from RLD 4.10(d) with no substantive change.

#### **ELC 10.13 DISCIPLINARY HEARING.**

Section (a) is derived from RLD 4.10(f) with no substantive change.

Sections (b) and (c) are derived from RLD 4.10(g) with a clarification that depositions and declarations are admissible only if the respondent does not attend the hearing.

Section (d) is derived from RLD 4.10(i) and RLD 4.11 (c)(3) with no substantive change.

Section (e) is derived from RLD 4.10(j), modified to state the duty of all witnesses to comply with subpoenas issued in disciplinary proceedings and to allow hearing officers to draw adverse inferences from a respondent lawyer's failure to respond to a subpoena.

Section (f) is derived from RLD 4.10(l) with no substantive change.

#### **ELC 10.14 EVIDENCE AND BURDEN OF PROOF.**

Section (a) is derived from RLD 4.11(a) with no substantive change.

Section (b) is derived from RLD 4.11(b) with no substantive change.

Section (c) is derived from RLD 4.9 with no substantive change.

Section (d) is derived from RLD 4.11(c). That section was based on portions of the evidence standard set forth in the Washington Administrative Procedures Act (RCW 34.05.452). Those provisions were updated in 1988, and this section is modified to make the section consistent with the

updated language in the statute, but because no substantive change is intended, the rule continues to include only those portions of the statutory language that were included in RLD 4.11. Specifically, neither RLD 4.11 (c)(1) nor ELC 10.14 (d)(1) includes the second sentence of RCW 34.05.452(1).

A specific reference to the Washington Administrative Procedures Act as the source of this language is added as section (e).

**ELC 10.15 BIFURCATED HEARINGS.**

This rule is derived from RLD 4.12(b). The modified rule is divided into sections (a) and (b).

Section (a) changes from 20 days to 60 days the time period prior to a hearing by which bifurcation must be requested. Bifurcation remains in the hearing officer's discretion based upon factors which are added to the rule.

Section (b) provides the procedure to be followed in a bifurcated proceeding. The rule is modified to provide that factual findings and legal conclusions as to the mental state necessary for the violation are made at the violation hearing. The rule is modified to provide that the date for the sanction hearing will be set at the time the motion to bifurcate is granted and the sanction hearing must ordinarily be held within 45 days of the violation hearing. The rule is also modified to preclude the admission at the sanction hearing of evidence to contradict or challenge the findings or conclusions as to the violations.

**ELC 10.16 DECISION OF HEARING OFFICER OR PANEL.**

This rule is derived from RLD 4.13.

Section (a) is modified to correct a compilation error in the 1997 amendments.

Section (c) is modified to increase from 5 days to 10 days the period in which to bring a motion to modify, amend or correct a hearing officer's decision. New language is added to section (c) to allow 5-day periods for bringing such motions after either of the two hearing officer decisions in a bifurcated matter. Section (c) is also modified to clarify that the opposing party may make a response to a motion to modify, amend or correct.

**TITLE 11 - REVIEW BY BOARD**

**ELC 11.1 SCOPE OF TITLE.**

This is new provision to clarify the scope of the title. It makes no substantive change, neither expanding nor contracting the powers of the Disciplinary Board to review matters.

**ELC 11.2 DECISIONS SUBJECT TO BOARD REVIEW.**

Section (a) is a new provision to define the term "Decision" as used in this title.

Section (b) is derived from RLD 2.3 (f)(1)&(2) and RLD 6.1, modified to delete the requirement that a notice of appeal specify the issues to be raised before the Board. This change is consistent with RAP 5.3 that requires a notice of appeal only to designate the decision which the party wants reviewed, not the issues.

**ELC 11.3 SUA SPONTE REVIEW.**

Section (a) is derived from the first sentence of RLD 2.3 (f)(3), modified to reflect that there is no longer a censure, and adding authority for the Board to sua sponte review a hearing officer's recommendation of an admonition, and RLD 6.3(f) with no substantive change.

Section (b) is derived from the second sentence of RLD 2.3 (f)(3) with no substantive change.

**ELC 11.4 TRANSCRIPT OF HEARING.**

Section (a) is derived from the first sentence of RLD 6.6(a), RLD 6.2(b) and RLD 6.3(a), with no substantive change other than to require the full transcript if no two members of a hearing panel can agree on a decision.

Section (b) is derived from the second and third sentences of RLD 6.6(a) with no substantive change.

Section (c) is derived from RLD 6.6(b) with no substantive change.

Section (d) is derived from RLD 6.6(c) with no substantive change.

**ELC 11.5 RECORD ON REVIEW.**

This rule defines the components of the record on review and is modeled after RAP 9.1.

Section (a) is a new provision to define the components of the record on review.

Section (b) is derived from RLD 6.4, modified to delete the language authorizing the parties to attach copies of exhibits to their statements, in favor of the new provisions in ELC 11.6 for designation of bar file documents and exhibits.

Section (c) is a new provision, modeled after RAP 9.1(d).

Section (d) is derived from RLD 6.5(b) with no substantive change.

**ELC 11.6 DESIGNATION OF BAR FILE DOCUMENTS AND EXHIBITS.**

This is a new provision to incorporate by reference the procedures of RAP 9.6 for the designation of bar file documents and exhibits and marks a substantial change from the previous practice of the parties attaching to their statements the exhibits they reference. The modifications to the RAP 9.6 procedure for designation are necessary to reflect the mandatory nature of reviews of suspension or disbarment recommendations.

**ELC 11.7 PREPARATION OF BAR FILE DOCUMENTS AND EXHIBITS.**

This is a new provision, modeled after RAP 9.7, and requires the bar file documents and exhibits to be prepared in the same manner as in the appellate courts. The RAP provisions requiring payment of the costs of preparing the documents before the documents are filed is not included, in favor of the ELC 13.9 procedure for assessment of costs.

**ELC 11.8 BRIEFS FOR REVIEWS INVOLVING SUSPENSION OR DISBARMENT RECOMMENDATION.**

Section (a) is a new provision.

Section (b) is derived from RLD 6.2(a) with no substantive change other than to refer to "briefs" rather than "statements".

Section (c) is derived from RLD 6.2(c) with no substantive change.

**ELC 11.9 BRIEFS FOR REVIEWS NOT INVOLVING SUSPENSION OR DISBARMENT RECOMMENDATION.**

Section (a) is a new provision.

Section (b) is derived from RLD 6.3(b), modified to refer to "briefs" rather than "statements".

Section (c) is derived from RLD 6.3(c) with no substantive change.

Section (d) is derived from RLD 6.3(d) with no substantive change.

Section (e) is derived from RLD 6.3(e) with no substantive change.

**ELC 11.10 SUPPLEMENTING RECORD ON REVIEW.**

This is a new provision that incorporates the RAP 9.6 procedures for supplementing the record on review but includes the exception that leave to supplement will be freely granted. This rule allows the Disciplinary Board to direct that the record be supplemented, which is the same provision as is available to the Supreme Court under ELC 12.5 (b)(5).

**ELC 11.11 REQUEST FOR ADDITIONAL PROCEEDINGS.**

This rule is derived from RLD 6.5(a) with no substantive change.

**ELC 11.12 DECISION OF BOARD.**

Section (a) is derived from RLD 6.7(a) modified to reflect that the Disciplinary Board bases its review on the record on review, as that record is designated by the parties or supplemented by the Board. By changing to a designation system for bar file documents and exhibits, it is no longer necessary to have the complete bar file and exhibits available to the Board, and that language is deleted.

Section (b) is derived from RLD 6.7(b) and RLD 6.5(b) with no substantive change.

Section (c) is derived from RLD 6.7(d) with no substantive change.

Section (d) is derived from RLD 6.7(e) with no substantive change.

Section (e) is derived from RLD 6.7 (f)&(g), modified to make the writing of a dissenting opinion optional with the dissenting Board member. New language is added to section (e) to make the filing of the majority and dissenting opinions consistent with traditional appellate practice in which all opinions are filed at the same time. No absolute time period is established to the filing of opinions, but the new language requires the opinions to be prepared as expeditiously as possible.

Section (f) is a new provision.

Section (g) is derived from RLD 6.7(h) with no substantive change.

**ELC 11.13 CHAIR MAY MODIFY REQUIREMENTS.**

This rule is derived from RLD 6.8 with no substantive change.

**TITLE 12 - REVIEW BY SUPREME COURT**

**ELC 12.1 APPLICABILITY OF RULES OF APPELLATE PROCEDURE.**

This rule is derived from RLD 7.4 with no substantive change, but conforming to the language of *In re Bonet*, 144 Wn.2d 502, 513-14 (2001).

**ELC 12.2 METHODS OF SEEKING REVIEW.**

This rule is derived from RLD 7.1 with no substantive change.

**ELC 12.3 APPEAL.**

This rule is derived from RLD 7.2 with no substantive change.

**ELC 12.4 DISCRETIONARY REVIEW.**

This rule is derived from RLD 7.3, with the substantive change that the Chief Disciplinary Counsel no longer must personally authorize disciplinary counsel to seek discretion-

ary review, such decisions being left to the ordinary management system of the Office of Disciplinary Counsel. Sections (b) and (c) of RLD 7.3 are combined into subsection (b) of ELC 12.4.

**ELC 12.5 RECORD TO SUPREME COURT.**

Section (a) is derived from RLD 7.5(a), modified to change from 10 days to 30 days the period within which the record must be transmitted to the Supreme Court. This change is necessary in order to allow sufficient time for the transcript of oral argument before the Board to be prepared.

Section (b) is derived from RLD 7.5(b) modified to reflect the changes to Title 11 incorporating the RAP Title 9 system for designation of the record.

Section (c) is a new provision to provide the notice required when using the RAP Title 9 system for designation of the record.

Section (d) is derived from RLD 7.5(c) with no substantive change.

Section (e) is derived from RLD 7.5(d) with no substantive change.

**ELC 12.6 BRIEFS.**

This rule is derived from RLD 7.6 with no substantive change.

**ELC 12.7 ARGUMENT.**

This rule is derived from RLD 7.7 with no substantive change.

**ELC 12.8 EFFECTIVE DATE OF OPINION.**

This rule is derived from RLD 7.8, with no substantive change, but the title of the rule and section (a) are modified to clarify that the rule addresses the effective date of the opinion.

**ELC 12.9 VIOLATION OF RULES.**

This rule is derived from RLD 7.9 with no substantive change.

**TITLE 13 - SANCTIONS AND REMEDIES**

**ELC 13.1 SANCTIONS AND REMEDIES.**

This rule is derived from RLD 5.1, but has been restructured to distinguish between sanctions, admonitions and other remedies.

The censure previously provided in RLD 5.1(d) is deleted to provide consistency with the ABA Standards for Imposing Lawyer Sanctions (ABA Standards), which do not include censures.

The cumulative disciplinary suspension under RLD 5.4 is deleted to provide consistency with the ABA Standards, which do not provide a separate sanction for cumulative discipline, instead using prior discipline as a factor to be considered in determining the appropriate discipline recommendation.

A new section (c) is added, listing other remedies consistent with the ABA Standards.

**ELC 13.2 EFFECTIVE DATE OF SUSPENSIONS AND DISBARMENTS.**

This is a new provision designed to establish uniformity for the effective date of suspensions and disbarments, which require an order of the Supreme Court. There will ordinarily be a seven day delay between the date of the order and the effective date of the suspension to allow notice to the respondent and avoid unintended injury to clients. Effective dates

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of suspensions and disbarments under this rule should not to be confused with the effective date of an opinion of the Supreme Court which is governed by ELC 12.8.

**ELC 13.3 SUSPENSION.**

This is a new provision that extends the maximum length of a suspension from two years to three years to be consistent with the ABA Standards for Imposing Lawyer Sanctions. In addition, new provisions provide for administrative reinstatement following disciplinary suspensions and a means of resolving any disputes regarding compliance with conditions.

**ELC 13.4 REPRIMAND.**

This rule is derived from RLD 5.5(b) with no substantive change.

**ELC 13.5 ADMONITION.**

This rule is derived from RLD 5.5A, with the following modifications:

To be consistent with the ABA Standards for Imposing Lawyer Sanctions, the specific grounds for issuance of an admonition in sections (a) and (b) are removed.

Section (e) is modified to allow the Disciplinary Board to impose the full range of other remedies listed in RLD 5.1(c) when imposing an admonition.

**ELC 13.6 DISCIPLINE FOR CUMULATIVE ADMONITIONS.**

This rule is derived from RLD 5.5B.

Section (a) is modified to include the option of the other remedies listed in RLD 13.1 to be consistent with the ABA Standards for Imposing Lawyer Sanctions.

Section (b) is modified to remove the reference to the effective date, as that language referenced the original 1990 effective date of this section and is now obsolete.

**ELC 13.7 RESTITUTION.**

This rule is derived from RLD 5.3, modified at section (b) to provide respondents a means to seek review of an adverse determination by disciplinary counsel regarding the reasonableness of a proposed periodic payment plan for restitution.

**ELC 13.8 PROBATION.**

This rule is derived from RLD 5.2 with no substantive change.

**ELC 13.9 COSTS AND EXPENSES.**

Section (a) is derived from RLD 5.7(a) with no substantive change. Under this rule costs and expenses may be assessed only against a respondent lawyer. The Discipline 2000 Task Force considered and rejected the concept to allow costs and expenses to be assessed against the Association.

Section (b) is derived from RLD 5.7(b), with a new subsection (b)(10) added to include compensation paid to hearing officers as a recoverable cost.

Section (c) is derived from RLD 5.7(c), modified to update the presumed reasonable expenses and to divide the expense provisions for matters appealed to the Supreme Court into those matters that require briefing and those matters that do not require briefing.

Section (d) is derived from RLD 5.7(d), modified to clarify when a statement of costs and expenses must be filed, and extends from 10 days to 20 days the period for filing such statements. Section (d) is also modified to provide that the statement is to be filed with the Clerk who serves a copy on the respondent lawyer. Section (d) is also modified to extend the period for filing exceptions from 10 days to 20 days. Sub-

section (d)(5) is a new provision to allow disciplinary counsel to reply to any exceptions filed by the respondent lawyer.

Section (e) is derived from the first sentence of RLD 5.7(e) with no substantive change. Section (f) is derived from the remainder of RLD 5.7(e), but is modified to provide that in matters being reviewed by the Supreme Court, the Chair's decision is final, but in all other matters, a review by the Disciplinary Board remains possible. The time period for requesting review by the Board is extended from 10 days to 20 days and the section is modified to allow disciplinary counsel as well as the respondent to request such review.

Section (g) is derived from RLD 5.7(f), modified to allow assessment when an opinion of the Supreme Court imposes an admonition.

Section (h) is derived from RLD 5.7(g) with no substantive change.

Section (i) is derived from RLD 5.7(h), modified to provide that all sums not paid within 30 days of assessment will earn interest at the maximum rate allowed. A review procedure by the Chair of the Disciplinary Board is provided for disputes as to conditions for a periodic payment plan.

Section (j) is derived from RLD 5.7(i) with no substantive change.

Section (k) is derived from RLD 5.7(j) with no substantive change.

Section (l) is a new provision for entry of money judgments by the Commissioner or Clerk of the Supreme Court against a respondent for unpaid costs. The rule provides for filing of the money judgments with Superior Court clerks.

**TITLE 14 - DUTIES ON SUSPENSION OR DISBARMENT**

**ELC 14.1 NOTICE TO CLIENTS AND OTHERS; PROVIDING CLIENT PROPERTY.**

This rule is derived from RLD 8.1.

The rule is reorganized by creating a new section (a) that combines the RLD 8.1 (a)(4) and RLD 8.1 (c)(3) provisions for returning client property. This provision is modified to clarify that a suspended or disbarred lawyer may return to the client or the client's new counsel those client assets being held at the time of the suspension or disbarment.

Section (b) is derived from RLD 8.1(c) with no substantive change.

Section (c) is derived from RLD 8.1(a) with no substantive change.

Section (d) is derived from RLD 8.1(b) with no substantive change.

Section (e) is derived from RLD 8.1(d) with no substantive change.

**ELC 14.2 LAWYER TO DISCONTINUE PRACTICE.**

This rule is derived from RLD 8.2. The first sentence of this rule is modified to reflect that the practice of law is now a defined term. GR 24. Other language in the rule is modified, replacing the "any possibility" language that was considered too broad, with "any reasonable likelihood" as a standard, and refocusing the rule on persons' reliance upon the individual being a lawyer. Consistent with the clarification of ELC 14.1, the suspended or disbarred lawyer may disburse assets. The language of the rule is clarified to provide that the suspended or disbarred lawyer can explain to the successor counsel or the client the lawyer's theory of the case, provided

that this does not involve the suspended or disbarred lawyer in discussing matters occurring after the date of the suspension or disbarment.

**ELC 14.3 AFFIDAVIT OF COMPLIANCE.**

This rule is derived from RLD 8.3, modified to make the affidavit of compliance a confidential document, as such affidavits may contain client confidences or secrets. The rule is also modified to provide that the affidavit is to be provided to disciplinary counsel rather than filed with the Association.

**ELC 14.4 LAWYER TO KEEP RECORDS OF COMPLIANCE.**

This rule is derived from RLD 8.5 with no substantive change.

**TITLE 15 - AUDITS AND TRUST ACCOUNT OVERDRAFT NOTIFICATION**

**ELC 15.1 AUDIT AND INVESTIGATION OF BOOKS AND RECORDS.**

This rule is derived from RLD 13.1, with no substantive change other than that section (b) is modified to clarify that the materials submitted to the Chair by disciplinary counsel seeking an order for an audit is subject to disclosure only as provided in rules 13.1 - 13.4.

**ELC 15.2 COOPERATION OF LAWYER.**

This rule is derived from RLD 13.2 with no substantive change.

**ELC 15.3 DISCLOSURE.**

This rule is derived from RLD 13.3 with no substantive change.

**ELC 15.4 TRUST ACCOUNT OVERDRAFT NOTIFICATION.**

This rule is derived from RLD 13.4 with no substantive change.

**ELC 15.5 DECLARATION OR QUESTIONNAIRE.**

This rule is derived from RLD 13.5 with no substantive change.

**ELC 15.6 REGULATIONS.**

This rule is derived from RLD 13.6 with no substantive change.

**TITLE 16 - EFFECT OF THESE RULES ON PENDING PROCEEDINGS**

**ELC 16.1 EFFECT ON PENDING PROCEEDINGS.**

This rule is derived from RLD 12.16, modified to provide for the same effect on pending proceedings as CR 86.

**COMMENTS ON  
PROPOSED AMENDMENTS TO  
RULES OF PROFESSIONAL CONDUCT (RPC)**

**RPC 1.2 SCOPE OF REPRESENTATION**

The new section (f) is language that was formerly at RLD 1.1(d). This language is being moved to the RPCs to consolidate all of the substantive rules related to lawyer conduct that constitute grounds for discipline, with no substantive change.

**RPC 1.14 PRESERVING IDENTITY OF FUNDS AND PROPERTY OF A CLIENT**

Section (c) is amended to reflect that the Rules for Lawyer Discipline are replaced by the Rules for Enforcement of Lawyer Conduct, with no substantive change.

**RPC 5.5 UNAUTHORIZED PRACTICE OF LAW**

The new section (c) is language that was formerly at RLD 1.1(e).

The new section (d) is language that was formerly at RLD 1.1(h).

The new section (e) is language that was formerly at RLD 1.1(l).

This language is being moved to the RPCs to consolidate all of the substantive rules related to lawyer conduct that constitute grounds for discipline, with no substantive change.

**RPC 8.1 BAR ADMISSION MATTERS**

This rule is made applicable to applications for reinstatement in order to incorporate the provisions formerly located at RLD 1.1(f). This provision is being moved to the RPC to consolidate all of the substantive rules related to lawyer conduct that constitute grounds for discipline, with no substantive change.

**RPC 8.4 MISCONDUCT**

The new section (i) is language that was formerly at RLD 1.1(a).

The new section (j) is language that was formerly RLD 1.1(b).

The new section (k) is language that was formerly RLD 1.1(c).

The new section (l) is language that was formerly RLD 1.1(j) (m) & (n).

The new section (m) is language that was formerly RLD 1.1(k).

The new section (n) is language that was formerly RLD 1.1(p).

This language is being moved to the RPCs to consolidate all of the substantive rules related to lawyer conduct that constitute grounds for discipline, with no substantive change.

**RPC 8.5 JURISDICTION**

The new section (b) is language that was formerly at RLD 1.1(g). This language is being moved to the RPCs to consolidate all of the substantive rules related to lawyer conduct that constitute grounds for discipline, with no substantive change.

**COMMENTS ON  
PROPOSED AMENDMENTS TO  
ADMISSION TO PRACTICE RULES (APR)**

**APR 3. APPLICANTS TO TAKE THE BAR EXAMINATION**

This change reflects the replacement of the Rules for Lawyer Discipline (RLD) by the Rules for Enforcement of Lawyer Conduct (ELC).

**APR 8. SPECIAL ADMISSIONS**

This change reflects the replacement of the Rules for Lawyer Discipline (RLD) by the Rules for Enforcement of Lawyer Conduct (ELC).

**APR 9. LEGAL INTERNS**

This change reflects the replacement of the Rules for Lawyer Discipline (RLD) by the Rules for Enforcement of Lawyer Conduct (ELC).

**APR 11 CONTINUING LEGAL EDUCATION**

**Regulation 101. Definitions**

This change reflects the replacement of the Rules for Lawyer Discipline (RLD) by the Rules for Enforcement of Lawyer Conduct (ELC).

**APR 12.1 PRESERVING IDENTITY OF FUNDS AND PROPERTY IN TRANSACTIONS CLOSED BY LIMITED PRACTICE OFFICERS**

This change reflects the replacement of the Rules for Lawyer Discipline (RLD) by the Rules for Enforcement of Lawyer Conduct (ELC). The seventh "or" in the first sentence of section (c) is stricken to conform with RPC 1.14(c) on which this section is based.

**APR 14 LIMITED PRACTICE RULE FOR FOREIGN LAW CONSULTANTS**

This change reflects the replacement of the Rules for Lawyer Discipline (RLD) by the Rules for Enforcement of Lawyer Conduct (ELC).

**APR 16 MEDIATION PROGRAM**

This change reflects the replacement of the Rules for Lawyer Discipline (RLD) by the Rules for Enforcement of Lawyer Conduct (ELC).

**APR 17 SUSPENSION FROM PRACTICE**

This change reflects the replacement of the Rules for Lawyer Discipline (RLD) by the Rules for Enforcement of Lawyer Conduct (ELC).

**APR 18 ADMISSION OF LAWYERS LICENSED IN OTHER STATES OR TERRITORIES OF THE UNITED STATES OR THE DISTRICT OF COLUMBIA TO PRACTICE LAW IN WASHINGTON**

This change reflects the replacement of the Rules for Lawyer Discipline (RLD) by the Rules for Enforcement of Lawyer Conduct (ELC).

**APR 20 CHARACTER AND FITNESS COMMITTEE**

This rule is derived from RLD 9.3 without substantive change. The reference to a "complaint" in subsection (a)(4) has been changed to "grievance" to reflect the terminology change otherwise made in the 1992 Amendments to the RLDs, 119 Wn.2d 1101.

**APR 21 REINSTATEMENT AFTER DISBARMENT**

This is the title to a new rule, with six subparts, APR 21.1 - 21.6.

**APR 21.1 RESTRICTIONS ON REINSTATEMENT**

This rule is derived from RLD 9.1.

A new section (b) is added to provide that although a petition for reinstatement may be filed 5 years following the disbarment, no reinstatement may actually occur sooner than 6 years following the disbarment.

Section (c) is derived from RLD 9.1(b), with the addition of a review procedure for disputes as to the reasonableness of proposed payment plans for costs, expenses and restitution.

**APR 21.2 REVERSAL OF CONVICTION**

This rule is derived from RLD 9.2 with no substantive change.

**APR 21.3 PETITIONS AND INVESTIGATIONS**

Sections (a) and (b) are derived from RLD 9.4, with no substantive change. Section (c) is derived from RLD 11.1(q) with no substantive change.

**APR 21.4 HEARING BEFORE CHARACTER AND FITNESS COMMITTEE**

This rule is derived from RLD 9.5 with no substantive change.

**APR 21.5 ACTION BY CHARACTER AND FITNESS COMMITTEE**

This rule is derived from RLD 9.6.

Section (b) is modified to clarify the procedure for appeals to the Disciplinary Board.

Section (c) is modified to provide a procedure for assessment and collection of costs.

**APR 21.6 ACTION ON SUPREME COURT'S DETERMINATION**

This rule is derived from RLD 9.7 without substantive change.

**COMMENTS ON PROPOSED AMENDMENTS TO GENERAL RULES (GR)**

**GR 1 CLASSIFICATION SYSTEM FOR COURT RULES**

This change reflects that the Rules for Lawyer Discipline are rescinded and replaced by the Rules for Enforcement of Lawyer Conduct. In addition, the Rules of Professional Conduct are moved so that they immediately precede the new Rules for Enforcement of Lawyer Conduct. This reorganization placed the sets of rules dealing with the regulation of lawyers in a more logical order.

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

*Reviser's note:* The brackets and enclosed material in the text above occurred in the copy filed by the State Supreme Court and appear in the Register pursuant to the requirements of RCW 34.08.040.

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

**WSR 02-07-009  
RULES OF COURT  
STATE SUPREME COURT  
[March 6, 2002]**

IN THE MATTER OF THE ADOPTION ) ORDER  
OF THE AMENDMENTS TO GR 15, ) NO. 25700-A-730  
NEW GR 28, CR 47, CrR 6.8, CRLJ 38, )  
CrRLJ 6.8, CR 43, CRLJ 43, CR 51, CrR )  
6.15, CRLJ 51 AND CrRLJ 6.15 )

The Washington State Jury Commission having recommended the adoption of the proposed amendments to GR 15, NEW GR 28, CR 47, CrR 6.8, CRLJ 38, CrRLJ 6.8, CR 43, CRLJ 43, CR 51, CrR 6.15, CRLJ 51 AND CrRLJ 6.15, and the Court having approved the proposed amendments for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(f), the proposed amendments as attached hereto are to be published for comment in the Washington Reports, Washington Register,

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Washington State Bar Association and Office of the Administrator for the Court's websites expeditiously.

(b) The purpose statement as required by GR 9(d), is published solely for the information of the Bench, Bar and other interested parties.

(c) Comments are to be submitted to the Clerk of the Supreme Court by either U.S. Mail or Internet E-Mail by no later than 90 days from the date published in the Washington Reports. Comments may be sent to the following addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or Lisa.Bausch@courts.wa.gov. Comments submitted by e-mail message must be limited to 1500 words.

DATED at Olympia, Washington this 6th day of March 2002.

Gerry L. Alexander  
Chief Justice

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### GR 9(d) Cover Sheet

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#### Proposal to Amend GR 15 Concerning Access to Juror Information

Submitted by the Washington State Jury Commission,  
a subcommittee of the Board for Judicial Administration

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(1) **Background:** Just before the Washington State Jury Commission completed its work, the Supreme Court amended GR 15. Language was added in section (j) establishing a presumption of privacy for juror information. Section (j) also includes a provision that allows the parties and their attorneys to petition the court for access to juror information after the conclusion of a trial. The Commission recommended that GR 15 be further amended to address two additional issues. First, the process for petitioning the court for access to juror information should be expanded to apply to all members of the public. Second, GR 15 does not address master jury source list records. GR 15(a) states in part, "The clerk shall maintain all documents and materials filed with the court, and shall make available for public examination all files, cases, records, documents or materials which have not been ordered destroyed or sealed." Thus, court clerks currently permit access to the master jury source list records containing potential jurors' names and addresses. The situation could arise where access to the address information for jurors in a particular trial has been restricted by the court. Yet, currently, it would be possible to obtain the master jury source list from the clerk's office containing those jurors' addresses.

(2) **Purpose:** The proposed amendment to section (j) seeks to give the public the same mechanism as the parties and attorneys to petition the court for access to individual juror information. The new section (k) seeks to resolve the apparent contradiction between GR 15(a) and GR 15(j) related to the master jury source list maintained by the clerk's office.

(3) **Washington State Bar Association Action:** None.

(4) **Supporting Materials:** Washington State Jury Commission Report to the Board for Judicial Administration, July 2000, Recommendation 18.

(5) **Spokesperson:** Hon. Daniel Berschauer.

(6) **Hearing:** Not recommended.

### Washington Court Rules GR 15 (j) and (k)

#### Concerning Access to Juror Information

- [a] Unchanged
- [b] Unchanged
- [c] Unchanged
- [d] Unchanged
- [e] Unchanged
- [f] Unchanged
- [h] Unchanged
- [i] Unchanged

[j] **Access to Juror Information.** Individual juror information, other than name, is presumed to be private. After the conclusion of a jury trial, the attorney for a party, or party pro se, or member of the public, may petition the trial court for access to individual juror information under the control of court. Upon a showing of good cause, the court may permit the petitioner to have access to relevant information. The court may require that juror information not be disclosed to other persons.

[k] **Access to Master Jury Source List.** Master jury source list information, other than name, is presumed to be private. Upon a showing of good cause, the court may permit a petitioner to have access to relevant information from the list. The court may require that the information not be disclosed to other persons.

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### GR 9(d) Cover Sheet

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#### Proposal to Add New Rule GR 28 Concerning Disqualifying, Excusing, and Postponing Prospective Jurors

Submitted by the Washington State Jury Commission,  
a subcommittee of the Board for Judicial Administration

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(1) **Background:** The Washington State Jury Commission recommends that in order to promote broad citizen participation and to send a message that courts respect the time commitments of citizens, a state-wide policy should be established that will strictly enforce and limit the granting of jury excusals while liberally granting requests for postponement. The Commission recommends creating a standardized process for postponing jury service that includes prompt responses to correspondence from prospective jurors. Best practices for granting excusals and postponements are detailed in Recommendation 10 of the Commission's Report.

(2) **Purpose:** This proposed rule allows a judge to delegate written authority to disqualify, postpone, or excuse a potential juror from jury service. The proposal adopts a policy of liberally allowing postponements for personal or work-related inconvenience and of strictly limiting excusals.

(3) **Washington State Bar Association Action:** None.

(4) Supporting Materials: Washington State Jury Commission Report to the Board for Judicial Administration, July 2000, Recommendation 10.

(5) Spokesperson: Hon. Daniel Berschauer.

(6) Hearing: Not recommended.

**Washington Court Rules  
New Rule GR 28**

**Jury Service Postponement, Excusal, and Disqualification**

[a] **Scope of rule.** This rule addresses the procedures for postponing and excusing jury service under RCW 2.36.100 and 2.36.110 and for disqualifying potential jurors under RCW 2.36.070 (basic statutory qualifications).

[b] **Delegation of authority to postpone, excuse, or disqualify.**

(1) The judges of a court may delegate to court staff and county clerks their authority to disqualify, postpone, or excuse a potential juror from jury service.

(2) Any delegation of authority under this rule must be written and must specify the criteria for making these decisions.

(3) Judges may not delegate decision-making authority over any grounds for peremptory challenges or challenges for cause that fall outside the scope of this rule.

[c] **Grounds for postponement of service.**

(1) Postponement of service for personal or work-related inconvenience should be liberally granted when requested in a timely manner.

(2) Postponement shall be to a specified period of time within the twelve-month period pursuant to RCW 2.36.100(2).

[d] **Grounds for excusal from service.**

(1) Excusal from jury service shall be limited and shall be allowed only when justified by the criteria established in RCW 2.36.100(1) and 2.36.110.

[e] **Grounds for disqualification of potential jurors.**

[Reserved. See RCW 2.36.070.]

**GR 9(d) Cover Sheet**

**Proposal to Amend CR 47  
Concerning Note-taking by Jurors**

Submitted by the Washington State Jury Commission,  
a subcommittee of the Board for Judicial Administration

**Note-Taking by Jurors:**

(1) Background: Court rules currently allow jurors to take notes with the permission of the trial judge. Although many judges in the state allow jurors to take notes during trial, the practice is not universal. Research shows that jurors who take notes remember the evidence more accurately, apply the evidence to the law more accurately, are more attentive during trial, and are more satisfied with jury service. The Washington State Jury Commission recommends that

jurors should be permitted to take notes during trial, regardless of the length or complexity of the trial.

(2) Purpose: The proposed amendment would permit jurors to take notes in every case.

(3) Washington State Bar Association Action: None.

(4) Supporting Materials: Washington State Jury Commission Report to the Board for Judicial Administration, July 2000, Recommendation 29.

(5) Spokesperson: Hon. Daniel Berschauer.

(6) Hearing: Not recommended.

**Washington Court Rules  
CR 47**

**Concerning Note-Taking by Jurors**

[a] Unchanged

[b] Unchanged

[c] Unchanged

[d] Unchanged

[e] Unchanged

[f] Unchanged

[g] Unchanged

[h] Unchanged

[i] Unchanged

[j] Note-Taking by Jurors. ~~With the permission of the trial judge, In all cases, jurors shall be allowed to~~ ~~may~~ take written notes regarding the evidence presented to them and keep these notes with them ~~during when they retire~~ for their deliberation. The court may allow jurors to keep these notes with them in the jury room during recesses, in which case jurors may review their own notes but may not share or discuss the notes with other jurors until they begin deliberating. Such notes should be treated as confidential between the jurors making them and their fellow jurors, and shall be destroyed immediately after the verdict is rendered.

**GR9(d) Cover Sheet**

**Proposal to Amend CrR 6.8  
Concerning Note-taking by Jurors**

Submitted by the Washington State Jury Commission,  
a subcommittee of the Board for Judicial Administration

**Note-Taking by Jurors:**

(1) Background: See Background statement for CR 47.

(2) Purpose: See Purpose statement for CR 47. Also, the rule's last sentence is being revised to parallel other court rules on this topic: CR 47; CRLJ 38; and CrRLJ 6.8.

(3) Washington State Bar Association Action: None.

(4) Supporting Materials: Washington State Jury Commission Report to the Board for Judicial Administration, July 2000, Recommendation 29.

(5) Spokesperson: Hon. Daniel Berschauer.

(6) Hearing: Not recommended.

Washington Court Rules  
CrR 6.8  
Concerning Note-Taking by Jurors

NOTE-TAKING BY JURORS

~~With permission of the trial judge, In all cases, jurors shall be allowed to may take written notes regarding the evidence presented to them and keep these notes with them during when they retire for their deliberation. The court may allow jurors to keep these notes with them in the jury room during recesses, in which case jurors may review their own notes but may not share or discuss the notes with other jurors until they begin deliberating.~~ Such notes should be treated as confidential between the jurors making them and their fellow jurors, and shall be destroyed immediately after the verdict is rendered.

GR 9(d) Cover Sheet

Proposal to Amend CRLJ 38  
Concerning Note-taking by Jurors

Submitted by the Washington State Jury Commission,  
a subcommittee of the Board for Judicial Administration

Note-Taking by Jurors:

- (1) Background: See Background statement for CR 47.
- (2) Purpose: See Purpose statement for CR 47.
- (3) Washington State Bar Association Action: None.
- (4) Supporting Materials: Washington State Jury Commission Report to the Board for Judicial Administration, July 2000, Recommendation 29.
- (5) Spokesperson: Hon. Daniel Berschauer.
- (6) Hearing: Not recommended.

Washington Court Rules  
CRLJ 38  
Concerning Note-taking by Jurors

- [a] Unchanged
- [b] Unchanged
- [c] Unchanged
- [d] Unchanged
- [e] Unchanged
- [f] Unchanged
- [g] Unchanged

[h] Note-Taking by Jurors. ~~With the permission of the trial judge, In all cases, jurors shall be allowed to may take written notes regarding the evidence presented to them and keep these notes with them during when they retire for their deliberation. The court may allow jurors to keep these notes with them in the jury room during recesses, in which case jurors may review their own notes but may not share or discuss the notes with other jurors until they begin deliberating.~~ Such notes should be treated as confidential between the jurors making them and their fellow jurors, and shall be destroyed immediately after the verdict is rendered.

GR 9(d) Cover Sheet

Proposal to Amend CrRLJ 6.8  
Concerning Note-taking by Jurors

Submitted by the Washington State Jury Commission,  
a subcommittee of the Board for Judicial Administration

Note-Taking by Jurors:

- (1) Background: See Background statement for CR 47.
- (2) Purpose: See Purpose statement for CR 47. Also, the rule's last sentence is being revised to parallel other court rules on this topic: CR 47; CRLJ 38; and CrR 6.8.
- (3) Washington State Bar Association Action: None.
- (4) Supporting Materials: Washington State Jury Commission Report to the Board for Judicial Administration, July 2000, Recommendation 29.
- (5) Spokesperson: Hon. Daniel Berschauer.
- (6) Hearing: Not recommended.

Washington Court Rules  
CrRLJ 6.8  
Concerning Note-Taking by Jurors

NOTE-TAKING BY JURORS

~~With permission of the trial judge, In all cases, jurors shall be allowed to may take written notes regarding the evidence presented to them and keep these notes with them during when they retire for their deliberation. The court may allow jurors to keep these notes with them in the jury room during recesses, in which case jurors may review their own notes but may not share or discuss the notes with other jurors until they begin deliberating.~~ Such notes ~~should shall~~ be treated as confidential between the jurors making them and their fellow jurors, and shall be destroyed immediately after the verdict is rendered.

GR 9(d) Cover Sheet

Proposal to Amend CR 43  
Concerning Jurors Proposing Written Questions to Witnesses

Submitted by the Washington State Jury Commission,  
a subcommittee of the Board for Judicial Administration

Questions of Witnesses from Jurors:

- (1) Background: The Washington State Jury Commission recommended that jurors should be allowed to propose written questions for witnesses during civil trials, subject to careful judicial supervision. Permitting jurors' questions acknowledges the important role of jurors as active learners and active participants in the search for the truth, promotes efforts to focus on the merits of a case rather than speculation, and avoids the real possibility of an erroneous verdict based on confusion or misunderstanding. Judges and attorneys who

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have used this procedure report that the great majority of juror questions are serious, concise, and relevant to the issues of the trial. Counsel also find the questions to be a useful gauge of how clearly they are explaining their case. Jurors who have been permitted to ask questions indicate the procedure kept them engaged in the proceeding and gave them greater satisfaction with jury service. Studies verify that the advantages to jurors and the trial as a whole outweigh the feared risks. Best practices will be developed for these procedures.

(2) Purpose: The new section would permit jurors to submit written questions for witnesses in civil cases.

(3) Washington State Bar Association Action: None.

(4) Supporting Materials: Washington State Jury Commission Report to the Board for Judicial Administration, July 2000, Recommendation 33.

(5) Spokesperson: Hon. Daniel Berschauer.

(6) Hearing: Not recommended.

**Washington Court Rules**

**CR 43**

**Concerning Jurors Proposing Written Questions to Witnesses**

- [a] Unchanged
- [b] Unchanged
- [c] Unchanged
- [d] Unchanged
- [e] Unchanged
- [f] Unchanged
- [g] Unchanged
- [h] Unchanged
- [i] Unchanged
- [j] Unchanged

[k] Juror Questions for Witnesses. The court shall permit jurors to submit to the court written questions directed to witnesses. Counsel shall be given an opportunity to object to such questions in a manner that does not inform the jury that an objection was made. The court shall establish procedures for submitting, objecting to, and answering questions from jurors to witnesses. The court may rephrase or reword questions from jurors to witnesses. The court may refuse on its own motion to allow a particular question from a juror to a witness.

**GR 9(d) Cover Sheet**

**Proposal to Amend CRLJ 43**

**Concerning Jurors Proposing Written Questions to Witnesses**

Submitted by the Washington State Jury Commission, a subcommittee of the Board for Judicial Administration

**Questions of Witnesses from Jurors:**

(1) Background: See Background statement for proposal to amend CR 43.

(2) Purpose: See Purpose statement for proposal to amend CR 43.

(3) Washington State Bar Association Action: None.

(4) Supporting Materials: Washington State Jury Commission Report to the Board for Judicial Administration, July 2000, Recommendation 33.

(5) Spokesperson: Hon. Daniel Berschauer.

(6) Hearing: Not recommended.

**Washington Court Rules**

**CRLJ 43**

**Concerning Jurors Proposing Written Questions to Witnesses**

- [a] Unchanged
- [b] Unchanged
- [c] Unchanged
- [d] Unchanged
- [e] Unchanged
- [f] Unchanged
- [g] Unchanged
- [h] Unchanged
- [i] Unchanged
- [j] Unchanged

[k] Juror Questions for Witnesses. The court shall permit jurors to submit to the court written questions directed to witnesses. Counsel shall be given an opportunity to object to such questions in a manner that does not inform the jury that an objection was made. The court shall establish procedures for submitting, objecting to, and answering questions from jurors to witnesses. The court may rephrase or reword questions from jurors to witnesses. The court may refuse on its own motion to allow a particular question from a juror to a witness.

**GR 9(d) Cover Sheet**

**Proposal to Amend CR 51**

**Concerning Questions from Deliberating Jurors/Rehearing Evidence**

Submitted by the Washington State Jury Commission, a subcommittee of the Board for Judicial Administration

**Questions from Deliberating Jurors and Requests to Rehear or Replay Evidence**

(1) Background:

(a) Questions from Deliberating Jurors. The failure of trial judges to be of greater assistance to jurors during deliberations is a primary source of juror confusion. Research shows that the vast majority of the time, judges answer jurors' requests for clarification of instructions by simply referring the jurors to the instructions without further comments. Although many judges and lawyers consider juror questions an inconvenience, they should be welcomed as opportunities to determine whether additional or corrective action is necessary to ensure juror comprehension. Judges should exercise their discretion to respond more fully to deliberating jurors'

questions. As long as the judge does not impermissibly comment on the evidence, imply a view on the merits, or pressure the jury, the judge's response will not constitute error.

(b) Requests to Rehear or Replay Evidence. Court rules provide that when the jury retires for deliberation, it must take with it the written instructions given, all exhibits (except testimonial exhibits such as depositions) received in evidence, and the verdict form(s). However, the court rules do not specifically address the jury's ability to review testimonial evidence after deliberations have begun. Concerns sometimes are expressed that granting these requests may be interpreted as an unconstitutional comment on the evidence or that jurors might place undue weight on the selected testimony.

In *State v. Koontz*, 102 Wn.App.309 (2000), the Court of Appeals upheld the replaying of videotaped trial testimony when requested by a jury that was otherwise deadlocked. The Court of Appeals held that trial courts have broad discretion to reread or replay trial testimony at a jury's request, but also emphasized that this discretion must be exercised with caution due to the dangers inherent in rereading testimony for deliberating jurors (noted above). Both the *Koontz* opinion and the Report of the Washington State Jury Commission discuss these dangers along with appropriate safeguards. Appropriate safeguards include: soliciting argument from the parties; giving the jurors cautionary instructions; making sure that the requested testimony does not overemphasize any particular party's position; ordinarily not selecting additional evidence for the jury to hear lest jurors interpret this as a judicial comment on the evidence; and rereading or replaying the testimony in open court instead of allowing the jurors to review the testimony in the jury room. Best practices will be developed for these procedures.

(2) Purpose: The proposed amendment would establish procedures for deliberating jurors to ask questions regarding clarification of instructions or questions on evidence. It would also grant judges discretion to allow jurors to rehear evidence as long as appropriate safeguards are in place.

(3) Washington State Bar Association Action: None.

(4) Supporting Materials: Washington State Jury Commission Report to the Board for Judicial Administration, July 2000, Recommendation 38, 39, and 40.

(5) Spokesperson: Hon. Daniel Berschauer.

(6) Hearing: Not recommended.

**CR 51**

**Concerning Questions from  
Deliberating Jurors/Rehearing Evidence**

- [a] Unchanged
- [b] Unchanged
- [c] Unchanged
- [d] Unchanged
- [e] Unchanged
- [f] Unchanged
- [g] Unchanged
- [h] Unchanged

~~[i] Questions from Jury During Deliberations Further Instructions. After retirement for deliberation, if the jury desires to be informed on any point of law, the judge may require the officer having them in charge to conduct them into court. Upon the jury being brought into court, the information requested, if given, shall be given in the presence of, or after notice to the parties or their counsel. The jury shall be instructed that any question it wishes to ask the court about the instructions or evidence should be signed, dated and submitted in writing to the bailiff without any indication of the status of the jury's deliberations. The court shall notify the parties of the contents of the questions and provide them an opportunity to comment upon an appropriate response. Written questions from the jury, the court's response and any objections thereto shall be made a part of the record. The court shall respond to all questions from a deliberating jury in open court or in writing. In its discretion, the court may grant a jury's request to rehear or replay evidence, but should do so in a way that is least likely to be seen as a comment on the evidence, in a way that is not unfairly prejudicial and in a way that minimizes the possibility that jurors will give undue weight to such evidence. Any additional instruction upon any point of law shall be given in writing.~~

[j] Unchanged

**GR 9(d) Cover Sheet**

**Proposal to Amend CrR 6.15  
Concerning Questions from  
Deliberating Jurors/Rehearing Evidence**

Submitted by the Washington State Jury Commission,  
a subcommittee of the Board for Judicial Administration

**Questions from Deliberating Jurors and Requests to Rehear or Replay Evidence**

(1) Background: See Background statement for proposal to amend CR 51.

(2) Purpose: See Background statement for proposal to amend CR 51.

(3) Washington State Bar Association Action: None.

(4) Supporting Materials: Washington State Jury Commission Report to the Board for Judicial Administration, July 2000, Recommendation 38, 39, and 40.

(5) Spokesperson: Hon. Daniel Berschauer.

(6) Hearing: Not recommended.

**Washington Court Rules**

**CrR 6.15**

**Concerning Questions from  
Deliberating Jurors/Rehearing Evidence**

- [a] Unchanged
- [b] Unchanged
- [c] Unchanged

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[d] Unchanged

[e] Unchanged

[f] **Questions from Jury During Deliberations** Additional or Subsequent Instructions.

(1) After retirement for deliberation, if the jury desires to be informed on any point of law, the judge may require the officer having them in charge to conduct them into court. Upon the jury being brought into court, the information requested, if given, shall be given in the presence of, or after notice to the parties or their counsel. The jury shall be instructed that any question it wishes to ask the court about the instructions or evidence should be signed, dated and submitted in writing to the bailiff. The court shall notify the parties of the contents of the questions and provide them an opportunity to comment upon an appropriate response. Written questions from the jury, the court's response and any objections thereto shall be made a part of the record. The court shall respond to all questions from a deliberating jury in open court or in writing. In its discretion, the court may grant a jury's request to rehear or replay evidence, but should do so in a way that is least likely to be seen as a comment on the evidence, in a way that is not unfairly prejudicial and in a way that minimizes the possibility that jurors will give undue weight to such evidence. Any additional instruction upon any point of law shall be given in writing.

(2) After jury deliberations have begun, the court shall not instruct the jury in such a way as to suggest the need for agreement, the consequences of no agreement, or the length of time a jury will be required to deliberate.

[g] Unchanged

**GR9(d) Cover Sheet**

**Proposal to Amend CRLJ 51  
Concerning Questions from  
Deliberating Jurors/Rehearing Evidence**

Submitted by the Washington State Jury Commission,  
a subcommittee of the Board for Judicial Administration

**Questions from Deliberating Jurors and Requests to Rehear or Replay Evidence**

- (1) Background: See Background statement for proposal to amend CR 51.
- (2) Purpose: See Background statement for proposal to amend CR 51.
- (3) Washington State Bar Association Action: None.
- (4) Supporting Materials: Washington State Jury Commission Report to the Board for Judicial Administration, July 2000, Recommendation 38, 39, and 40.
- (5) Spokesperson: Hon. Daniel Berschauer.
- (6) Hearing: Not recommended.

**CRLJ 51**

**Concerning Questions from  
Deliberating Jurors/Rehearing Evidence**

- [a] Unchanged
- [b] Unchanged
- [c] Unchanged
- [d] Unchanged
- [e] Unchanged
- [f] Unchanged
- [g] Unchanged
- [h] Unchanged

[i] **Questions from Jury During Deliberations Further Instructions.** After retirement for deliberation, if the jury desires to be informed on any point of law, the judge may require the officer having them in charge to conduct them into court. Upon the jury's being brought into court, the information requested, if given, shall be given in the presence of, or after notice to the parties or their counsel. The jury shall be instructed that any question it wishes to ask the court about the instructions or evidence should be signed, dated and submitted in writing to the bailiff without any indication of the status of the jury's deliberations. The court shall notify the parties of the contents of the questions and provide them an opportunity to comment upon an appropriate response. Written questions from the jury, the court's response and any objections thereto shall be made a part of the record. The court shall respond to all questions from a deliberating jury in open court or in writing. In its discretion, the court may grant a jury's request to rehear or replay evidence, but should do so in a way that is least likely to be seen as a comment on the evidence, in a way that is not unfairly prejudicial and in a way that minimizes the possibility that jurors will give undue weight to such evidence. Any additional instruction upon any point of law shall be given in writing.

[j] Unchanged

**GR 9(d) Cover Sheet**

**Proposal to Amend CrRLJ 6.15  
Concerning Questions from  
Deliberating Jurors/Rehearing Evidence**

Submitted by the Washington State Jury Commission,  
a subcommittee of the Board for Judicial Administration

**Questions from Deliberating Jurors and Requests to Rehear or Replay Evidence**

- (1) Background: See Background statement for proposal to amend CR 51.
- (2) Purpose: See Background statement for proposal to amend CR 51.
- (3) Washington State Bar Association Action: None.
- (4) Supporting Materials: Washington State Jury Commission Report to the Board for Judicial Administration, July 2000, Recommendation 38, 39, and 40.
- (5) Spokesperson: Hon. Daniel Berschauer.

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(6) Hearing: Not recommended.

**Washington Court Rules**

**CrRLJ 6.15**

**Concerning Questions from  
Deliberating Jurors/Rehearing Evidence**

- [a] Unchanged
- [b] Unchanged
- [c] Unchanged
- [d] Unchanged

**[e] Questions from Jury During Deliberations Additional or Subsequent Instructions.**

(1) After the jury retires for deliberation, any instructions shall be given in writing. They may be given in open court or delivered to the jury room, but only in the presence of, or after notice to, the parties and their lawyers. The jury shall be instructed that any question it wishes to ask the court about the instructions or evidence should be signed, dated and submitted in writing to the bailiff. The court shall notify the parties of the contents of the questions and provide them an opportunity to comment upon an appropriate response. Written questions from the jury, the court's response and any objections thereto shall be made a part of the record. The court shall respond to all questions from a deliberating jury in open court or in writing. In its discretion, the court may grant a jury's request to rehear or replay evidence, but should do so in a way that is least likely to be seen as a comment on the evidence, in a way that is not unfairly prejudicial and in a way that minimizes the possibility that jurors will give undue weight to such evidence. Any additional instruction upon any point of law shall be given in writing.

(2) After jury deliberations have begun, the court shall not instruct the jury in such a way as to suggest the need for agreement, the consequences of no agreement, or the length of time a jury will be required to deliberate.

[f] Unchanged

Reviser's note: The typographical errors in the above material occurred in the copy filed by the State Supreme Court and appear in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: The brackets and enclosed material in the text above occurred in the copy filed by the State Supreme Court and appear in the Register pursuant to the requirements of RCW 34.08.040.

**WSR 02-07-030**  
**RULES OF COURT**  
**STATE SUPREME COURT**  
 [March 11, 2002]

IN THE MATTER OF THE ADOPTION ) ORDER  
 OF THE AMENDMENTS TO CrR 4.2(g), ) NO. 25700-A-730  
 CrRLJ 4.2(g) AND JuCR 7.7 )

The Pattern Forms Committee having recommended the adoption of the proposed amendments to CrR 4.2(g), CrRLJ 4.2(g) and JuCR 7.7, 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 and become effective upon publication.

DATED at Olympia, Washington this 11th day of March 2002.

	Alexander, C.J.
Smith, J.	Sanders, J.
Johnson, J.	Bridge, J.
Madsen, J.	Chambers, J.
Ireland, J.	Owens, J.

MISC.

SUPERIOR COURT OF WASHINGTON	
FOR	
STATE OF WASHINGTON	
vs.	Plaintiff
	Defendant.

NO.  
 STATEMENT OF DEFENDANT ON  
 PLEA OF GUILTY TO NON-SEX OFFENSE  
 (STTDFG)

1. My true name is: \_\_\_\_\_
2. My age is: \_\_\_\_\_

3. I went through the \_\_\_\_\_ grade.
4. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:
  - (a) I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me.
  - (b) I am charged with: \_\_\_\_\_  
The elements are: \_\_\_\_\_
5. I UNDERSTAND I HAVE THE FOLLOWING IMPORTANT RIGHTS, AND I GIVE THEM ALL UP BY PLEADING GUILTY:
  - (a) The right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been committed;
  - (b) The right to remain silent before and during trial, and the right to refuse to testify against myself;
  - (c) The right at trial to hear and question the witnesses who testify against me;
  - (d) The right at trial to testify and to have witnesses testify for me. These witnesses can be made to appear at no expense to me;
  - (e) I am presumed innocent unless the charge is proven beyond a reasonable doubt or I enter a plea of guilty;
  - (f) The right to appeal a finding of guilt after a trial.
6. IN CONSIDERING THE CONSEQUENCES OF MY GUILTY PLEA, I UNDERSTAND THAT:
  - (a) Each crime with which I am charged carries a maximum sentence, a fine, and a STANDARD SENTENCE RANGE as follows:

COUNT NO.	OFFENDER SCORE	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancements*	TOTAL ACTUAL CONFINEMENT (standard range including enhancements)	COMMUNITY CUSTODY RANGE (Only applicable for crimes committed on or after July 1, 2000. For crimes committed prior to July 1, 2000, see paragraph 6(f))	MAXIMUM TERM AND FINE
1						
2						
3						

\*(F) Firearm, (D) other deadly weapon, (V) VUCSA in protected zone, (VH) Veh. Hom, See RCW 46.61.520, (JP) Juvenile present

- (b) The standard sentence range is based on the crime charged and my criminal history. Criminal history includes prior convictions and juvenile adjudications or convictions, whether in this state, in federal court, or elsewhere.
- (c) The prosecuting attorney's statement of my criminal history is attached to this agreement. Unless I have attached a different statement, I agree that the prosecuting attorney's statement is correct and complete. If I have attached my own statement, I assert that it is correct and complete. If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated to tell the sentencing judge about those convictions.
- (d) If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendation may increase. Even so, my plea of guilty to this charge is binding on me. I cannot change my mind if additional criminal history is discovered even though the standard sentencing range and the prosecuting attorney's recommendation increase or a mandatory sentence of life imprisonment without the possibility of parole is required by law.
- (e) In addition to sentencing me to confinement, the judge will order me to pay \$500.00 as a victim's compensation fund assessment. If this crime resulted in injury to any person or damage to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The amount of restitution may be up to double my gain or double the victim's loss. The judge may also order that I pay a fine, court costs, attorney fees and the costs of incarceration.

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(f) For crimes committed prior to July 1, 2000: In addition to sentencing me to confinement, the judge may order me to serve up to one year of community supervision if the total period of confinement ordered is ~~less~~ not more than 12 months. If this crime is a drug offense, assault in the second degree, assault of a child in the second degree, or any crime against a person in which a specific finding was made that I or an accomplice was armed with a deadly weapon, the judge will order me to serve at least one year of community placement. If this crime is a vehicular homicide, vehicular assault, or a serious violent offense, the judge will order me to serve at least two years of community placement. ~~If this crime is a sex offense, the court will order me to serve at least three years of community custody.~~ The actual period of community placement, community custody, or community supervision may be as long as my earned early release period. During the period of community placement, community custody, or community supervision, I will be under the supervision of the Department of Corrections, and I will have restrictions placed on my activities.

For crimes committed on or after July 1, 2000: In addition to sentencing me to confinement, the judge may order me to serve up to one year of community custody if the total period of confinement ordered is ~~less~~ not more than 12 months. If the crime I have been convicted of falls into one of the offense types listed in the following chart, the court will sentence me to community custody for the community custody range established for that offense type unless the judge finds substantial and compelling reasons not to do so. If the period of earned release awarded per RCW 9.94A.150 is longer, that will be the term of my community custody. If the crime I have been convicted of falls into more than one category of offense types listed in the following chart, then the community custody range will be based on the offense type that dictates the longest term of community custody.

OFFENSE TYPE	COMMUNITY CUSTODY RANGE
<del>Sex Offenses (Not sentenced under RCW 9.94A.120(8))</del>	<del>36 to 48 months or up to the period of earned release, whichever is longer.</del>
Serious Violent Offenses	24 to 48 months or up to the period of earned release, whichever is longer.
Violent Offenses	18 to 36 months or up to the period of earned release, whichever is longer.

Crimes Against Persons as defined by RCW 9.94A.440(2)	9 to 18 months or up to the period of earned release, whichever is longer.
Offenses under Chapter 69.50 or 69.52 RCW (Not sentenced under RCW 9.94A.120(6))	9 to 12 months or up to the period of earned release, whichever is longer.

During the period of community custody I will be under the supervision of the Department of Corrections, and I will have restrictions placed on my activities. My failure to comply with these conditions will render me ineligible for general assistance, RCW 74.04.005(6)(h), and may result in the Department of Corrections transferring me to a more restrictive confinement status or other sanctions.

(g) The prosecuting attorney will make the following recommendation to the judge: \_\_\_\_\_

The prosecutor will recommend as stated in the plea agreement, which is incorporated by reference.

(h) The judge does not have to follow anyone's recommendation as to sentence. The judge must impose a sentence within the standard range unless the judge finds substantial and compelling reasons not to do so. If the judge goes outside the standard range, either the state or I can appeal that sentence. If the sentence is within the standard range, no one can appeal the sentence.

(i) If I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

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- (j) I understand that I may not possess, own, or have under my control any firearm unless my right to do so is restored by a court of record and that I must immediately surrender any concealed pistol license. RCW 9.41.040.
- (k) Public assistance will be suspended during any period of imprisonment.

NOTIFICATION RELATING TO SPECIFIC CRIMES: IF ANY OF THE FOLLOWING PARAGRAPHS DO NOT APPLY, THEY SHOULD BE STRICKEN AND INITIALED BY THE DEFENDANT AND THE JUDGE.

- [l] This offense is a most serious offense or strike as defined by RCW 9.94A.030, and if I have at least two prior convictions for most serious offenses, whether in this state, in federal court, or elsewhere, the crime for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole. ~~In addition, if this offense is (1) rape in the first degree, rape of a child in the first degree, rape in the second degree, rape of a child in the second degree, indecent liberties by forcible compulsion, or child molestation in the first degree, or (2) murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, or burglary in the first degree, with a finding of sexual motivation, or (3) any attempt to commit any of the crimes listed in this sentence and I have at least one prior conviction for one of these listed crimes in this state, in federal court, or elsewhere, the crime for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole.~~
- [m] The judge may sentence me as a first-time offender instead of giving a sentence within the standard range if I qualify under RCW 9.94A.030. This sentence could include as much as 90 days' confinement, and up to two years community supervision if the crime was committed prior to July 1, 2000, or up to two years of community custody if the crime was committed on or after July 1, 2000, plus all of the conditions described in paragraph (e). Additionally, the judge could require me to undergo treatment, to devote time to a specific occupation, and to pursue a prescribed course of study or occupational training.
- [n] ~~The judge may suspend execution of the standard range term of confinement under the special sex offender sentencing alternative (SSOSA) if I qualify under RCW 9.94A.120(8). If the judge suspends execution of the standard range term of confinement, I will be placed on community custody for the length of the suspended sentence or three years, whichever ever is greater; I will be ordered to serve up to 180 days of total confinement; I will be ordered to participate in sex offender treatment; and I will be subject to all of the conditions described in paragraph (e). Additionally, the judge could require me to devote time to a specific occupation and to pursue a prescribed course of study or occupational training. If a violation of the sentence occurs during community custody, the judge may revoke the suspended sentence.~~
- [o n] ~~Because~~ If this crime involves a sex offense, or a kidnapping offense involving a minor, I will be required to register where I reside, study or work. The specific registration requirements are set forth in Attachment "A."
- [po] If this crime involves a sex offense or a violent offense, I will be required to provide a sample of my blood for purposes of DNA identification analysis.
- [qp] If this is a crime of domestic violence and if I, or the victim of the offense, have a minor child, the court may order me to participate in a domestic violence perpetrator program approved under RCW 26.50.150.
- [rq] If this crime involves a sexual offense, prostitution, or a drug offense associated with hypodermic needles, I will be required to undergo testing for the human immunodeficiency (AIDS) virus.
- [s r] The judge may sentence me under the special drug offender sentencing alternative (DOSA) if I qualify under former RCW 9.94A.120(6) (for offenses committed before July 1, 2001) or RCW 9.94A.660 (for offenses committed on or after July 1, 2001). This sentence could include a period of total confinement in a state facility for one-half of the midpoint of the standard range plus all of the conditions described in paragraph 6(e). During confinement, I will be required to undergo a comprehensive substance abuse assessment and to participate in treatment. The judge will also impose community custody of at least one-half of the midpoint of the standard range that must include appropriate substance abuse treatment, a condition not to use illegal controlled substances, and a requirement to submit to urinalysis or other testing to monitor that status. Additionally, the judge could prohibit me from using alcohol or controlled substances, require me to devote time to a specific employment or training, stay out of certain areas, pay thirty dollars per month to offset the cost of monitoring and require other conditions, including affirmative conditions.
- [t s] If the judge finds that I have a chemical dependency that has contributed to the offense, the judge may order me to participate in rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the circumstances of the crime for which I am pleading guilty.

- [u t] If this crime involves the manufacture, delivery, or possession with the intent to deliver methamphetamine or amphetamine, a mandatory methamphetamine clean-up fine of \$3,000.00 will be assessed. RCW 69.50.401(a)(1)(ii).
- [v u] ~~If this crime involves a conviction for a violation of the state drug laws, will affect my eligibility for state and federal food stamps, welfare, and education benefits will be affected.~~ 20 U.S.C. § 1091(r) and 21 U.S.C. § 862a.
- [w v] If this crime involves a motor vehicle, my driver's license or privilege to drive will be suspended or revoked. If I have a driver's license, I must now surrender it to the judge.
- [x w] If this crime involves the offense of vehicular homicide while under the influence of intoxicating liquor or any drug, as defined by RCW 46.61.502, committed on or after January 1, 1999, an additional two years shall be added to the presumptive sentence for vehicular homicide for each prior offense as defined in RCW 46.61.5055(8).
- [y x] The crime of \_\_\_\_\_ has a mandatory minimum sentence of at least \_\_\_\_ years of total confinement. The law does not allow any reduction of this sentence. This mandatory minimum sentence is not the same as the mandatory sentence of life imprisonment without the possibility of parole described in paragraph 6[1].
- [z y] I am being sentenced for two or more serious violent offenses arising from separate and distinct criminal conduct and the sentences imposed on counts \_\_\_\_ and \_\_\_\_ will run consecutively unless the judge finds substantial and compelling reasons to do otherwise.
- [aa z] I understand that the offense(s) I am pleading guilty to include a deadly weapon or firearm enhancement. Deadly weapon or firearm enhancements are mandatory, they must be served in total confinement, and they must run consecutively to any other sentence and to any other deadly weapon or firearm enhancements.
- [bb aa] I understand that the offenses I am pleading guilty to include both a conviction under RCW 9.41.040 for unlawful possession of a firearm in the first or second degree and one or more convictions for the felony crimes of theft of a firearm or possession of a stolen firearm. The sentences imposed for these crimes shall be served consecutively to each other. A consecutive sentence will also be imposed for each firearm unlawfully possessed.
- [ee bb] I understand that if I am pleading guilty to the crime of unlawful practices in obtaining assistance as defined in RCW 74.08.331, no assistance payment shall be made for at least 6 months if this is my first conviction and for at least 12 months if this is my second or subsequent conviction. This suspension of benefits will apply even if I am not incarcerated. RCW 74.08.290.

7. I plead guilty to:  
 count \_\_\_\_\_  
 count \_\_\_\_\_  
 count \_\_\_\_\_  
 in the \_\_\_\_\_ Information. I have received a copy of that Information.

- 8. I make this plea freely and voluntarily.
- 9. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.
- 10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.
- 11. The judge has asked me to state what I did in my own words that makes me guilty of this crime.  
 This is my statement: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

[ ] Instead of making a statement, I agree that the court may review the police reports and/or a statement of probable cause supplied by the prosecution to establish a factual basis for the plea.

12. My lawyer has explained to me, and we have fully discussed, all of the above paragraphs and Attachment "A," if applicable. I understand them all. I have been given a copy of this "Statement of Defendant on Plea of Guilty." I have no further questions to ask the judge.

MISC.

Defendant

I have read and discussed this statement with the defendant and believe that the defendant is competent and fully understands the statement.

Prosecuting Attorney

Bar #

Defendant's Lawyer

Bar #

Print Name

Print Name

The foregoing statement was signed by the defendant in open court in the presence of the defendant's lawyer and the undersigned judge. The defendant asserted that [check appropriate box]:

- (a) The defendant had previously read the entire statement above and that the defendant understood it in full;
- (b) The defendant's lawyer had previously read to him or her the entire statement above and that the defendant understood it in full; or
- (c) An interpreter had previously read to the defendant the entire statement above and that the defendant understood it in full. The Interpreter's Declaration is attached.

I find the defendant's plea of guilty to be knowingly, intelligently and voluntarily made. Defendant understands the charges and the consequences of the plea. There is a factual basis for the plea. The defendant is guilty as charged.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge

INTERPRETER'S DECLARATION

I am a certified interpreter or have been found otherwise qualified by the court to interpret in the \_\_\_\_\_ language, which the defendant understands, and I have translated the \_\_\_\_\_  
for the defendant from English into that language. Identify document being translated

The defendant has acknowledged his or her understanding of both the translation and the subject matter of this document. I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Interpreter

Location: \_\_\_\_\_

<b>SUPERIOR COURT OF WASHINGTON</b>	
<b>FOR</b>	
<u>STATE OF WASHINGTON</u>	Plaintiff
vs.	
_____	Defendant.

NO.  
**STATEMENT OF DEFENDANT ON  
PLEA OF GUILTY TO SEX OFFENSE  
(STTDFG)**

1. My true name is: \_\_\_\_\_
2. My age is: \_\_\_\_\_
3. I went through the \_\_\_\_\_ grade.
4. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:

MISC.

- (a) I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me.
- (b) I am charged with: \_\_\_\_\_  
The elements are: \_\_\_\_\_

5. I UNDERSTAND I HAVE THE FOLLOWING IMPORTANT RIGHTS, AND I GIVE THEM ALL UP BY PLEADING GUILTY:

- (a) The right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been committed;
- (b) The right to remain silent before and during trial, and the right to refuse to testify against myself;
- (c) The right at trial to hear and question the witnesses who testify against me;
- (d) The right at trial to testify and to have witnesses testify for me. These witnesses can be made to appear at no expense to me;
- (e) I am presumed innocent unless the charge is proven beyond a reasonable doubt or I enter a plea of guilty;
- (f) The right to appeal a finding of guilt after a trial.

6. IN CONSIDERING THE CONSEQUENCES OF MY GUILTY PLEA, I UNDERSTAND THAT:

- (a) Each crime with which I am charged carries a maximum sentence, a fine, and a STANDARD SENTENCE RANGE as follows:

COUNT NO.	OFFENDER SCORE	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancements*	TOTAL ACTUAL CONFINEMENT (standard range including enhancements)	COMMUNITY CUSTODY RANGE (Only applicable for crimes committed on or after July 1, 2000. For crimes committed prior to July 1, 2000, see paragraph 6(f))	MAXIMUM TERM AND FINE
1						
2						
3						

\*(F) Firearm, (D) other deadly weapon

- (b) The standard sentence range is based on the crime charged and my criminal history. Criminal history includes prior convictions and juvenile adjudications or convictions, whether in this state, in federal court, or elsewhere.
- (c) The prosecuting attorney's statement of my criminal history is attached to this agreement. Unless I have attached a different statement, I agree that the prosecuting attorney's statement is correct and complete. If I have attached my own statement, I assert that it is correct and complete. If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated to tell the sentencing judge about those convictions.
- (d) If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendation may increase. Even so, my plea of guilty to this charge is binding on me. I cannot change my mind if additional criminal history is discovered even though the standard sentencing range and the prosecuting attorney's recommendation increase or a mandatory sentence of life imprisonment without the possibility of parole is required by law.
- (e) In addition to sentencing me to confinement, the judge will order me to pay \$500.00 as a victim's compensation fund assessment. If this crime resulted in injury to any person or damage to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The amount of restitution may be up to double my gain or double the victim's loss. The judge may also order that I pay a fine, court costs, attorney fees and the costs of incarceration.
- (f) For sex offenses committed prior to July 1, 2000: In addition to sentencing me to confinement, the judge may order me to serve up to one year of community supervision if the total period of confinement ordered is less not more than 12 months. If the period of confinement is more than one year, the judge will order me to serve at least three years of community custody or up to the period of earned early release, whichever is longer. During the period of community custody, I will be under the supervision of the Department of Corrections, and I will have restrictions placed on my activities.

MISC.

For sex offenses committed on or after July 1, 2000 but prior to September 1, 2001: In addition to sentencing me to confinement, the judge may order me to serve up to one year of community custody if the total period of confinement ordered is not more than 12 months. If the period of confinement is over one year, the judge will sentence me to community custody for a period of 36 to 48 months or up to the period of earned release, whichever is longer. During the period of community custody to which I am sentenced, I will be under the supervision of the Department of Corrections, and I will have restrictions placed on my activities.

For sex offenses committed on or after September 1, 2001:

(i) Sentencing under RCW 9.94A.712: If this offense is for any of the offenses listed in subsections (aa) or (bb), below, the judge will impose a maximum term of confinement consisting of the statutory maximum sentence of the offense and a minimum term of confinement either within the standard range for the offense or outside the standard range if an exceptional sentence is appropriate. The minimum term of confinement that is imposed may be increased by the Indeterminate Sentencing Review Board if the Board determines by a preponderance of the evidence that it is more likely than not that I will commit sex offenses if released from custody. In addition to the period of confinement, I will be sentenced to community custody for any period of time I am released from total confinement before the expiration of the maximum sentence. During the period of community custody I will be under the supervision of the Department of Corrections and I will have restrictions placed on my activities and I may be required to participate in rehabilitative programs.

(aa) If the current offense is any of these offenses or attempt to commit any of these offenses:

<u>Rape in the first degree</u>	<u>Rape in the second degree</u>
<u>Rape of a child in the first degree committed when I was at least 18 years old.</u>	<u>Rape of a child in the second degree committed when I was at least 18 years old.</u>
<u>Child molestation in the first degree committed when I was at least 18 years old.</u>	<u>Indecent liberties by forcible compulsion</u>
<u>Any of the following offenses with a finding of sexual motivation:</u>	

<u>Murder in the first degree</u>	<u>Murder in the second degree</u>
<u>Homicide by abuse</u>	<u>Kidnapping in the first degree</u>
<u>Kidnapping in the second degree</u>	<u>Assault in the first degree</u>
<u>Assault in the second degree</u>	<u>Assault of a child in the first degree</u>
<u>Burglary in the first degree.</u>	

(bb) If the current offense is any sex offense, and I have a prior conviction for any of these offenses or attempt to commit any of these offenses:

<u>Rape in the first degree</u>	<u>Rape in the second degree</u>
<u>Rape of a child in the first degree</u>	<u>Rape of a child in the second degree</u>
<u>Child molestation in the first degree</u>	<u>Indecent liberties by forcible compulsion</u>
<u>Any of the following offenses with a finding of sexual motivation:</u>	
<u>Murder in the first degree</u>	<u>Murder in the second degree</u>

<u>Homicide by abuse</u>	<u>Kidnapping in the first degree</u>
<u>Kidnapping in the second degree</u>	<u>Assault in the first degree</u>
<u>Assault in the second degree</u>	<u>Assault of a child in the first degree</u>
<u>Burglary in the first degree.</u>	

(ii) If this offense is for a sex offense that is not listed in paragraph 6(f)(i), then in addition to sentencing me to a term of confinement, the judge may order me to serve up to one year of community custody if the total period of confinement ordered is not more than 12 months. If the period of confinement is over one year, the judge will sentence me to community custody for a period of 36 to 48 months or up to the period of earned release, whichever is longer. During the period of community custody to which I am sentenced, I will be under the supervision of the Department of Corrections, and I will have restrictions placed on my activities.

MISC.

- (g) The prosecuting attorney will make the following recommendation to the judge: \_\_\_\_\_
- 
- [ ] The prosecutor will recommend as stated in the plea agreement, which is incorporated by reference.
- (h) The judge does not have to follow anyone's recommendation as to sentence. The judge must impose a sentence within the standard range unless the judge finds substantial and compelling reasons not to do so. If the judge goes outside the standard range, either the state or I can appeal that sentence. If the sentence is within the standard range, no one can appeal the sentence.
- (i) If I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.
- (j) I understand that I may not possess, own, or have under my control any firearm unless my right to do so is restored by a court of record and that I must immediately surrender any concealed pistol license. RCW 9.41.040.
- (k) Public assistance will be suspended during any period of imprisonment.
- (l) I will be required to register where I reside, study or work. The specific registration requirements are described in Attachment "A".
- (m) I will be required to provide a sample of my blood for purposes of DNA identification analysis.
- (n) I will be required to undergo testing for the human immunodeficiency (AIDS) virus.

NOTIFICATION RELATING TO SPECIFIC CRIMES: IF ANY OF THE FOLLOWING PARAGRAPHS DO NOT APPLY, THEY SHOULD BE STRICKEN AND INITIALED BY THE DEFENDANT AND THE JUDGE.

- [o] This offense is a most serious offense or strike as defined by RCW 9.94A.030, and if I have at least two prior convictions for most serious offenses, whether in this state, in federal court, or elsewhere, the offense for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole. In addition, if this offense is (1) rape in the first degree, rape of a child in the first degree, rape in the second degree, rape of a child in the second degree, indecent liberties by forcible compulsion, or child molestation in the first degree, or (2) murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, or burglary in the first degree, with a finding of sexual motivation, or (3) any attempt to commit any of the offenses listed in this sentence and I have at least one prior conviction for one of these listed offenses in this state, in federal court, or elsewhere, the offense for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole.
- [p] Special sex offender sentencing alternative:  
For offenses committed before September 1, 2001: The judge may suspend execution of the standard range term of confinement under the special sex offender sentencing alternative (SSOSA) if I qualify under former RCW 9.94A.120(8) (for offenses committed before July 1, 2001) or RCW 9.94A.670 (for offenses committed on or after July 1, 2001). If the judge suspends execution of the standard range term of confinement, I will be placed on community custody for the length of the suspended sentence or three years, whichever is greater; I will be ordered to serve up to 180 days of total confinement; I will be ordered to participate in sex offender treatment; and I will be subject to all of the conditions described in paragraph 6(e). Additionally, the judge could require me to devote time to a specific occupation and to pursue a prescribed course of study or occupational training. If a violation of the sentence occurs during community custody, the judge may revoke the suspended sentence.  
For offenses committed on or after September 1, 2001: The Judge may suspend execution of the standard range term of confinement or the minimum term of confinement under the special sex offender sentencing alternative (SSOSA) if I qualify under RCW 9.94A.670. If the judge suspends execution of the standard range term of confinement for a sex offense that is not listed in paragraph 6(f)(i), I will be placed on community custody for the length of the suspended sentence or three years, whichever is greater. If the judge suspends execution of minimum term of confinement for a sex offense listed in paragraph 6(f)(i), I will be placed on community custody for the length of the statutory maximum sentence of the offense. In addition to the term of community custody, I will be ordered to serve up to 180

days of total confinement; I will be ordered to participate in sex offender treatment; and I will be subject to all of the conditions described in paragraph 6(e). Additionally, the judge could require me to devote time to a specific occupation and to pursue a prescribed course of study or occupational training. If a violation of the sentence occurs during community custody, the judge may revoke the suspended sentence.

- [q] If this is a crime of domestic violence and if I, or the victim of the offense, have a minor child, the court may order me to participate in a domestic violence perpetrator program approved under RCW 26.50.150.
- [r] If the judge finds that I have a chemical dependency that has contributed to the offense, the judge may order me to participate in rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the circumstances of the crime for which I am pleading guilty.
- [s] If this offense involves a motor vehicle, my driver's license or privilege to drive will be suspended or revoked. If I have a driver's license, I must now surrender it to the judge.
- [t] The crime of \_\_\_\_\_ has a mandatory minimum sentence of at least \_\_\_\_\_ years of total confinement. The law does not allow any reduction of this sentence. This mandatory minimum sentence is not the same as the mandatory sentence of life imprisonment without the possibility of parole described in paragraph 6[l].
- [u] I am being sentenced for two or more serious violent offenses arising from separate and distinct criminal conduct and the sentences imposed on counts \_\_\_ and \_\_\_ will run consecutively unless the judge finds substantial and compelling reasons to do otherwise.
- [v] I understand that the offense(s) I am pleading guilty to include a deadly weapon or firearm enhancement. Deadly weapon or firearm enhancements are mandatory, they must be served in total confinement, and they must run consecutively to any other sentence and to any other deadly weapon or firearm enhancements.

7. I plead guilty to:  
 count \_\_\_\_\_  
 count \_\_\_\_\_  
 count \_\_\_\_\_  
 in the \_\_\_\_\_ Information. I have received a copy of that Information.

- 8. I make this plea freely and voluntarily.
- 9. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.
- 10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.
- 11. The judge has asked me to state what I did in my own words that makes me guilty of this crime.  
 This is my statement:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

[ ] Instead of making a statement, I agree that the court may review the police reports and/or a statement of probable cause supplied by the prosecution to establish a factual basis for the plea.

12. My lawyer has explained to me, and we have fully discussed, all of the above paragraphs and Attachment "A". I understand them all. I have been given a copy of this "Statement of Defendant on Plea of Guilty." I have no further questions to ask the judge.

\_\_\_\_\_  
 Defendant  
 I have read and discussed this statement with the defendant and believe that the defendant is competent and fully understands the statement.

MISC.

Prosecuting Attorney	Bar #	Defendant's Lawyer	Bar #
Print Name		Print Name	

The foregoing statement was signed by the defendant in open court in the presence of the defendant's lawyer and the under-  
signed judge. The defendant asserted that [check appropriate box]:

- (a) The defendant had previously read the entire statement above and that the defendant understood it in full;
- (b) The defendant's lawyer had previously read to him or her the entire statement above and that the defendant understood it in full; or
- (c) An interpreter had previously read to the defendant the entire statement above and that the defendant understood it in full. The Interpreter's Declaration is attached.

I find the defendant's plea of guilty to be knowingly, intelligently and voluntarily made. Defendant understands the charges and the consequences of the plea. There is a factual basis for the plea. The defendant is guilty as charged.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge

INTERPRETER'S DECLARATION

I am a certified interpreter or have been found otherwise qualified by the court to interpret in the \_\_\_\_\_ language, which the defendant understands, and I have translated the \_\_\_\_\_ for the defendant from English into that language. Identify document being translated

The defendant has acknowledged his or her understanding of both the translation and the subject matter of this document. I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Interpreter

Location: \_\_\_\_\_

Case Name: \_\_\_\_\_ Cause No.: \_\_\_\_\_

MISC.

ATTACHMENT A: Paragraph 6 (e) or 6(n); sex offense, or, kidnapping offense involving a minor as defined in RCW 9A.44.130, or other offenses listed in RCW 9A.44.

(If required, attach to Statement of Defendant on Plea of Guilty.)

Because this crime involves a sex offense, or a kidnapping offense involving a minor, ~~communicating with a minor or other offense listed in~~ as defined in RCW 9A.44.130, I will be required to register with the sheriff of the county of the state of Washington where I reside. If I am not a resident of Washington but I am a student in Washington or I am employed in Washington or I carry on a vocation in Washington, I must register with the sheriff of the county of my school, place of employment, or vocation. I must register immediately upon being sentenced unless I am in custody, in which case I must register at the time of my release with the person designated by the agency that has me in custody and I must also register within 24 hours of my release with the sheriff of the county of the state of Washington where I will be residing, or if not residing in the state of Washington, where I am a student, where I am employed, or where I carry on a vocation.

If I leave this state following my sentencing or release from custody but later move back to Washington, I must register within 30 days after moving to this state or within 24 hours after doing so if I am under the jurisdiction of this state's Department of Corrections. If I leave this state following my sentencing or release from custody, but later while not a resident of Washington I become employed in Washington, carry out a vocation in Washington, or attend school in Washington, I must register within 30 days after attending school in this state or becoming employed or carrying out a vocation in this state, or within 24 hours after doing so if I am under the jurisdiction of this state's Department of Corrections.

If I change my residence within a county, I must send written notice of my change of residence to the sheriff within 72 hours of moving. If I change my residence to a new county within this state, I must send written notice of the change of address at least 14 days before moving to the county sheriff in the new county of residence, I must register with the sheriff of the new county

within 24 hours of moving, and I must also give written notice of my change of address to the sheriff of the county where last registered within 10 days of moving. If I move out of Washington State, I must send written notice within 10 days of moving to the new state or foreign country to the county sheriff with whom I last registered in Washington State.

If I move to another state, or if I work, carry on a vocation, or attend school in another state I must register a new address, fingerprints, and photograph with the new state within 10 days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. I must also send written notice within 10 days of moving to the new state or to a foreign country to the county sheriff with whom I last registered in Washington State.

If I am a resident of Washington and I am admitted to a public or private institution of higher education, I shall, within 10 days of enrolling or by the first business day after arriving at the institution, whichever is earlier, notify the sheriff of the county of my residence of my intent to attend the institution.

If I lack a fixed residence, I am required to register. Registration must occur within 24 hours of release in the county where I am being supervised if I do not have a residence at the time of my release from custody or within ~~14 days~~ 48 hours, excluding weekends and holidays, after ceasing to have a fixed residence. If I enter a different county and stay there for more than 24 hours, I will be required to register in the new county. I must also report in person to the sheriff of the county where I am registered on a weekly basis. ~~if I have been classified as a risk level II or III or on a monthly basis if I have been classified as a risk level I.~~ The weekly report will be on a day specified by the county sheriff's office, and shall occur during normal business hours. I am required to provide a list of the locations where I have stayed during the last 7 days. The lack of a fixed residence is a factor that may be considered in determining a sex offender's risk level and shall make me subject to disclosure to the public at large pursuant to RCW 4.24.550.

If I apply for a name change, I must submit a copy of the application to the county sheriff of the county of my residence and to the state patrol not fewer than five days before the entry of an order granting the name change. If I receive an order changing my name, I must submit a copy of the order to the county sheriff of the county of my residence and to the state patrol within 5 days of the entry of the order.

RCW 9A.44.130(7).

\_\_\_\_\_  
Defendant's signature

<b>COURT OF WASHINGTON</b>	
<b>FOR</b>  _____, <p style="text-align: center;">Plaintiff</p> vs.  _____, <p style="text-align: center;">Defendant.</p>	NO.  <b>STATEMENT OF DEFENDANT ON PLEA OF GUILTY</b>

**MISC.**

1. My true name is \_\_\_\_\_.
2. My age is \_\_\_\_\_.
3. I went through the \_\_\_\_\_ grade.
4. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:
  - (a) I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me.
  - (b) I am charged with: \_\_\_\_\_  
The elements are: \_\_\_\_\_.
5. I UNDERSTAND THAT I HAVE THE FOLLOWING IMPORTANT RIGHTS, AND I GIVE THEM ALL UP BY PLEADING GUILTY:
  - (a) The right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been committed;
  - (b) The right to remain silent before and during trial, and the right to refuse to testify against myself;
  - (c) The right at trial to hear and question the witnesses who testify against me;

- (d) The right at trial to testify and to have witnesses testify for me. These witnesses can be made to appear at no expense to me;
- (e) I am presumed innocent unless the charge is proven beyond a reasonable doubt or I enter a plea of guilty;
- (f) The right to appeal a finding of guilt after a trial.

6. IN CONSIDERING THE CONSEQUENCES OF MY GUILTY PLEA, I UNDERSTAND THAT:

- (a) The crime with which I am charged carries a maximum sentence of \_\_\_\_\_ days in jail and a \$ \_\_\_\_\_ ~~fine~~ monetary penalty.
- (b) The prosecuting authority will make the following recommendation to the judge:  
\_\_\_\_\_
- (c) The judge does not have to follow anyone's recommendation as to sentence. The judge can give me any sentence up to the maximum authorized by law no matter what the prosecuting authority or anyone else recommends.
- (d) The judge may place me on probation for up to five years if I am sentenced under RCW 46.61.5055 or up to two years for all other offenses and impose conditions of probation. If the court orders me to appear at a hearing regarding my compliance with probation and I fail to attend the hearing, the term of probation will be tolled until I appear before the court on the record.
- (e) The judge may require me to pay costs, fees and assessments authorized by law. The judge may also order me to make restitution to any victims who lost money or property as a result of crimes I committed. The maximum amount of restitution is double the amount of the loss of all victims or double the amount of my gain.
- (f) If I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

NOTIFICATION RELATING TO SPECIFIC CRIMES: IF ANY OF THE FOLLOWING PARAGRAPHS APPLY, THE BOX SHOULD BE CHECKED AND THE PARAGRAPH INITIALED BY THE DEFENDANT.

- [ ]g The crime of \_\_\_\_\_ has a mandatory minimum sentence of \_\_\_\_\_ days in jail and \$ \_\_\_\_\_ monetary penalty. The law does not allow any reduction of this sentence.
- [ ]h If this crime involves a sexual offense, prostitution, or a drug offense associated with hypodermic needles, I will be required to undergo testing for the human immunodeficiency (AIDS) virus.
- [ ]i This plea of guilty will result in suspension or revocation of my ~~driver's license~~ driving license or privilege by the Department of Licensing for a period of \_\_\_\_\_. This period may not include suspension or revocation based on other matters. If I have a driver's license, I must now surrender it to the judge.
- [ ]j I understand that I may not possess, own, or have under my control any firearm unless my right to do so is restored by a court of record and that I must immediately surrender any concealed pistol license. RCW 9.41.040.
- [ ]k If this crime involves a drug offense, my eligibility for state and federal education benefits will be affected. 20 U.S.C. § 1091(r).
- [ ]k1 If this case involves driving while under the influence of alcohol and/or being in actual physical control of a vehicle while under the influence of alcohol and/or drugs, I have been informed and understand that I will be subject to  
 the penalties described in Attachment "A".  
OR  
 these penalties: The mandatory minimum sentence of \_\_\_\_\_ days in jail, \_\_\_\_\_ days of electronic home monitoring and \$ \_\_\_\_\_ monetary penalty. I will also be required to drive only motor vehicles equipped with an ignition interlock device for \_\_\_\_\_ years. My driving privilege will be suspended or revoked by the Department of Licensing for the period of time stated in paragraph 6(i). In lieu of the minimum jail term, the judge may order me to serve \_\_\_\_\_ days in electronic home monitoring. If I do not have a dwelling, telephone service, or any other necessity to operate electronic home monitoring; if I live out of state; or if the judge determines I would violate the terms of electronic home monitoring, the judge may waive electronic home monitoring and impose an alternative sentence which may include additional jail time, work crew or work camp.

MISC.

[ ] I understand that if this crime involves sexual misconduct with a minor in the second degree or attempt, solicitation or conspiracy to commit a sex offense, or a kidnapping offense involving a minor, ~~communicating with a minor, or one of the other offenses listed as defined in RCW 9A.44.130~~, I will be required to register with the county sheriff as described in Attachment "B".

- 7. I plead guilty to the crime of \_\_\_\_\_ as charged in the complaint or citation and notice. I have received a copy of that complaint or citation and notice.
- 8. I make this plea freely and voluntarily.
- 9. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.
- 10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.
- 11. The judge has asked me to state in my own words what I did that makes me guilty of this crime. This is my statement:  
\_\_\_\_\_  
\_\_\_\_\_

[ ] Instead of making a statement, I agree that the court may review the police reports and/or a statement of probable cause supplied by the prosecution to establish a factual basis for the plea.

12. My lawyer has explained to me, and we have fully discussed, all of the above paragraphs. I understand them all. I have been given a copy of this "Statement of Defendant on Plea of Guilty." I have no further questions to ask the judge.

Date: \_\_\_\_\_

\_\_\_\_\_  
Defendant  
I have read and discussed this statement with the defendant and believe that the defendant is competent and fully understands the statement.

\_\_\_\_\_  
Prosecuting Authority and Bar #

\_\_\_\_\_  
Defendant's Lawyer and Bar #

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print name

The foregoing statement was signed by the defendant in open court in the presence of the defendant's lawyer and the undersigned judge. The defendant asserted that (check the appropriate box):

- [ ] (a) The defendant had previously read; or
- [ ] (b) The defendant's lawyer had previously read to him or her; or
- [ ] (c) An interpreter had previously read to the defendant the entire statement above and that the defendant understood it in full.

I find the defendant's plea of guilty to be knowingly, intelligently and voluntarily made. Defendant understands the charges and the consequences of the plea. There is a factual basis for the plea. The defendant is guilty as charged.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Judge

INTERPRETER'S DECLARATION  
(If required, attach to Statement of Defendant on Plea of Guilty.)

I am a certified interpreter or have been found otherwise qualified by the court to interpret in the \_\_\_\_\_ language, which the defendant understands, and I have translated the \_\_\_\_\_  
Identify document being translated

The defendant has acknowledged his or her understanding of both the translation and the subject matter of this document. I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Interpreter

LOCATION: \_\_\_\_\_

MISC.

Case Name: \_\_\_\_\_

Cause No.: \_\_\_\_\_

Attachment A: Paragraph 6(k), driving under the influence of alcohol and/or actual physical control of a vehicle while under the influence of alcohol and/or drugs. (If required, attach to Statement of Defendant on Plea of Guilty.)

Department Of Licensing - 1999 DUI Administrative Sanctions and Reinstatement Provisions (as amended through June 1, 2001)

ADMINISTRATIVE SANCTIONS - RCW 46.20.3101 (Effective January 1, 1999)		
REFUSED TEST	<i>First Refusal Within 7 Years <u>And</u> No Prior Administrative Action Within Past 7 Years</i>	<i>Second or Subsequent Refusal Within Past 7 Years OR First Refusal <u>And</u> At Least One Prior Administrative Action Within Past 7 Years (<del>Suspension</del> <u>Revocation</u> consecutive to any court ordered suspension <u>as a result of same incident</u>)</i>
Adult	1-Year License Revocation	2-Year License Revocation
Minor	1-Year License Revocation	2-Year License Revocation Or Until Age 21 Whichever Is Longer
ALCOHOL CONCENTRATION TEST RESULT	<i>First Administrative Action</i>	<i>Second or Subsequent Administrative Action</i>
Adults With 0.08 or Greater	90-Day License Suspension	2-Year License Revocation
Minors With 0.02 or Greater	90-Day License Suspension	1-Year License Revocation Or Until Age 21 Whichever Is Longer

Note: An individual convicted of DUI or physical control will have his/her driving privilege placed in probationary status for five years from the date he/she is eligible to reinstate his/her driver's license. (See RCW 46.61.5055 and 46.20.355) An individual granted a deferred prosecution under RCW 10.05.060 will have his/her driving privilege placed on probationary status for five years from the date of the incident, which was the basis for the deferred prosecution. (See RCW 46.20.355 and 10.05.060)

REQUIREMENTS FOR REINSTATEMENT OF DRIVING PRIVILEGE	
<i>Suspended License* (RCW 46.20.311)</i>	<i>Revoked License* (RCW 46.20.311)</i>
<ul style="list-style-type: none"> <li>File and maintain proof of financial responsibility for the future with the Department of Licensing as provided in chapter 46.29 RCW</li> <li>Pay \$150 driver's license reissue fee (Effective June 11, 1998)</li> <li>Driver's ability test NOT required</li> </ul>	<ul style="list-style-type: none"> <li>File and maintain proof of financial responsibility for the future with the Department of Licensing as provided in chapter 46.29 RCW</li> <li>Pay \$150 driver's license reissue fee (Effective June 11, 1998)</li> <li>Satisfactorily complete a driver's ability test</li> </ul>

\* If suspension or revocation is the result of a criminal conviction, the driver must also show proof of either (1) enrollment and satisfactory participation in an approved alcohol treatment program or (2) completion of an alcohol information school, as determined by the court and/or treatment agency.

**COURT 1999 DUI SENTENCING GRID (RCW 46.61.5055 as amended through June 1, 2001)**

**"Prior Offense" includes the following:** (as defined in RCW 46.61.5055 as amended by Ch. 211 and 214 Laws of 1998)  
**Original Convictions for the following:** (1) DUI (RCW 46.61.502) (or an equivalent local ordinance); (2) Phys. Cont. (RCW 46.61.504) (or an equivalent local ordinance); (3) Veh. Homicide (RCW 46.61.520) or Veh. Assault (RCW 46.61.522) if either committed while under the influence; (4) Equiv. out-of-state statute for any of the above offenses.

**Amended Convictions for the following:** If the person was originally charged with DUI or Phys. Cont. or an equivalent local ordinance, or Veh. Homicide (RCW 46.61.520) or Veh. Assault (RCW 46.61.522). (1) Neg. Driving 1st (RCW 46.61.5249 ~~previously 46.61.525-1~~); (2) Reckless Driving (RCW 46.61.500); (3) Reckless Endangerment (RCW 9A.36.050); (4) Equiv. out-of-state or local ordinance for the above offenses.

**Deferred Prosecution Granted for the following:** (1) DUI (RCW 46.61.502) (or equivalent local ordinance); (2) Phys. Cont. (RCW 46.61.504) (or equivalent local ordinance); (3) Neg. Driving 1st (RCW 46.61.5249 ~~previously 46.61.525-1~~), (or equiv. local ord.), if the person was originally charged with DUI or Phys. Cont. (or an equiv. local ord.), or Veh. Homicide (RCW 46.61.520) or Veh. Assault (RCW 46.61.522).

MISC.

<b>"Within seven years"</b> means that the arrest for a prior offense(s) occurred within 7 years of the arrest for the current offense. (as defined in RCW 46.61.5055 as amended by Ch. 207, Laws of 1998.)			
<b>Alcohol Concentration Less Than .15 Or No Test Result</b>	<b>No Prior Offenses Within Past 7 Years</b>	<b>One Prior Offense Within Past 7 Years</b>	<b>Two or More Prior Offenses Within Past 7 Years</b>
Jail Time***	1-365 Days (24 consecutive hours non-suspendable)	30-365 Days (30 days non-suspendable)	90-365 Days (90 days non-suspendable)
Electronic Home Monitoring*	In Lieu of Mandatory Minimum Jail Time, Not Less Than 15 Days	60 Days	120 Days
Fine	\$350-\$5,000 ( <del>\$685</del> <u>735</u> total minimum fine w/statutory assessments****)	\$500-\$5,000 ( <del>\$925</del> <u>975</u> total minimum fine w/statutory assessments****)	\$1,000-\$5,000 ( <del>\$1,725</del> <u>1,775</u> total minimum fine w/statutory assessments****)
Driver's License	90-Day Suspension	2-Year Revocation	3-Year Revocation
Ignition Interlock Device	Court may order**	Not Less Than 1 Year**	Not Less Than 1 Year**
Alcohol/Drug Ed. or Treatment	As Determined By The Court	As Determined By The Court	As Determined By The Court
<b>Alcohol Concentration At Least .15 or Greater Or Test Refusal</b>	<b>No Prior Offenses Within Past 7 Years</b>	<b>One Prior Offense Within Past 7 Years</b>	<b>Two or More Prior Offenses Within Past 7 Years</b>
Jail Time***	2-365 Days (2 consecutive days non-suspendable)	45-365 Days (45 days non-suspendable)	120-365 Days (120 days non-suspendable)
Electronic Home Monitoring*	In Lieu of Mandatory Minimum Jail Time, Not Less Than 30 Days	90 Days	150 Days
Fine	\$500-\$5,000 ( <del>\$925</del> <u>975</u> total minimum fine w/statutory assessments****)	\$750-\$5,000 ( <del>\$1,325</del> <u>1,375</u> total minimum fine w/statutory assessments****)	\$1,500-\$5,000 ( <del>\$2,525</del> <u>2,575</u> total minimum fine w/statutory assessments****)
Driver's License	1-Year Revocation	900-Day Revocation	4-Year Revocation
Ignition Interlock Device	Not Less Than 1 Year**	Not Less Than 1 Year**	Not Less Than 1 Year**
Alcohol/Drug Ed. or Treatment	As Determined By The Court	As Determined By The Court	As Determined By The Court

\* **Electronic Home Monitoring:** For first time offenders, the court may impose electronic home monitoring in lieu of the mandatory minimum jail time. ~~the electronic home monitoring option in lieu of the mandatory minimum jail time is effective 6/11/98. Effective 3/16/99, courts~~ Courts may waive electronic home monitoring in writing stating the reasons therefor and facts relied upon. If EHM is waived, the court is required to impose an alternative sentence with similar punitive consequences. (Chapter 5, Laws of 1999 RCW 46.61.5055).

\*\* **Ignition Interlock:** For a person previously ordered to install ignition interlock under RCW 46.20.720(3)(a) not less than 5 years, for a person previously ordered to install ignition interlock under RCW 46.20.720(3)(b) not less than 10 years. *Note: RCW 46.20.720(3)(a) and (3)(b) are effective 1/1/99.* For application in DUI Deferred Prosecution, see: RCW 10.05.140, as amended Ch. 331, Laws of 1999, effective 5/14/99.

\*\*\* **Mandatory conditions of probation if any jail time is suspended:** (Court's jurisdiction extended to five years if it imposes less than one year in jail - RCW 46.61.5055 as amended by Ch. 206, Laws of 1998, effective 6/11/98. See also Ch. 56, Laws of 1999, effective 7/25/99.) (i) The individual is not to drive a motor vehicle within this state without a valid license to drive and proof of financial responsibility for the future, (ii) the individual is not to drive a motor vehicle within this state while having an alcohol concentration of .08 or more within two hours after driving, (iii) the individual is not to refuse to submit to a test of his or her breath or blood to determine alcohol concentration upon request of a law enforcement officer who has reasonable grounds to believe the person was driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor.

\*\*\*\* **Local Government Criminal Justice Funding penalty:** Effective July 22, 2001, the court must impose an additional local government criminal justice funding penalty of \$50. RCW 46.64.055.

Case Name: \_\_\_\_\_

Cause No.: \_\_\_\_\_

ATTACHMENT B: Paragraph 6 (4m); sexual misconduct with a minor in the second degree or attempt, solicitation or conspiracy to commit a sex offense, or, a kidnapping offense involving a minor, as defined in RCW 9A.44.130, communicating with a minor and other offenses listed in RCW 9A.44.

(If required, attach to Statement of Defendant on Plea of Guilty.)

Because this crime involves sexual misconduct with a minor in the second degree or attempt, solicitation or conspiracy to commit a sex offense, or a kidnapping offense involving a minor, as defined in RCW 9A.44.130, communicating with a minor or other offense listed in RCW 9A., I will be required to register with the sheriff of the county of the state of Washington where I reside. If I am not a resident of Washington but I am a student in Washington or I am employed in Washington or I carry on a vocation in Washington, I must register with the sheriff of the county of my school, place of employment, or vocation. I must register immediately upon being sentenced unless I am in custody, in which case I must register at the time of my release with the person designated by the agency that has me in custody and I must also register within 24 hours of my release with the sheriff of the county of the state of Washington where I will be residing, or if not residing in the state of Washington, where I am a student, where I am employed, or where I carry on a vocation.

If I leave this state following my sentencing or release from custody but later move back to Washington, I must register within 30 days after moving to this state or within 24 hours after doing so if I am under the jurisdiction of this state's Department of Corrections. If I leave this state following my sentencing or release from custody, but later while not a resident of Washington I become employed in Washington, carry out a vocation in Washington, or attend school in Washington, I must register within 30 days after attending school in this state or becoming employed or carrying out a vocation in this state, or within 24 hours after doing so if I am under the jurisdiction of this state's Department of Corrections.

If I change my residence within a county, I must send written notice of my change of residence to the sheriff within 72 hours of moving. If I change my residence to a new county within this state, I must send written notice of the change of address at least 14 days before moving to the county sheriff in the new county of residence, I must register with the sheriff of the new county within 24 hours of moving, and I must also give written notice of my change of address to the sheriff of the county where last registered within 10 days of moving. If I move out of Washington State, I must send written notice within 10 days of moving to the new state or foreign country to the county sheriff with whom I last registered in Washington State.

If I move to another state, or if I work, carry on a vocation, or attend school in another state I must register a new address, fingerprints, and photograph with the new state within 10 days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. I must also send written notice within 10 days of moving to the new state or to a foreign country to the county sheriff with whom I last registered in Washington State.

If I am a resident of Washington and I am admitted to a public or private institution of higher education, I shall, within 10 days of enrolling or by the first business day after arriving at the institution, whichever is earlier, notify the sheriff of the county of my residence of my intent to attend the institution.

If I lack a fixed residence, I am required to register. Registration must occur within 24 hours of release in the county where I am being supervised if I do not have a residence at the time of my release from custody or within ~~14 days~~ 48 hours, excluding week-ends and holidays, after ceasing to have a fixed residence. If I enter a different county and stay there for more than 24 hours, I will be required to register in the new county. I must also report in person to the sheriff of the county where I am registered on a weekly basis ~~if I have been classified as a risk level II or III or on a monthly basis if I have been classified as a risk level I.~~ The weekly report will be on a day specified by the county sheriff's office, and shall occur during normal business hours. I may be required to provide a list of the locations where I have stayed during the last 7 days. The lack of a fixed residence is a factor that may be considered in determining a sex offender's risk level and shall make me subject to disclosure to the public at large pursuant to RCW 4.24.550.

If I apply for a name change, I must submit a copy of the application to the county sheriff of the county of my residence and to the state patrol not fewer than five days before the entry of an order granting the name change. If I receive an order changing my name, I must submit a copy of the order to the county sheriff of the county of my residence and to the state patrol within 5 days of the entry of the order. RCW 9A.44.130(7).

\_\_\_\_\_  
Defendant's signature

**SUPERIOR COURT OF WASHINGTON**  
 COUNTY OF \_\_\_\_\_  
**JUVENILE COURT**  
 STATE OF WASHINGTON v. \_\_\_\_\_  
 Respondent  
**D.O.B.** \_\_\_\_\_

**NO:  
STATEMENT ON PLEA OF GUILTY  
(STJOPG)**

1. My true name is: \_\_\_\_\_  
 I am also known as: \_\_\_\_\_
2. My age is \_\_\_\_\_ Date of Birth: \_\_\_\_\_
3. I have been informed and fully understand that I have the right to a lawyer, and that if I cannot afford to pay for a lawyer, the judge will provide me with one at no cost. I understand that a lawyer can look at the social and legal files in my case, talk to the police, probation counselor and prosecuting attorney, tell me about the law, help me understand my rights, and help me at trial.
4. I understand that I am charged with \_\_\_\_\_,  
 and that the elements are \_\_\_\_\_

and I have been given a copy of the charge(s).

5. *I UNDERSTAND I HAVE THE FOLLOWING IMPORTANT RIGHTS, AND I GIVE THEM ALL UP BY PLEADING GUILTY:*
  - a. I have the right to a speedy and public trial in the county where I reside or where the offense(s) allegedly occurred.
  - b. I have the right to remain silent before and during trial, and I need not testify against myself.
  - c. I have the right to hear and question witnesses who might testify against me.
  - d. I have the right to testify and to have witnesses testify for me. These witnesses may be required to appear at no cost to me.
  - e. ~~I have the right to testify on my own behalf.~~
  - f. I am presumed innocent unless each element of the offense(s) I am the charged with is proven beyond a reasonable doubt or I enter a plea of guilty.
  - g. I have the right to appeal a finding of guilt after trial.

6. I have been informed that in order to determine an appropriate sentence regarding the charges to which I plead guilty in this matter, the judge will take into consideration my criminal history, which is as follows:
  - a. \_\_\_\_\_
  - b. \_\_\_\_\_
  - c. \_\_\_\_\_
  - d. \_\_\_\_\_
  - e. \_\_\_\_\_
  - f. \_\_\_\_\_

7. The Standard Sentencing Range, which was calculated using my criminal history as referenced in Paragraph 6, above, is as follows:

LOCAL SANCTIONS:

COUNT	SUPERVISION	COMMUNITY SERVICE	FINE	DETENTION	CVC	RESTITUTION
<input type="checkbox"/> 1	0 to 12 months	0 to 150 hours	\$0 to \$500	0 to 30 Days	\$75/\$100	<input type="checkbox"/> As required <input type="checkbox"/> _____
<input type="checkbox"/> 2	0 to 12 months	0 to 150 hours	\$0 to \$500	0 to 30 Days	\$75/\$100	<input type="checkbox"/> As required <input type="checkbox"/> _____
<input type="checkbox"/> 3	0 to 12 months	0 to 150 hours	\$0 to \$500	0 to 30 Days	\$75/\$100	<input type="checkbox"/> As required <input type="checkbox"/> _____

MISC.

I understand that, if community supervision is imposed, I will be required to comply with various rules, which could include school attendance, curfew, law abiding behavior, associational restrictions, counseling, treatment, urinalysis, and/or other conditions deemed appropriate by the judge. Failure to comply with the conditions of supervision could result in a violation being found and further confinement imposed for the violation up to 30 days.

JUVENILE REHABILITATION ADMINISTRATION (JRA) COMMITMENT:

COUNT	WEEKS AT JUVENILE REHABILITATION ADMINISTRATION (JRA) FACILITY	CVC	RESTITUTION
<input type="checkbox"/> 1	<input type="checkbox"/> 15 - 36 <input type="checkbox"/> 30 - 40 <input type="checkbox"/> 52 - 65 <input type="checkbox"/> 80 - 100 <input type="checkbox"/> 103 - 129 <input type="checkbox"/> 180 - Age 21	\$75/\$100	<input type="checkbox"/> As required <input type="checkbox"/> _____
<input type="checkbox"/> 2	<input type="checkbox"/> 15 - 36 <input type="checkbox"/> 30 - 40 <input type="checkbox"/> 52 - 65 <input type="checkbox"/> 80 - 100 <input type="checkbox"/> 103 - 129 <input type="checkbox"/> 180 - Age 21	\$75/\$100	<input type="checkbox"/> As required <input type="checkbox"/> _____
<input type="checkbox"/> 3	<input type="checkbox"/> 15 - 36 <input type="checkbox"/> 30 - 40 <input type="checkbox"/> 52 - 65 <input type="checkbox"/> 80 - 100 <input type="checkbox"/> 103 - 129 <input type="checkbox"/> 180 - Age 21	\$75/\$100	<input type="checkbox"/> As required <input type="checkbox"/> _____

I understand that, if I am committed to a Juvenile Rehabilitation Administration (JRA) facility, following my release I may be required to comply with a program of parole for a number of months. I understand that if placed on parole, I will be under the supervision of a parole officer. The conditions of parole will restrict my actions and may require me to participate in activities and programs including, but not limited to, evaluation, treatment, education, employment, community service, electronic monitoring, and urinalysis. Failure to comply with the conditions of parole may result in parole revocation and further confinement.

I understand that if I am pleading guilty to two or more offenses, the disposition terms shall run consecutively (one term after the other) subject to the limitations in RCW 13.40.180.

I understand that if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendation may increase. Even so, my plea of guilty to this charge is binding.

8. RIGHT TO APPEAL SENTENCE: I understand, that the judge must impose a sentence within the standard range, unless the judge finds by clear and convincing evidence that the standard range sentence would amount to a manifest injustice, substantial and compelling reasons not to do so. If the judge goes outside the standard range, either the state or I or the state can appeal that sentence. If the sentence is within the standard range, no one can appeal the sentence.

9. MAXIMUM PUNISHMENT: I have been informed, and fully understand, that the maximum punishment I can receive is commitment until I am 21 years old, but that I may be incarcerated for no longer than the adult maximum sentence for this offense.

10. COUNTS AS CRIMINAL HISTORY: I understand that my plea of guilty and the judge's acceptance of my plea will become part of my criminal history. I understand that if I am pleading guilty to two or more offenses that arise out of the same course of conduct, only the most serious offense will count as an offense in my criminal history. I understand that my guilty plea will remain part of my criminal history when I am an adult and may affect my ability to remain in the Juvenile Justice System should I re-offend. I understand that the judge will consider my criminal history when sentencing me for any offense that I commit in the future as an adult or juvenile.

11. GROUNDS FOR DEPORTATION: If I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

12. NOTIFICATION RELATING TO SPECIFIC CRIMES: IF ANY OF THE FOLLOWING PARAGRAPHS DO NOT APPLY, THEY SHOULD BE STRICKEN AND INITIALED BY THE DEFENDANT AND THE JUDGE.

[A] SUSPENSION/REVOCAION OF DRIVING PRIVILEGE FOR FIREARMS OR DRUGS: I have been informed that if the offense that I am pleading guilty to involves a finding that I was armed with a firearm when I committed the offense or if the offense was a violation of RCW 9.41.040(1) or chapters 66.44, 69.41, 69.50 or 69.52 and I was 13 years of age or older when I committed the offense, then the plea will result in the suspension or revocation of my privilege to drive.

[B] SUSPENSION/REVOCAION OF DRIVING PRIVILEGE FOR DRIVING OFFENSES: I have been informed that if the offense that I am pleading guilty to is reckless driving, driving or being in physical control of a motor vehicle while under the influence of intoxicants, driving while license suspended or revoked, vehicular assault, vehicular homicide, hit and run, theft of motor vehicle fuel, or attempting to elude a pursuing police vehicle, the plea will result in the suspension or revocation of my privilege to drive.

[C] OFFENDER REGISTRATION FOR SEX OFFENSE OR KIDNAPPING OFFENSE: Because this crime involves a sex offense, or a kidnapping offense involving a minor, I will be required to register where I reside, study or work. The specific registration requirements are set forth in Attachment "A."

MISC.

- [D] DNA TESTING: If this crime involves a sex offense or a violent offense, I will be required to provide a sample of my blood for purposes of DNA identification analysis. RCW 43.43.754.
- [E] HIV TESTING: If this crime involves a sexual offense, prostitution, or a drug offense associated with hypodermic needles, I will be required to undergo testing for the human immunodeficiency (HIV/AIDS) virus. RCW 70.24.340.
- [F] CRIME LAB FEES: If this offense involves a controlled substance, I will be required to pay \$100 for the State Patrol Crime Lab fees to test the substance.
- [G] SCHOOL NOTIFICATION: If I am enrolled in a common school, the court will notify the principal of my plea of guilty if the offense for which I am pleading guilty is a violent offense as defined in RCW 9.94A.030; a sex offense as defined in RCW 9.94A.030; inhaling toxic fumes under chapter 9.47A RCW; a controlled substance violation under chapter 69.50 RCW; a liquor violation under RCW 66.44.270; or any crime under chapters 9.41, 9A.36, 9A.40, 9A.46, and 9A.48 RCW. RCW 13.04.155.
- [H] SCHOOL ATTENDANCE WITH VICTIM PROHIBITED: I understand that if I am pleading guilty to a sex offense, I will not be allowed to attend the school attended by the victim or victim's siblings. RCW 13.40.160.
- [I] FEDERAL BENEFITS: I understand that if I am pleading guilty to a felony drug offense, my eligibility for state and federal food stamps and welfare will be affected. If I am pleading guilty to any drug offense, my education benefits will be affected, as well.  
20 U.S.C. § 1091(r) and 21 U.S.C. § 862a.
- [J] MANDATORY MINIMUM SENTENCE: The crime of \_\_\_\_\_ has a mandatory minimum sentence of at least \_\_\_\_\_ weeks of total confinement. The law does not allow any reduction of this sentence.
- [K] RIGHT TO POSSESS FIREARMS: [JUDGE MUST READ THE FOLLOWING TO OFFENDER] I have been informed that if I am pleading guilty to any offense that is classified as a felony or any of the following crimes when committed by one family or household member against another: assault in the fourth degree, coercion, stalking, reckless endangerment, criminal trespass in the first degree, or violation of the provisions of a protection order or no-contact order restraining the person or excluding the person from a residence; that I may not possess, own, or have under my control any firearm unless my right to do so has been restored by a court of record. RCW 9.41.040(1).
- [L] FIREARMS POSSESSION OR COMMISSION WHILE ARMED:
- [i] Minimum 10 Days for Possession Under Age 18: I understand that the offense I am pleading guilty to includes possession of a firearm in violation of RCW 9.41.040(1)(b)(iii), and pursuant to chapter 13.40.193, the judge will impose a mandatory minimum disposition of 10 days of confinement, which must be served in total confinement without possibility of release until a minimum of 10 days has been served.
- [ii] Unlawful Possession with Stolen Firearm: I understand that if the offenses I am pleading guilty to include both a conviction under RCW 9.41.040 for unlawful possession of a firearm in the first or second degree and one or more convictions for the felony crimes of theft of a firearm or possession of a stolen firearm, that the sentences imposed for these crimes shall be served consecutively to each other. A consecutive sentence will also be imposed for each firearm unlawfully possessed.
- [iii] Armed During Commission of Any Offense: I understand that if the offense I am pleading guilty to includes a finding that either I or my accomplice was armed with a firearm during the commission of the offense, that the standard range disposition shall be determined pursuant to RCW 13.40.160, unless the judge finds a manifest injustice, in which case the disposition shall be determined pursuant to chapter 13.40.193(3). Such confinement will run consecutive to any other sentence that may be imposed.

[iv] Armed During Commission of a Felony: I further understand that the offense I am pleading guilty to includes a finding that either myself or my accomplice was armed with a firearm during the commission of a felony (other than possession of a machine gun, possession of a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first or second degree, or use of a machine gun in a felony) and, therefore, the following mandatory periods of total confinement will be added to my sentence: For a class A felony, six (6) months; for a class B felony, four (4) months; and for a class C felony, two (2) months. Such confinement will run consecutive to any other sentence that may be imposed.

13. I understand that the prosecuting attorney will make the following recommendation to the judge:

\_\_\_\_\_  
\_\_\_\_\_

14. I understand that the probation counselor will make the following recommendation to the judge:

\_\_\_\_\_  
\_\_\_\_\_

15. Although the judge will consider recommendations of the prosecuting attorney and the probation officer, the judge may impose any sentence he or she feels is appropriate, up to the maximum allowed by law. ~~The judge must impose a sentence within the standard sentence range unless the judge finds that doing so would constitute a manifest injustice. If the judge goes outside the standard sentence range, either I or the prosecuting attorney can appeal that sentence. If the sentence is within the standard range, no one can appeal the sentence.~~

16. The judge has asked me to state in my own words what I did that makes me guilty of this crime. This is my statement:

\_\_\_\_\_  
\_\_\_\_\_

[ ] Instead of making a statement, I agree that the judge may review the police reports and/or a statement of probable cause supplied by the prosecution to establish a factual basis for the plea.

17. I plead guilty to count \_\_\_\_\_ in the \_\_\_\_\_ Information. I have received a copy of that Information.

18. I make this plea freely. No one has threatened to harm me or anyone else to get me to plead guilty.

19. No one has made any promises to make me plead guilty, except as written in this statement.

20. I have read or someone has read to me everything printed above, and in Attachment "A," if applicable, and I understand it in full, and I have been given a copy of this statement. I have no more questions to ask the judge.

Dated: \_\_\_\_\_

RESPONDENT Respondent

I have read and discussed this statement with the respondent and believe that the respondent is competent and fully understands the statement.

\_\_\_\_\_  
Deputy Prosecuting Attorney

\_\_\_\_\_  
Attorney for Respondent

\_\_\_\_\_  
Type or Print Name/Bar Number

\_\_\_\_\_  
Type or Print Name/Bar Number

JUDGE'S CERTIFICATE

The foregoing statement was ~~read by or to the respondent and~~ signed by the respondent in open court in the presence of his or her lawyer and the undersigned judge, ~~in open court.~~ The respondent asserted that [check appropriate box]:

(a) The respondent had previously read the entire statement above and that the respondent understood it in full;

MISC.

- (b) The respondent's lawyer had previously read to him or her the entire statement above and that the respondent understood it in full; or
- (c) An interpreter had previously read to the respondent the entire statement above and that the defendant understood it in full. The Interpreter's Declaration is attached.

~~The judge I finds the respondent's plea of guilty is knowingly, intelligently, and voluntarily made. Respondent understands the charge and the consequences of the plea, that the respondent has been advised by the judge concerning the nature of the offense, that there is a factual basis for the plea, and that the~~ The respondent is guilty as charged.

Dated: \_\_\_\_\_

\_\_\_\_\_  
JUDGE/COMMISSIONER

\_\_\_\_\_  
Attorney for Respondent

\_\_\_\_\_  
Deputy Prosecuting Attorney

\_\_\_\_\_  
Type or Print Name/Bar Number

\_\_\_\_\_  
Type or Print Name/Bar Number

Case Name: \_\_\_\_\_

Cause No.: \_\_\_\_\_

ATTACHMENT A: Paragraph 12 (C); OFFENDER REGISTRATION FOR SEX OFFENSE OR KIDNAPPING OFFENSE (If required, attach to Statement on Plea of Guilty.):

Because this crime involves a sex offense, or a kidnapping offense involving a minor as defined in RCW 9A.44.130, I will be required to register with the sheriff of the county of the state of Washington where I reside. ~~RCW 9A.44.130~~. If I am not a resident of Washington but I am a student in Washington or I am employed in Washington or I carry on a vocation in Washington, I must register with the sheriff of the county of my school, place of employment, or vocation. I must register immediately upon being sentenced unless I am in custody, in which case I must register at the time of my release with the person designated by the agency that has me in custody and I must also register within 24 hours of my release with the sheriff of the county of the state of Washington where I will be residing, or if not residing in the state of Washington, where I am a student, where I am employed or where I carry on a vocation.

If I leave this state following my sentencing or release from custody but later move back to Washington, I must register within 30 days after moving to this state or within 24 hours after doing so if I am under the jurisdiction of this state's Department of Corrections. If I leave this state following my sentencing or release from custody, but later while not a resident of Washington I become employed in Washington, carry out a vocation in Washington, or attend school in Washington, I must register within 30 days after attending school in this state or becoming employed or carrying out a vocation in this state, or within 24 hours after doing so if I am under the jurisdiction of this state's Department of Corrections.

If I change my residence within a county, I must send written notice of my change of residence to the sheriff within 72 hours of moving. If I change my residence to a new county within this state, I must send written notice of the change of address at least fourteen days before moving to the county sheriff in the new county of residence, I must register with the sheriff of the new county within 24 hours of moving and I must also give written notice of my change of address to the sheriff of the county where last registered within 10 days of moving. If I move out of Washington State, I must send written notice within 10 days of moving to the new state or foreign country to the county sheriff with whom I last registered in Washington State.

If I move to another state, or if I work, carry on a vocation, or attend school in another state I must register a new address, fingerprints, and photograph with the new state within 10 days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. I must also send written notice within 10 days of moving to the new state or to a foreign country to the county sheriff with whom I last registered in Washington State.

If I am a resident of Washington and I am admitted to a public or private institution of higher education, I shall, within 10 days of enrolling or by the first business day after arriving at the institution, whichever is earlier, notify the sheriff of the county of my residence of my intent to attend the institution.

If I lack a fixed residence, I am required to register. Registration must occur within 24 hours of release in the county where I am being supervised if I do not have a residence at the time of my release from custody or within ~~14 days~~ 48 hours, excluding weekends and holidays, after ceasing to have a fixed residence. If I enter a different county and stay there for more than 24 hours, I will be required to register in the new county. I must also report in person to the sheriff of the county where I am registered on a weekly basis. ~~if I have been classified as a risk level II or III or on a monthly basis if I have been classified as a risk level I.~~ The weekly report will be on a day specified by the county sheriff's office, and shall occur during normal business hours. I may

MISC.

be required to provide a list of the locations where I have stayed during the last 7 days. The lack of a fixed residence is a factor that may be considered in determining a sex offender's risk level and shall make me subject to disclosure to the public at large pursuant to RCW 4.24.550.

If I apply for a name change, I must submit a copy of the application to the county sheriff of the county of my residence and to the state patrol not fewer than 5 days before the entry of an order granting the name change. If I receive an order changing my name, I must submit a copy of the order to the county sheriff of the county of my residence and to the state patrol within 5 days of the entry of the order. RCW 9A.44.130(67).

Respondent's signature

Reviser's note: The typographical errors in the above material occurred in the copy filed by the State Supreme Court and appear in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: The brackets and enclosed material in the text above occurred in the copy filed by the State Supreme Court and appear in the Register pursuant to the requirements of RCW 34.08.040.

WSR 02-09-006
NOTICE OF PUBLIC MEETINGS
PUGET SOUND
CLEAN AIR AGENCY
[Memorandum—April 4, 2002]

PUGET SOUND CLEAN AIR AGENCY

BOARD OF DIRECTORS

MEETING DATES FOR YEAR 2002

REGULAR MONTHLY MEETINGS

- January 10, 2002
February 14, 2002
March 14, 2002
April 11, 2002
May 9, 2002
June 13, 2002
July 11, 2002
August (No Meeting)
September 12, 2002
October 10, 2002
November 21, 2002
December 19, 2002

WSR 02-09-007
SECRETARY OF STATE
[Filed April 4, 2002, 1:17 p.m.]

In an effort at simplification and consistency we would like several of the chapter codifications in Title 434 WAC changed. The specific changes we would like include:

- 434-228 to 434-215
434-236 to 434-238
434-334 to 434-333

Steve Excell
Assistant Secretary of State

WSR 02-09-013
RULES OF COURT
STATE SUPREME COURT
[April 3, 2002]

IN THE MATTER OF THE ADOPTION ) ORDER
OF NEW GR 29 AND REPEAL OF AR 4 ) NO. 25700-A-732
AND ARLJ 5 )

The Board for Judicial Administration having recommended the adoption of New GR 29 and repeal of AR 4 and ARLJ 5, and the Court having determined that the proposed new rule and repeal 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 new rule as attached hereto is adopted and AR 4 and ARLJ 5 are repealed.

(b) That pursuant to the emergency provisions of GR 9(i), the new rule will be published expeditiously and become effective upon publication.

DATED at Olympia, Washington this 3rd day of April 2002.

Gerry L. Alexander, C.J.

Smith, J. Ireland, J.
Johnson, J. Bridge, J.
Madsen, J. Chambers, J.
Sanders, J. Owens, J.

General Rule 29
PRESIDING JUDGE IN SUPERIOR COURT DISTRICT AND LIMITED JURISDICTION COURT DISTRICT

(a) Election, Term, Vacancies, Removal and Selection Criteria - Multiple Judge Courts.

MISC.

(1) Election. Each superior court district and each limited jurisdiction court district (including municipalities operating municipal courts) having more than one judge shall establish a procedure, by local court rule, for election, by the judges of the district, or a Presiding Judge, who shall supervise the judicial business of the district. In the same manner, the judges shall elect an Assistant Presiding Judge of the district who shall serve as Acting Presiding Judge during the absence or upon the request of the Presiding Judge and who shall perform such further duties as the Presiding Judge, the Executive Committee, if any, or the majority of the judges shall direct. If the judges of a district fail or refuse to elect a Presiding Judge, the Supreme Court shall appoint the Presiding Judge and Assistant Presiding Judge.

(2) Term. The Presiding Judge shall be elected for a term of not less than two years, subject to reelection. The term of the Presiding Judge shall commence on January 1 of the year in which the Presiding Judge's term begins.

(3) Vacancies. Interim vacancies of the office of Presiding Judge or Acting Presiding Judge shall be filled as provided in the local court rule in (a)(1).

(4) Removal. The Presiding Judge may be removed by a majority vote of the judges of the district unless otherwise provided by local court rule.

(5) Selection Criteria. Selection of a Presiding Judge should be based on the judge's 1) management and administrative ability, 2) interest in serving in the position, 3) experience and familiarity with a variety of trial court assignments, and 4) ability to motivate and educate other judicial officers and court personnel. A Presiding Judge must have at least four years of experience as a judge, unless this requirement is waived by a majority vote of the judges of the court.

#### *Commentary*

*It is the view of the committee that the selection and duties of a presiding judge should be enumerated in a court rule rather than in a statute. It is also our view that one rule should apply to all levels of court and include single judge courts. Therefore, the rule should be a GR (General Rule). The proposed rule addresses the process of selection/removal of a presiding judge and an executive committee. It was the intent of the committee to provide some flexibility to local courts wherein they could establish, by local rule, a removal process. Additionally, by delineating the selection criteria for the presiding judge, the committee intends that a rotational system of selecting a presiding judge is not advisable.*

(b) Selection and Term - Single Judge Courts. In court districts or municipalities having only one judge, that judge shall serve as the Presiding Judge for the judge's term of office.

(c) Notification of Chief Justice. The Presiding Judge so elected shall send notice of the election of the Presiding Judge and Assistant Presiding Judge to the Chief Justice of the Supreme Court within 30 days of election.

(d) Caseload Adjustment. To the extent possible, the judicial caseload should be adjusted to provide the Presiding Judge with sufficient time and resources to devote to the management and administrative duties of the office.

#### *Commentary*

*Whether caseload adjustments need to be made depends on the size and workload of the court. A recognition of the additional duties of the Presiding Judge by some workload adjustment should be made by larger courts. For example, the Presiding Judge could be assigned a smaller share of civil cases or a block of time every week could be set aside with no cases scheduled so the Presiding Judge could attend to administrative matters.*

(e) General Responsibilities. The Presiding Judge is responsible for leading the management and administration of the court's business, recommending policies and procedures that improve the court's effectiveness, and allocating resources in a way that maximizes the court's ability to resolve disputes fairly and expeditiously.

(f) Duties and Authority. The judicial and administrative duties set forth in this rule cannot be delegated to persons in either the legislative or executive branches of government. A Presiding Judge may delegate the performance of ministerial duties to court employees; however, it is still the Presiding Judge's responsibility to ensure they are performed in accordance with this rule. In addition to exercising general administrative supervision over the court, except those duties assigned to clerks of the superior court pursuant to law, the Presiding Judge shall:

(1) Supervise the business of the judicial district and judicial officers in such manner as to ensure the expeditious and efficient processing of all cases and equitable distribution of the workload among judicial officers;

(2) Assign judicial officers to hear cases pursuant to statute or rule. The court may establish general policies governing the assignment of judges.;

(3) Coordinate judicial officers' vacations, attendance at education programs, and similar matters;

(4) Develop and coordinate statistical and management information;

(5) Supervise the daily operation of the court including:

(a) All personnel assigned to perform court functions; and

(b) All personnel employed under the judicial branch of government including but not limited to working conditions, hiring, discipline, and termination decisions except wages, or benefits directly related to wages; and

(c) The court administrator, or equivalent employee, who shall report directly to the Presiding Judge.

#### *Commentary*

*The trial courts must maintain control of the working conditions for their employees. For some courts this includes control over some wage-related benefits such as vacation time. While the executive branch maintains control of wage issues, the courts must assert their control in all other areas of employee relations.*

*With respect to the function of the court clerk, generally the courts of limited jurisdiction have direct responsibility for the administration of their clerk's office as well as the supervision of the court clerks who work in the courtroom. In the superior courts, the clerk's office may be*

under the direction of a separate elected official or someone appointed by the local judges or local legislative or executive authority. In those cases where the superior court is not responsible for the management of the clerk's office the presiding judge should communicate to the county clerk any concerns regarding the performance of statutory court duties by county clerk personnel.

A model job description, including qualification and experience criteria, for the court administrator position shall be established by the Board for Judicial Administration. A model job description that generally describes the knowledge, skills, and abilities of a court administrator would provide guidance to Presiding Judges in modifying current job duties/responsibilities or for courts initially hiring a court administrator or replacing a court administrator.

(6) Supervise the court's accounts and auditing the procurement and disbursement of appropriations and preparation of the judicial district's annual budget request;

(7) Appoint standing and special committees of judicial officers necessary for the proper performance of the duties of the judicial district;

(8) Promulgate local rules as a majority of the judges may approve or as the Supreme Court shall direct;

(9) Supervise the preparation and filing of reports required by statute and court rule;

(10) Act as the official spokesperson for the court in all matters with the executive or legislative branches of state and local government and the community unless the Presiding Judge shall designate another judge to serve in this capacity;

#### *Commentary*

*This provision recognizes the Presiding Judge as the official spokesperson for the court. It is not the intent of this provision to preclude other judges from speaking to community groups or executive or legislative branches of state or local government.*

(11) Preside at meetings of the judicial officers of the district;

(12) Determine the qualifications of and establish a training program for pro tem judges and pro tem court commissioners; and

(13) Perform other duties as may be assigned by statute or court rule.

#### *Commentary*

*The proposed rule also addresses the duties and general responsibilities of the presiding judge. The language in subsection (d), (e), (f) and (g) was intended to be broad in order that the presiding judge may carry out his/her responsibilities. There has been some comment that individual courts should have the ability to change the "duties and general responsibilities" subsections by local rule. While our committee has not had an opportunity to discuss this fully, this approach has a number of difficulties:*

- *It would create many "Presiding Judge Rules" all of which are different*
- *It could subject some municipal and district court judges to pressure from their executive and/or legislative authority to relinquish authority over areas such as budget and personnel*
- *It would impede the ability of the BJA through AOC to offer consistent training to incoming presiding judges*

*The Unified Family Court subgroup of the Domestic Relations Committee suggested the presiding judge is given specific authority to appoint judges to the family court for long periods of time. Again the committee has not addressed the proposal; however, subsections (e) and (f) do give the presiding judge broad powers to manage the judicial resources of the court, including the assignment of judges to various departments.*

(g) Executive Committee. The judges of a court may elect an executive committee consisting of other judicial officers in the court to advise the Presiding Judge. By local rule, the judges may provide that any or all of the responsibilities of the Presiding Judge be shared with the Executive Committee and may establish additional functions and responsibilities of the Executive Committee.

#### *Commentary*

*Subsection (g) provides an option for an executive committee if the presiding judge and/or other members of the bench want an executive committee.*

(h) Oversight of judicial officers. It shall be the duty of the Presiding Judge to supervise judicial officers to the extent necessary to ensure the timely and efficient processing of cases. The Presiding Judge shall have the authority to address a judicial officer's failure to perform judicial duties and to propose remedial action. If remedial action is not successful, the Presiding Judge shall notify the Commission on Judicial Conduct of a judge's substantial failure to perform judicial duties, which includes habitual neglect of duty or persistent refusal to carry out assignments or directives made by the Presiding Judge, as authorized by this rule.

(i) Multiple Court Districts. In counties that have multiple court districts, the judges may, by majority vote of each court, elect to conduct the judicial business collectively under the provisions of this rule.

(j) Multiple Court Level Agreement. The judges of the superior, district, and municipal courts or any combination thereof in a superior court judicial district may, by majority vote of each court, elect to conduct the judicial business collectively under the provisions of this rule.

(k) Judicial Services Contracts. A judicial officer may contract with a municipal or county authority to serve as a judicial officer. The personal service contract shall not contain provisions which conflict with this rule, the Code of Judicial Conduct or statutory judicial authority, or which would create an impropriety or the appearance of impropriety concerning the judge's activities. The employment contract should acknowledge the court is a part of an independent branch of government and that the judicial officer or court

employees are bound to act in accordance with the provisions of the Code of Judicial Conduct and this rule.

*Commentary*

*The Board for Judicial Administration should establish a model judicial services contract.*

**RULE 4**

**PRESIDING JUDGE, MORE THAN ONE JUDGE IN SUPERIOR COURT DISTRICT**

(a) ~~Appointment. By local rule, a superior court district having more than one judge may establish a procedure for the appointment of a judge who shall be known as the Presiding Judge. The judicial business of the district shall be supervised by the Presiding Judge who shall be elected by the judges of the district for a term of not less than 1 year subject to reelection. In the same manner, the judges shall elect another judge of the district to serve as Acting Presiding Judge during the absence or inability of the Presiding Judge to act. Interim vacancies of the office of Presiding Judge and Acting Presiding Judge shall be filled as in the original election described above.~~

(b) ~~Notification of Chief Justice. The Presiding Judge so elected shall send notice of the election of the Presiding Judge and Acting Presiding Judge to the Chief Justice of the Supreme Court on or before March 15 of each year.~~

(c) ~~Duties and Authority. The duties and authority of the Presiding Judge, in addition to exercising general administrative supervision over the court, shall include:~~

(1) ~~Supervision of the business of the judicial district in such manner as to ensure the expeditious and efficient processing of all cases and equal distribution of the workload among the judges;~~

(2) ~~Assignment of cases for trial and assignment of judges to departments and motion calendars;~~

(3) ~~Preparation of a plan for judicial vacations, attendance at education programs, and similar matters;~~

(4) ~~Responsibility for developing and coordinating statistical and management information;~~

(5) ~~Exercise general supervision over all court personnel;~~

(6) ~~Responsibility for accounts and auditing as well as procurement and disbursement and the preparation of the judicial district's annual budget;~~

(7) ~~Appointment of the standing and special committees of the judges necessary for the proper performance of the duties of the judicial district;~~

(8) ~~Promulgate local rules as a majority of the judges may approve or as the Supreme Court shall direct;~~

(9) ~~Supervision of the preparation and filing of reports required by statute and court rule;~~

(10) ~~Act as the sole spokesperson for the court in all matters with the county council, county executive, county commissioners and state legislature unless the Presiding Judge shall designate another judge to serve in this capacity;~~

(11) ~~Other duties as may be assigned by statute or court rule.~~

(d) ~~Amendment of Rule. By local court rule, a superior court district may amend this rule by a two-thirds vote of all elected and sitting judges in the district. Such a local rule~~

~~may be promulgated no sooner than 2 years after the effective date of this rule.~~

**RULE 5**

**PRESIDING JUDGE, MULTIPLE JUDGE COURT DISTRICT, MULTIPLE DISTRICT COUNTIES**

(a) ~~Appointment. In all court districts having more than one judge, the judicial business of the district shall be supervised by one of those judges to be known as the "Presiding Judge," who shall be elected by the judges of such district for a term not to exceed 1 year subject to reelection. In the same manner, the judges shall elect another judge of said district to serve as Acting Presiding Judge during the temporary absence or disability of the Presiding Judge. Interim vacancies in the office of Presiding Judge or Acting Presiding Judge shall be filled as in the original election above described. Notice of the election of the new presiding judge shall be sent to the Chief Justice of the Supreme Court within 30 days. The Presiding Judge so elected shall send notice of the election of such Presiding Judge and Acting Presiding Judge to the Chief Justice of the Supreme Court on or before March 15 of each year. If the judges of a district shall fail or refuse to elect and certify to the Chief Justice of the Supreme Court, the Supreme Court shall by appointment designate the Presiding Judge and Acting Presiding Judge. In court districts or municipalities having only one judge, that judge shall be known as the "Presiding Judge". The name of the Presiding Judge shall be sent to the Chief Justice of the Supreme Court on or before March 15 of each year.~~

(b) ~~Duties and Authority. The duties and authority of the Presiding Judge, in addition to exercising general administrative supervision over the court shall include:~~

(1) ~~Supervising the business of the court in such a manner as to assure the expeditious and efficient handling of all cases and equal distribution of the workload among the judges;~~

(2) ~~Assigning the judges to departments, if the court is departmentalized;~~

(3) ~~Presiding at meetings of the judges of the district;~~

(4) ~~Developing and coordinating statistical and management information;~~

(5) ~~Supervising of all court personnel relating to all matters except wages or benefits directly related to wages, and including hiring and termination decisions. The Presiding Judge shall have complete supervision and authority over working conditions of all court employees. The court administrator, or equivalent employee, is an employee of the court and shall report directly to the Presiding Judge;~~

(6) ~~Assuming Responsibility for accounts and auditing, as well as procurement and disbursement of court funds. The Presiding Judge shall be responsible for the control and preparation of the court or judicial district's annual budget;~~

(7) ~~In multiple judge jurisdictions, the Presiding Judge shall be guided in personnel and budgetary matters by the policies, if any, established by the judges on that bench;~~

(8) ~~Promulgating local rules as a majority of the judges may approve or as the Supreme Court may direct;~~

(9) ~~Supervising the preparation and filing of reports as required by statute and court rule;~~

(10) Acting as the sole spokesperson for the court in all matters dealing with the executive or legislative branches of government;

(11) Assuming other duties as may be assigned by statute or court rule.

(e) Multiple Court Districts. In counties having multiple court districts, the judges may, by majority vote, elect to conduct the judicial business collectively under the provisions of this rule.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the State Supreme Court and appear in the Register pursuant to the requirements of RCW 34.08.040.

WSR 02-09-014
RULES OF COURT
STATE SUPREME COURT
[April 3, 2002]

IN THE MATTER OF THE ADOPTION ) ORDER
OF NEW GR 26 AND AMENDMENT TO ) NO. 25700-A-733
CJC 3 (A)(1) )

The Board for Judicial Administration having recommended the adoption of New GR 26 and CJC 3 (A)(1), and the Court having determined that the proposed new rule and amendment will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

(a) That the new rule and amendment as attached hereto are adopted.

(b) That the new rule and amendment will be published in the Washington Reports and become effective July 1, 2002.

DATED at Olympia, Washington this 3rd day of April 2002.

Alexander, C.J.

Smith, J.

Ireland, J.

Johnson, J.

Bridge, J.

Madsen, J.

Chambers, J.

Owens, J.

PROPOSED NEW GR 26
MANDATORY CONTINUING JUDICIAL EDUCATION

Preamble. The protection of the rights of free citizens depends upon the existence of an independent and competent judiciary. The challenge of maintaining judicial competence requires ongoing education of judges in the application of legal principles and the art of judging in order to meet the needs of a changing society. This rule establishes the minimum requirements for continuing education of judicial officers.

(a) Minimum Requirement. Each judicial officer shall complete a minimum of 45 credit hours of judicial education approved by the Board for Court Education (BCE) every three years, commencing January 1 of the calendar year following the adoption of this rule. If a judicial officer completes more than 45 such credit hours in a three-year reporting period, up to 15 hours of the excess credit may be carried forward and applied to the judicial officer's education requirement for the following three-year reporting period. At least six credit hours for each three-year reporting period shall be earned by completing programs in judicial ethics approved by the BCE. The fifteen credit hours that may be carried forward may include two credit hours toward the judicial ethics requirement.

(b) Judicial College Attendance.

1) A judicial officer in a District Court, Municipal Court, or Superior Court shall attend and complete the Washington Judicial College program within twelve months of the initial appointment or election to the judicial office.

2) A judicial officer who attended the Washington Judicial College during his or her term of office in a court of limited jurisdiction shall attend and complete the Washington Judicial College within twelve months of any subsequent appointment or election to the Superior Court. A judicial officer who attended the Washington Judicial College during his or her term of office in the Superior Court shall attend and complete the Washington Judicial College within twelve months of any subsequent appointment or election as a judicial officer in a court of limited jurisdiction.

3) A judicial officer of a District Court, Municipal Court, or Superior Court who has been a judicial officer at the time of the adoption of this rule for less than four years but has not attended the Washington Judicial College shall attend and complete the Washington Judicial College program within twelve months of the adoption of this rule.

(c) Accreditation. BCE shall subject to the approval of the Supreme Court establish and publish standards for accreditation of continuing judicial education programs and may choose to award continuing judicial education credits for self-study or teaching. Judicial education credit shall be given for programs BCE determines enhance the knowledge and skills that are relevant to the judicial office.

(d) Compliance Report. Each judicial officer shall file a report with the Office of the Administrator for the Courts (OAC) Administrative Office of the Courts (AOC) on or before January 31 each year in such form as the Office of the Administrator for the Courts Administrative Office of the Courts shall prescribe concerning the judicial officer's progress toward the judicial education requirements of sections (a) and (b) of this rule during the previous calendar year. By April 15, BCE shall send a reminder of the requirements of this rule to any judicial officer who has not filed the annual progress report. OAC AOC shall publish a report with the names of all judicial officers who do not fulfill the requirements of sections (a) and (b) of this rule. The OAC AOC report shall be disseminated by means that may include, but are not limited to, publishing on the Washington Courts Internet web site, publishing the information as part of any voter's guide produced by or under the direction of the Office of the

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~~Administrator for the Courts~~ Administrative Office of the Courts, and releasing the information in electronic or printed form to media organizations throughout the State.

(e) **Delinquency.** Failure to comply with the requirements of this rule may be deemed a violation of the Code of Judicial Conduct that would subject a judicial officer to sanction by the Commission on Judicial Conduct.

(f) **Definition.** The term "judicial officer" as used in this rule shall not include judges pro tempore but shall otherwise include all full or part time appointed or elected justices, judges, or court commissioners and magistrates.

CANON 3—JUDGES SHALL PERFORM THE DUTIES OF THEIR OFFICE IMPARTIALLY AND DILIGENTLY

The judicial duties of judges should take precedence over all other activities. Their judicial duties include all the duties of office prescribed by law. In the performance of these duties, the following standards apply:

(A) Adjudicative Responsibilities.

(1) Judges should be faithful to the law and maintain professional competence in it, and comply with the continuing judicial education requirements of GR 26. Judges should be unswayed by partisan interests, public clamor, or fear of criticism.

(2) Judges should maintain order and decorum in proceedings before them.

(3) Judges should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom judges deal in their official capacity, and should require similar conduct of lawyers, and of the staff, court officials, and others subject to their direction and control.

Comment

The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Courts can be efficient and business-like while being patient and deliberate.

(4) Judges should accord to every person who is legally interested in a proceeding, or that persons lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceeding. Judges, however, may obtain the advice of a disinterested expert on the law

applicable to a proceeding before them, by amicus curiae only, if they afford the parties reasonable opportunity to respond.

Comment

The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted. It does not preclude judges from consulting with other judges, or with court personnel whose function is to aid judges in carrying out their adjudicative responsibilities. An appropriate and often desirable procedure for a court to obtain the advice of a disinterested expert on legal issues is to invite the expert to file a brief amicus curiae.

(5) Judges shall perform judicial duties without bias or prejudice.

Comment

A judge must perform judicial duties impartially and fairly. A judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute.

(6) Judges should dispose promptly of the business of the court.

Comment

Prompt disposition of the courts business requires judges to devote adequate time to their duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials, litigants and their lawyers cooperate with them to that end.

(7) Judges shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing. The judge shall require similar abstention on the part of court personnel subject to the judge's direction and control. This section does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This section does not apply to proceedings in which the judge is a litigant in a personal capacity.

(8) Judges shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.

Comment

Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial in a subsequent case.

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

WSR 02-09-015  
RULES OF COURT  
STATE SUPREME COURT

[April 3, 2002]

IN THE MATTER OF THE ADOPTION ) ORDER  
OF THE AMENDMENT TO GR 24 (b)(10) ) NO. 25700-A-734

The Court Management Council having recommended the adoption of the proposed amendment to GR 24 (b)(10), and the Court having determined that the proposed amendment 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 amendment as attached hereto is adopted.

(b) That pursuant to the emergency provisions of GR 9(i), the amendment will be published expeditiously and become effective upon publication.

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DATED at Olympia, Washington this 3rd day of April 2002.

Gerry L. Alexander, C.J.

<u>Smith, J.</u>	<u>Ireland, J.</u>
<u>Johnson, J.</u>	<u>Bridge, J.</u>
<u>Madsen, J.</u>	<u>Chambers, J.</u>
	<u>Owens, J.</u>

PROPOSED AMENDMENT  
GENERAL RULES (GR)

GR 24 DEFINITION OF THE PRACTICE OF LAW  
Submitted by the Court Management Council

(a) **General Definition:** The practice of law is the application of legal principles and judgment with regard to the circumstances or objectives of another entity or person(s) which require the knowledge and skill of a person trained in the law. This includes but is not limited to:

(1) Giving advice or counsel to others as to their legal rights or the legal rights or responsibilities of others for fees or other consideration.

(2) Selection, drafting, or completion of legal documents or agreements which affect the legal rights of an entity or person(s).

(3) Representation of another entity or person(s) in a court, or in a formal administrative adjudicative proceeding or other formal dispute resolution process or in an administrative adjudicative proceeding in which legal pleadings are filed or a record is established as the basis for judicial review.

(4) Negotiation of legal rights or responsibilities on behalf of another entity or person(s).

(b) **Exceptions and Exclusions:** Whether or not they constitute the practice of law, the following are permitted:

(1) Practicing law authorized by a limited license to practice pursuant to Admission to Practice Rules 8 (special admission for: a particular purpose or action; indigent representation; educational purposes; emeritus membership; house counsel), 9 (legal interns), 12 (limited practice for closing officers), or 14 (limited practice for foreign law consultants).

(2) Serving as a court house facilitator pursuant to court rule.

(3) Acting as a lay representative authorized by administrative agencies or tribunals.

(4) Serving in a neutral capacity as a mediator, arbitrator, conciliator, or facilitator.

(5) Participation in labor negotiations, arbitrations or conciliations arising under collective bargaining rights or agreements.

(6) Providing assistance to another to complete a form provided by a court for protection under RCW chapters 10.14 (harassment) or 26.50 (domestic violence prevention) when no fee is charged to do so.

(7) Acting as a legislative lobbyist.

(8) Sale of legal forms in any format.

(9) Activities which are preempted by Federal law.

(10) Serving in a neutral capacity as a clerk or court employee providing information to the public pursuant to Supreme Court Order.

~~(10)~~ (11) Such other activities that the Supreme Court has determined by published opinion do not constitute the unlicensed or unauthorized practice of law or that have been permitted under a regulatory system established by the Supreme Court.

(c) **Nonlawyer Assistants:** Nothing in this rule shall affect the ability of nonlawyer assistants to act under the supervision of a lawyer in compliance with Rule 5.3 of the Rules of Professional Conduct.

(d) **General Information:** Nothing in this rule shall affect the ability of a person or entity to provide information of a general nature about the law and legal procedures to members of the public.

(e) **Governmental agencies:** Nothing in this rule shall affect the ability of a governmental agency to carry out responsibilities provided by law.

(f) **Professional Standards:** Nothing in this rule shall be taken to define or affect standards for civil liability or professional responsibility.

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

WSR 02-09-016  
RULES OF COURT  
STATE SUPREME COURT  
[April 3, 2002]

IN THE MATTER OF THE ADOPTION ) ORDER  
OF THE AMENDMENT TO GR 23(m) ) NO. 25700-A-735

The Professional Guardian Board having recommended the adoption of the proposed amendment to GR 23(m), and the Court having determined that the proposed amendment 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 amendment as attached hereto is adopted.

(b) That pursuant to the emergency provisions of GR 9(i), the amendment will be published expeditiously and become effective upon publication.

DATED at Olympia, Washington this 3rd day of April 2002.

Gerry L. Alexander, C.J.

<u>Smith, J.</u>	<u>Ireland, J.</u>
<u>Johnson, J.</u>	<u>Bridge, J.</u>

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Madsen, J.

Chambers, J.

Owens, J.

Board Room on the Bellingham Technical College campus.  
Call 738-3105 ext. 334 for information.

**GR 23. RULE FOR CERTIFYING PROFESSIONAL GUARDIANS**

(a) - (l) [Unchanged.]

(m) **Ethics Advisory Opinions.**

(1) The Board may issue written ethics advisory opinions to inform and advise Certified Professional Guardians and Certified Agencies of their ethical obligations.

(2) Any Certified Professional Guardian or Certified Agency may request in writing an ethical advisory opinion from the Board. Compliance with an opinion issued by the Board shall be considered as evidence of good faith in any subsequent disciplinary proceeding involving a Certified Professional Guardian or Certified Agency.

(3) The Board shall publish opinions issued pursuant to this rule in electronic or paper format. ~~A~~ The identity of the person requesting for an opinion is confidential and not public information.

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

**Reviser's note:** The brackets and enclosed material in the text above occurred in the copy filed by the State Supreme Court and appear in the Register pursuant to the requirements of RCW 34.08.040.

**WSR 02-09-017**

**NOTICE OF PUBLIC MEETINGS  
DEPARTMENT OF AGRICULTURE**

(Asparagus Commission)  
[Memorandum—April 5, 2002]

The Washington Asparagus Commission has changed a regularly scheduled meeting time.

The July meeting, scheduled for 9:00 a.m. in Walla Walla, Washington at the WSU extension has been changed to 1:00 p.m.

No other changes are proposed at this time.

Should you have any further questions in regard to Washington Asparagus Commission contact Alan Schreiber, 2621 Ringold Road, Eltopia, WA 99330, (509) 266-4303, aschreib@centurytel.net, or Cynthia Hayes, 2621 Ringold Road, Eltopia, WA 99330, (509) 266-4303, c\_hayes@centurytel.net.

**WSR 02-09-022**

**NOTICE OF PUBLIC MEETINGS  
BELLINGHAM TECHNICAL COLLEGE**

[Memorandum—April 8, 2002]

The regularly scheduled meeting of the board of trustees of Bellingham Technical College will be held on Thursday, April 18, 2002, 9-11 a.m., in the College Services Building

**WSR 02-09-031**

**NOTICE OF PUBLIC MEETINGS  
DEPARTMENT OF LICENSING**

[Memorandum—April 9, 2002]

The Department of Licensing is responsible for the administration and enforcement of the law pertaining to driver training schools as set forth in chapter 46.82 RCW. The director shall be assisted in the duties and responsibilities of this chapter by the Drivers Training Advisory Committee. The Driver's Training School Advisory Committee shall meet at least semiannually and shall have additional meetings as may be called by the director. The following is a schedule of future meetings.

April 22, 2002	9 a.m. - 1:00 p.m.
May 6, 2002	9 a.m. - 1:00 p.m.
May 20, 2002	9 a.m. - 1:00 p.m.
June 3, 2002	9 a.m. - 1:00 p.m.
June 17, 2002	9 a.m. - 1:00 p.m.
(tentative date)	

Meetings will be held at the Highways-Licenses Building. Future meeting dates will be scheduled based on committee member schedules and availability.

**WSR 02-09-035**

**INTERPRETIVE OR POLICY STATEMENT  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES**

[Filed April 10, 2002, 3:42 p.m.]

**DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT**

Document Title: Numbered Memorandum 02-11 MAA.  
Subject: Prescribers identifier—Prescription drug program (all prescribers memo).

Effective Date: .Not mandatory - April 15, 2002 (date of letter).

Document Description: The Medical Assistance Administration (MAA) is requesting prescribing providers who have a 9-digit Drug Enforcement Agency (DEA) prescriber number to put their DEA number on all prescriptions for medical assistance clients, **effective immediately**, instead of their 7-digit DSHS provider number.

To receive a copy of the interpretive or policy statement, contact Kevin Sullivan, Regulatory Improvement Coordinator, Department of Social and Health Services, Medical Assistance Administration, Division of Program Support, P.O. Box 45533, Olympia, WA 98504-5533, phone (360) 725-1344 or go to website <http://maa.dshs.wa.gov> (click on

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Numbered Memorandum link), TDD 1-800-848-5429, fax (360) 586-9727, e-mail <mailto:sullikm@dshs.wa.gov>.

April 8, 2002

E. A. Myers, Manager  
Rules and Publications Section

### WSR 02-09-036

#### INTERPRETIVE OR POLICY STATEMENT DEPARTMENT OF SOCIAL AND HEALTH SERVICES

[Filed April 10, 2002, 3:42 p.m.]

##### DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: Numbered Memorandum 02-12 MAA.

Subject: Prescribers identifier—Prescription drug program (pharmacy only).

Effective Date: Not mandatory - April 15, 2002 (date of letter).

Document Description: This memorandum is to inform pharmacy providers that the Medical Assistance Administration (MAA) is requesting prescribing providers who have a 9-digit Drug Enforcement Agency (DEA) prescriber number to put their DEA number on all prescriptions for medical assistance clients, **effective immediately**, instead of their 7-digit DSHS provider number.

To receive a copy of the interpretive or policy statement, contact Kevin Sullivan, Regulatory Improvement Coordinator, Department of Social and Health Services, Medical Assistance Administration, Division of Program Support, P.O. Box 45533, Olympia, WA 98504-5533, phone (360) 725-1344 or go to website <http://maa.dshs.wa.gov> (click on Numbered Memorandum link), TDD 1-800-848-5429, fax (360) 586-9727, e-mail <mailto:sullikm@dshs.wa.gov>.

April 8, 2002

E. A. Myers, Manager  
Rules and Publications Section

### WSR 02-09-044

#### NOTICE OF PUBLIC MEETINGS CONVENTION AND TRADE CENTER

[Memorandum—April 10, 2002]

A regular meeting of the Washington State Convention and Trade Center board of directors will be held on **Tuesday, April 16, 2002, at 2:00 p.m.** in the Administrative Boardroom, 5th Floor, of the Convention Center, 800 Convention Place, Seattle.

If you have any questions regarding this meeting, please call (206) 694-5000.

### WSR 02-09-054

#### OFFICE OF THE INSURANCE COMMISSIONER

[Filed April 12, 2002, 4:14 p.m.]

#### TECHNICAL ASSISTANCE ADVISORY T 02-02

The United States Department of the Treasury (treasury) and the National Association of Insurance Commissioners (NAIC) asked Commissioner Kreidler to assist in notifying Washington domestic insurers and licensees about the federal USA PATRIOT ACT of 2001 and the federal rule making to implement the law. The OIC does not regulate money-laundering and does not have a role in the federal law other than this courtesy notification. Treasury and the NAIC developed the following language to be used to inform insurers and licensees:

"On October 26, 2001, President Bush signed into law the "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001"<sup>1</sup> (the act). This law, enacted in response to the terrorist attacks of September 11, 2001, strengthens our nation's ability to combat terrorism and prevent and detect money-laundering activities.

The purpose of this technical assistance advisory is to advise persons or entities regulated by the Office of the Insurance Commissioner of important new responsibilities under the act. In particular, Section 352 of the act amends the Bank Secrecy Act ("BSA")<sup>2</sup> to require that all financial institutions establish an anti-money laundering program, and Section 326 amends the BSA to require the Secretary of the Treasury (treasury) to adopt minimum standards for financial institutions regarding the identity of customers that open accounts.

#### Section 352 - Establishing Anti-Money Laundering Programs.

Section 352 of the act requires the establishment of an anti-money laundering program, including, at a minimum:

- The development of internal policies, procedures, and controls; these should be appropriate for the level of risk of money laundering identified.
- The designation of a compliance officer; the officer should have appropriate training and background to execute their responsibilities. In addition, the compliance officer should have access to senior management.
- An ongoing employee training program; a training program should match training to the employees' roles in the organization and their job functions. The training program should be provided as often as necessary to address gaps created by movement of employees within the organization and turnover.
- An independent audit function to test the programs. The independent audit function does not require engaging outside consultants. Internal staff that is independent of those developing and executing the anti-money laundering program may conduct the audit.

Treasury is currently drafting a regulation describing the anti-money laundering compliance program for insurers.

The regulation may borrow from the anti-money laundering compliance program rule recently proposed by the NASD for broker-dealers,<sup>3</sup> and is expected to be promulgated in late spring or early summer.

Insurance companies are included in the BSA's definition of financial institution, and should be prepared to comply with the new law and the regulations promulgated thereunder. *Section 352 of the act becomes effective on April 24, 2002; all insurance companies are required to be in compliance with the law by that date.*

As part of its rule-making process, treasury is determining the extent to which other insurance entities will be considered financial institutions for purposes of the regulation. It is anticipated that the regulation could cover all other persons and entities engaged in the business of insurance, including brokers, agents, and managing general agents, and may also include other regulated entities. These insurance entities will be required to comply with the regulation by the regulation's effective date.

Anti-money laundering programs are not anticipated to be "one size fits all." Rather, it is expected that they will be developed using a risk-based approach. Development of an anti-money laundering program should begin with identification of those areas, processes and programs that are susceptible to money laundering activities. The practices and procedures implemented under the program should reflect the risks of money laundering given the entity's products, methods of distribution, contact with customers and forms of customer payment and deposits.

#### **Section 326 - Customer Identification.**

Section 326 of the act amends the BSA to require that treasury issue regulations setting forth minimum standards for financial institutions regarding the identity of their customers in connection with the purchase of a policy or contract of insurance. This program must set forth customer identity verification and documentation procedures, as well as procedures the insurer will employ to notify its customers about this requirement and determine whether the customer appears on government lists of known or suspected terrorists or terrorist organizations.

Final regulations regarding this requirement are to be issued by the Department of the Treasury by October 26, 2002. Proposed regulations will be published in the Federal Register<sup>4</sup> later in the year. Through the rule-making process, treasury will determine which insurance entities will be subject to the regulations. Insurance entities subject to the rules will be required to comply when the final treasury regulations become effective.

Requests for additional information or questions regarding the act may be directed to Linda L. Duzick, Office of Thrift Supervision, serving as insurance industry liaison for the Department of the Treasury, at (202) 906-6565 or [linda.duzick@ots.treas.gov](mailto:linda.duzick@ots.treas.gov).

Questions regarding the OIC's role may be directed to Jon Hedegard, Rules Coordinator at the Office of the Insurance Commissioner at (360) 664-4629 or [JonH@oic.wa.gov](mailto:JonH@oic.wa.gov).

<sup>1</sup> The full text of the law can be obtained at [www.access.gpo.gov/congress](http://www.access.gpo.gov/congress). Scroll to public and private laws, select 107th Congress, and select Public Law 107-56.

<sup>2</sup> Codified in subchapter II of chapter 53 of title 31, U.S. Code.

<sup>3</sup> 67 C.F.R. 8565 (February 25, 2002).

<sup>4</sup> The Federal Register website address is [www.access.gpo.gov/nara](http://www.access.gpo.gov/nara).

### WSR 02-09-058 NOTICE OF PUBLIC MEETINGS CONVENTION AND TRADE CENTER

[Memorandum—April 11, 2002]

A meeting of the Washington State Convention and Trade Center Board of Directors Design Committee will be held on **Tuesday, April 16, 2002, at 12:30 p.m.** in the Administrative Boardroom, 5th Floor, of the Convention Center, 800 Convention Place, Seattle.

If you have any questions regarding this meeting, please call (206) 694-5000.

### WSR 02-09-078 INTERPRETIVE OR POLICY STATEMENT DEPARTMENT OF SOCIAL AND HEALTH SERVICES

[Filed April 17, 2002, 8:36 a.m.]

#### DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: Numbered Memorandum 02-15 MAA.

Subject: Maximum allowable fees for injectable drugs.

Effective Date: Dates of service on and after May 1, 2002.

Document Description: **Effective for dates of service on and after May 1, 2002**, the Medical Assistance Administration (MAA) will begin using maximum allowable fees for most injectable drugs administered in a physician's office. This memorandum updates pages to the Physician-Related Services Billing Instructions (C15/16 and Section L).

To receive a copy of the interpretive or policy statement, contact Kevin Sullivan, Regulatory Improvement Coordinator, Department of Social and Health Services, Medical Assistance Administration, Division of Program Support, P.O. Box 45533, Olympia, WA 98504-5533, phone (360) 725-1344 or go to website <http://maa.dshs.wa.gov> (click on Numbered Memorandum link), TDD 1-800-848-5429, fax (360) 586-9727, e-mail <mailto:sullikm@dshs.wa.gov>.

April 15, 2002

E. A. Myers, Manager  
Rules and Publications Section

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**WSR 02-09-086**  
**NOTICE OF PUBLIC MEETINGS**  
**JAIL INDUSTRIES BOARD**

[Memorandum—April 15, 2002]

**NOTICE OF PUBLIC MEETINGS**  
**JAIL INDUSTRIES BOARD**

**2002 BOARD MEETING SCHEDULE - REVISED**

February 8, 2002	King County Regional Justice Center	Kent
April 5, 2002	Clark County Jail Work Center Industries Building	Vancouver
July 26, 2002	Plumbers/Pipefitters Training Center	Tukwila
October 25, 2002	Criminal Justice Training Center	Burien

All regular meetings run from 10:00 a.m. through 2:00 p.m. For further information, please contact Jill Will, Executive Director, Jail Industries Board at 206 Tenth Avenue S.E., Olympia, WA 98501-1311, phone (360) 586-1534, fax (360) 664-2812, e-mail [jwill@wacounties.org](mailto:jwill@wacounties.org), Web [www.jib.wa.gov](http://www.jib.wa.gov).

**WSR 02-09-087**  
**OFFICE OF THE GOVERNOR**

[Filed April 17, 2002, 10:01 a.m.]

**NOTICE OF APPEAL**  
(RCW 34.05.330(3))

Pursuant to RCW 34.05.330(3), you are hereby notified for publication in the Washington State Register that:

On April 11, 2002, the Governor received an appeal to the March 26, 2002 denial by the Washington State Ferry System to amend the rules governing the ferry system's tariff schedules, filed by David M. Estes.

DATED: April 16, 2002

Everett H. Billingslea  
General Counsel to the Governor

MISC.

**Table of WAC Sections Affected**

**KEY TO TABLE**

This table covers the current calendar year through this issue of the Register and should be used to locate rules amended, adopted, or repealed subsequent to the publication date of the latest WAC or Supplement.

- |  |   |
|--|---|
| <p><b>Symbols:</b></p> <p>AMD = Amendment of existing section<br/>         A/R = Amending and recodifying a section<br/>         DECOD = Decodification of an existing section<br/>         NEW = New section not previously codified<br/>         OBJECT = Notice of objection by Joint Administrative Rules Review Committee<br/>         PREP = Preproposal comments<br/>         RE-AD = Readoption of existing section<br/>         RECOD = Recodification of previously codified section<br/>         REP = Repeal of existing section<br/>         RESCIND = Rescind of existing section<br/>         REVIEW = Review of previously adopted rule<br/>         SUSP = Suspending an existing section</p> | <p><b>Suffixes:</b></p> <p>-C = Continuance of previous proposal<br/>         -E = Emergency action<br/>         -P = Proposed action<br/>         -S = Supplemental notice<br/>         -W = Withdrawal of proposed action<br/>         -X = Expedited rule making<br/>         -XA = Expedited adoption<br/>         -XR = Expedited repeal<br/>         No suffix means permanent action</p> <p><b>WAC #</b> Shows the section number under which an agency rule is or will be codified in the Washington Administrative Code.</p> <p><b>WSR #</b> Shows the issue of the Washington State Register where the document may be found; the last three digits identify the document within the issue.</p> |
|--|---|

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4-25-745	AMD	02-04-064	16-157-010	NEW-P	02-04-109	16-162-040	REP-P	02-04-109
4-25-746	AMD	02-04-064	16-157-020	NEW-P	02-04-109	16-162-045	REP-P	02-04-109
4-25-750	AMD	02-04-064	16-157-030	NEW-P	02-04-109	16-162-050	REP-P	02-04-109
4-25-752	NEW	02-04-064	16-157-100	NEW-P	02-04-109	16-162-070	REP-P	02-04-109
4-25-756	NEW	02-04-064	16-157-110	NEW-P	02-04-109	16-162-100	REP-P	02-04-109
4-25-783	AMD	02-04-064	16-157-120	NEW-P	02-04-109	16-164-010	REP-P	02-04-109
4-25-790	AMD	02-04-064	16-157-200	NEW-P	02-04-109	16-164-020	REP-P	02-04-109
4-25-791	AMD	02-04-064	16-157-210	NEW-P	02-04-109	16-164-035	REP-P	02-04-109
4-25-792	AMD	02-04-064	16-157-220	NEW-P	02-04-109	16-164-037	REP-P	02-04-109
4-25-793	NEW	02-04-064	16-157-230	NEW-P	02-04-109	16-164-040	REP-P	02-04-109
4-25-795	AMD	02-04-064	16-157-240	NEW-P	02-04-109	16-164-050	REP-P	02-04-109
4-25-820	AMD	02-04-064	16-157-250	NEW-P	02-04-109	16-164-055	REP-P	02-04-109
4-25-830	AMD	02-04-064	16-157-255	NEW-P	02-04-109	16-164-060	REP-P	02-04-109
4-25-910	AMD	02-04-064	16-157-260	NEW-P	02-04-109	16-164-070	REP-P	02-04-109
16-104	PREP	02-06-050	16-157-270	NEW-P	02-04-109	16-164-080	REP-P	02-04-109
16-154-010	REP-P	02-04-109	16-157-275	NEW-P	02-04-109	16-164-085	REP-P	02-04-109
16-154-030	REP-P	02-04-109	16-157-280	NEW-P	02-04-109	16-164-090	REP-P	02-04-109
16-154-040	REP-P	02-04-109	16-157-290	NEW-P	02-04-109	16-164-100	REP-P	02-04-109
16-154-050	REP-P	02-04-109	16-158-010	REP-P	02-04-109	16-164-110	REP-P	02-04-109
16-154-053	REP-P	02-04-109	16-158-020	REP-P	02-04-109	16-228-1231	AMD	02-04-041
16-154-060	REP-P	02-04-109	16-158-027	REP-P	02-04-109	16-228-1235	NEW-E	02-06-048
16-154-070	REP-P	02-04-109	16-158-028	REP-P	02-04-109	16-228-1235	NEW-P	02-07-080
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16-228-12352	NEW-E	02-06-048	16-324-375	AMD-P	02-08-087	16-557-040	REP-C	02-09-005
16-228-12352	NEW-P	02-07-080	16-324-398	AMD-P	02-08-087	16-557-041	REP-C	02-09-005
16-228-1237	NEW-E	02-06-048	16-324-401	AMD-P	02-08-087	16-557-050	REP-C	02-09-005
16-228-1237	NEW-P	02-07-080	16-324-431	AMD-P	02-08-087	16-557-060	REP-C	02-09-005
16-228-12371	NEW-E	02-06-048	16-324-720	AMD-P	02-08-087	16-557-070	REP-C	02-09-005
16-228-12371	NEW-P	02-07-080	16-324-730	AMD-P	02-08-087	16-557-080	REP-C	02-09-005
16-228-1238	NEW-P	02-07-080	16-324-740	AMD-P	02-08-087	16-662-105	AMD-X	02-07-121
16-301-025	PREP	02-05-083	16-324-750	AMD-P	02-08-087	16-674	PREP	02-08-084
16-301-025	AMD-P	02-09-059	16-325-015	AMD-X	02-04-020	16-675	PREP	02-08-083
16-301-045	PREP	02-05-083	16-325-015	AMD	02-09-030	16-695-070	AMD-P	02-07-122
16-301-045	AMD-P	02-09-059	16-400-045	AMD-X	02-09-012	16-752	PREP	02-05-089
16-301-050	PREP	02-05-083	16-403-141	AMD-P	02-07-118	16-752-610	AMD-P	02-09-098
16-301-050	AMD-P	02-09-059	16-403-142	AMD-P	02-07-118	36-12-010	REP	02-03-069
16-302-091	PREP	02-05-083	16-403-190	PREP	02-03-128	36-12-011	AMD	02-03-069
16-302-091	AMD-P	02-09-059	16-403-190	AMD-P	02-07-118	36-12-020	AMD	02-03-069
16-302-125	PREP	02-05-083	16-403-280	AMD-P	02-07-118	36-12-030	AMD	02-03-069
16-302-125	AMD-P	02-09-059	16-462-015	AMD-P	02-08-085	36-12-040	AMD	02-03-069
16-302-142	NEW-P	02-09-059	16-462-020	AMD-P	02-08-085	36-12-050	AMD	02-03-069
16-302-250	PREP	02-05-083	16-462-021	AMD-P	02-08-085	36-12-060	REP	02-03-069
16-302-250	AMD-P	02-09-059	16-462-022	AMD-P	02-08-085	36-12-070	AMD	02-03-069
16-302-260	PREP	02-05-083	16-462-025	AMD-P	02-08-085	36-12-080	REP	02-03-069
16-302-260	AMD-P	02-09-059	16-462-030	AMD-P	02-08-085	36-12-100	AMD	02-03-069
16-302-330	PREP	02-05-083	16-462-050	AMD-P	02-08-085	36-12-110	AMD	02-03-069
16-302-330	AMD-P	02-09-059	16-462-055	AMD-P	02-08-085	36-12-120	REP	02-03-069
16-302-385	PREP	02-05-083	16-470-800	NEW-P	02-06-131	36-12-130	AMD	02-03-069
16-302-385	AMD-P	02-09-059	16-470-800	NEW-E	02-07-120	36-12-140	AMD	02-03-069
16-302-390	PREP	02-05-083	16-470-800	NEW	02-09-099	36-12-150	AMD	02-03-069
16-302-390	AMD-P	02-09-059	16-470-810	NEW-P	02-06-131	36-12-160	REP	02-03-069
16-302-410	PREP	02-05-083	16-470-810	NEW-E	02-07-120	36-12-170	AMD	02-03-069
16-302-410	AMD-P	02-09-059	16-470-810	NEW	02-09-099	36-12-190	AMD	02-03-069
16-302-435	PREP	02-05-083	16-470-820	NEW-P	02-06-131	36-12-200	AMD	02-03-069
16-302-435	AMD-P	02-09-059	16-470-820	NEW-E	02-07-120	36-12-210	REP	02-03-069
16-302-440	PREP	02-05-083	16-470-820	NEW	02-09-099	36-12-220	REP	02-03-069
16-302-440	REP-P	02-09-059	16-470-830	NEW-P	02-06-131	36-12-240	AMD	02-03-069
16-302-490	PREP	02-05-083	16-470-830	NEW-E	02-07-120	36-12-250	AMD	02-03-069
16-302-490	AMD-P	02-09-059	16-470-830	NEW	02-09-099	36-12-260	AMD	02-03-069
16-302-545	PREP	02-05-083	16-470-840	NEW-P	02-06-131	36-12-270	AMD	02-03-069
16-302-685	PREP	02-05-083	16-470-840	NEW-E	02-07-120	36-12-280	AMD	02-03-069
16-302-685	AMD-P	02-09-059	16-470-840	NEW	02-09-099	36-12-285	NEW	02-03-069
16-303-200	PREP	02-03-127	16-470-840	NEW	02-09-099	36-12-285	NEW	02-03-069
16-303-200	AMD-P	02-09-060	16-470-850	NEW-P	02-06-131	36-12-290	AMD	02-03-069
16-303-210	PREP	02-03-127	16-470-850	NEW-E	02-07-120	36-12-300	AMD	02-03-069
16-303-210	AMD-P	02-09-060	16-470-850	NEW	02-09-099	36-12-310	AMD	02-03-069
16-303-230	PREP	02-03-127	16-470-860	NEW-P	02-06-131	36-12-320	AMD	02-03-069
16-303-230	AMD-P	02-09-060	16-470-860	NEW-E	02-07-120	36-12-330	REP	02-03-069
16-303-250	PREP	02-03-127	16-470-860	NEW	02-09-099	36-12-340	REP	02-03-069
16-303-250	PREP	02-05-083	16-470-870	NEW-P	02-06-131	36-12-350	REP	02-03-069
16-303-250	AMD-P	02-09-060	16-470-870	NEW-E	02-07-120	36-12-360	AMD	02-03-069
16-303-300	PREP	02-03-127	16-470-870	NEW	02-09-099	36-12-363	REP	02-03-069
16-303-300	AMD-P	02-09-060	16-484-210	AMD-P	02-08-086	36-12-364	AMD	02-03-069
16-303-310	PREP	02-03-127	16-484-220	AMD-P	02-08-086	36-12-465	AMD	02-03-069
16-303-310	AMD-P	02-09-060	16-484-230	AMD-P	02-08-086	44-10	PREP	02-06-046
16-303-317	PREP	02-03-127	16-484-240	AMD-P	02-08-086	51-56-1500	NEW-W	02-05-032
16-303-317	AMD-P	02-09-060	16-484-250	AMD-P	02-08-086	82-50-021	AMD-X	02-09-025
16-303-320	PREP	02-03-127	16-484-260	AMD-P	02-08-086	118-65-020	AMD-P	02-09-072
16-303-320	AMD-P	02-09-060	16-532-020	AMD-P	02-06-130	118-65-030	AMD-P	02-09-072
16-303-330	PREP	02-03-127	16-532-025	NEW-P	02-06-130	118-65-040	AMD-P	02-09-072
16-303-330	AMD-P	02-09-060	16-532-040	AMD-P	02-06-130	118-65-050	AMD-P	02-09-072
16-303-340	AMD	02-05-082	16-555-020	AMD-P	02-06-129	118-65-060	AMD-P	02-09-072
16-319-041	AMD	02-05-081	16-557-010	REP-C	02-09-005	118-65-070	AMD-P	02-09-072
16-324	PREP	02-03-132	16-557-020	REP-C	02-09-005	118-65-081	AMD-P	02-09-072
			16-557-025	REP-C	02-09-005	118-65-090	AMD-P	02-09-072

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130-14-010	AMD-P	02-03-131	132N-150-080	NEW	02-04-068	132Z-116-270	NEW-E	02-04-061
130-14-010	AMD	02-06-043	132N-150-090	NEW	02-04-068	132Z-116-280	NEW-P	02-03-089
130-14-030	AMD-P	02-03-131	132N-150-100	NEW	02-04-068	132Z-116-280	NEW-E	02-04-061
130-14-030	AMD	02-06-043	132N-150-110	NEW	02-04-068	132Z-116-300	NEW-P	02-03-089
130-14-050	AMD-P	02-03-131	132N-150-120	NEW	02-04-068	132Z-116-300	NEW-E	02-04-061
130-14-050	AMD	02-06-043	132N-150-130	NEW	02-04-068	132Z-116-310	NEW-P	02-03-089
130-14-060	AMD-P	02-03-131	132N-150-140	NEW	02-04-068	132Z-116-310	NEW-E	02-04-061
130-14-060	AMD	02-06-043	132N-150-150	NEW	02-04-068	132Z-116-320	NEW-P	02-03-089
132G-104-010	AMD-P	02-06-127	132N-150-160	NEW	02-04-068	132Z-116-320	NEW-E	02-04-061
132G-104-020	AMD-P	02-06-127	132N-150-170	NEW	02-04-068	132Z-116-400	NEW-P	02-03-089
132G-104-030	REP-P	02-06-127	132N-150-180	NEW	02-04-068	132Z-116-400	NEW-E	02-04-061
132H-106-030	AMD-P	02-05-052	132N-150-190	NEW	02-04-068	132Z-116-410	NEW-P	02-03-089
132H-120-030	AMD-P	02-03-106	132N-150-200	NEW	02-04-068	132Z-116-410	NEW-E	02-04-061
132H-120-050	AMD-P	02-03-106	132N-150-210	NEW	02-04-068	136-130-030	AMD-P	02-06-105
132H-120-200	AMD-P	02-03-106	132N-150-220	NEW	02-04-068	136-130-070	AMD-P	02-06-105
132H-120-220	AMD-P	02-03-106	132N-150-230	NEW	02-04-068	137-28	PREP	02-03-075
132H-120-300	AMD-P	02-03-106	132N-150-240	NEW	02-04-068	137-28-160	AMD-P	02-09-002
132H-120-350	AMD-P	02-03-106	132N-150-250	NEW	02-04-068	137-28-220	AMD-P	02-09-002
132H-120-410	AMD-P	02-03-106	132N-150-260	NEW	02-04-068	137-28-240	AMD-P	02-09-002
132H-120-420	AMD-P	02-03-106	132N-150-270	NEW	02-04-068	137-28-260	AMD-P	02-09-002
132H-120-440	AMD-P	02-03-106	132N-150-280	NEW	02-04-068	137-28-310	AMD-P	02-09-002
132H-120-450	AMD-P	02-03-106	132U-52	PREP	02-06-104	137-28-350	AMD-P	02-09-002
132H-122-020	AMD-P	02-09-038	132U-120	PREP	02-06-103	137-28-380	AMD-P	02-09-002
132H-140	PREP	02-05-051	132Z-116-005	NEW-P	02-03-089	139-05-915	PREP	02-08-015
132H-140-020	AMD-P	02-09-071	132Z-116-005	NEW-E	02-04-061	139-35-015	AMD-P	02-08-016
132H-140-030	AMD-P	02-09-071	132Z-116-010	NEW-P	02-03-089	139-35-025	AMD-P	02-08-016
132H-140-040	AMD-P	02-09-071	132Z-116-010	NEW-E	02-04-061	173-158-030	AMD-P	02-06-040
132H-140-050	AMD-P	02-09-071	132Z-116-020	NEW-P	02-03-089	173-158-070	AMD-P	02-06-040
132H-140-060	REP-P	02-09-071	132Z-116-020	NEW-E	02-04-061	173-158-075	NEW-P	02-06-040
132H-140-065	NEW-P	02-09-071	132Z-116-030	NEW-P	02-03-089	173-158-076	NEW-P	02-06-040
132H-140-070	AMD-P	02-09-071	132Z-116-030	NEW-E	02-04-061	173-173-030	NEW-W	02-05-034
132H-140-080	REP-P	02-09-071	132Z-116-040	NEW-P	02-03-089	173-173-070	NEW-W	02-05-034
132H-140-085	NEW-P	02-09-071	132Z-116-040	NEW-E	02-04-061	173-216-125	AMD	02-05-055
132H-140-090	REP-P	02-09-071	132Z-116-050	NEW-P	02-03-089	173-220-210	AMD	02-05-055
132H-140-100	REP-P	02-09-071	132Z-116-050	NEW-E	02-04-061	173-222-010	REP-X	02-07-038
132H-140-110	AMD-P	02-09-071	132Z-116-060	NEW-P	02-03-089	173-222-010	REP-W	02-07-098
132H-140-120	NEW-P	02-09-071	132Z-116-060	NEW-E	02-04-061	173-222-010	REP-X	02-07-099
132H-140-900	REP-P	02-09-071	132Z-116-070	NEW-P	02-03-089	173-222-015	REP-X	02-07-038
132H-152-135	PREP	02-03-104	132Z-116-070	NEW-E	02-04-061	173-222-015	REP-W	02-07-098
132H-152-135	AMD-P	02-08-082	132Z-116-080	NEW-P	02-03-089	173-222-015	REP-X	02-07-099
132H-160-190	AMD-P	02-09-038	132Z-116-080	NEW-E	02-04-061	173-222-020	REP-X	02-07-038
132H-410-010	NEW-P	02-03-107	132Z-116-090	NEW-P	02-03-089	173-222-020	REP-W	02-07-098
132H-410-020	NEW-P	02-03-107	132Z-116-090	NEW-E	02-04-061	173-222-020	REP-X	02-07-099
132H-410-030	NEW-P	02-03-107	132Z-116-100	NEW-P	02-03-089	173-222-030	REP-X	02-07-038
132H-410-040	NEW-P	02-03-107	132Z-116-100	NEW-E	02-04-061	173-222-030	REP-W	02-07-098
132H-410-050	NEW-P	02-03-107	132Z-116-110	NEW-P	02-03-089	173-222-030	REP-X	02-07-099
132H-410-060	NEW-P	02-03-107	132Z-116-110	NEW-E	02-04-061	173-222-040	REP-X	02-07-038
132H-410-070	NEW-P	02-03-107	132Z-116-200	NEW-P	02-03-089	173-222-040	REP-W	02-07-098
132H-410-080	NEW-P	02-03-107	132Z-116-200	NEW-E	02-04-061	173-222-040	REP-X	02-07-099
132H-410-090	NEW-P	02-03-107	132Z-116-210	NEW-P	02-03-089	173-222-050	REP-X	02-07-038
132H-410-100	NEW-P	02-03-107	132Z-116-210	NEW-E	02-04-061	173-222-050	REP-W	02-07-098
132H-410-110	NEW-P	02-03-107	132Z-116-220	NEW-P	02-03-089	173-222-050	REP-X	02-07-099
132H-450-010	NEW-P	02-05-053	132Z-116-220	NEW-E	02-04-061	173-222-060	REP-X	02-07-038
132N-144-010	REP	02-04-068	132Z-116-230	NEW-P	02-03-089	173-222-060	REP-W	02-07-098
132N-144-020	REP	02-04-068	132Z-116-230	NEW-E	02-04-061	173-222-060	REP-X	02-07-099
132N-150-010	NEW	02-04-068	132Z-116-240	NEW-P	02-03-089	173-222-070	REP-X	02-07-038
132N-150-020	NEW	02-04-068	132Z-116-240	NEW-E	02-04-061	173-222-070	REP-W	02-07-098
132N-150-030	NEW	02-04-068	132Z-116-250	NEW-P	02-03-089	173-222-070	REP-X	02-07-099
132N-150-040	NEW	02-04-068	132Z-116-250	NEW-E	02-04-061	173-222-080	REP-X	02-07-038
132N-150-050	NEW	02-04-068	132Z-116-260	NEW-P	02-03-089	173-222-080	REP-W	02-07-098
132N-150-060	NEW	02-04-068	132Z-116-260	NEW-E	02-04-061	173-222-080	REP-X	02-07-099
132N-150-070	NEW	02-04-068	132Z-116-270	NEW-P	02-03-089	173-222-090	REP-X	02-07-038

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173-222-090	REP-X	02-07-099	173-422-070	AMD-P	02-09-066	180-55-032	NEW-E	02-08-038
173-222-100	REP-X	02-07-038	173-422-075	AMD-P	02-09-066	180-55-034	NEW-E	02-08-038
173-222-100	REP-W	02-07-098	173-422-190	AMD-P	02-09-066	180-55-035	REP-E	02-08-038
173-222-100	REP-X	02-07-099	173-422-195	AMD-P	02-09-066	180-55-050	REP-E	02-08-038
173-222-110	REP-X	02-07-038	173-434	PREP	02-07-097	180-55-070	REP-E	02-08-038
173-222-110	REP-W	02-07-098	180-08	PREP	02-08-041	180-55-075	REP-E	02-08-038
173-222-110	REP-X	02-07-099	180-10	PREP	02-08-041	180-55-080	REP-E	02-08-038
173-224-015	REP-X	02-07-038	180-16	PREP	02-08-039	180-55-085	REP-E	02-08-038
173-224-015	REP-W	02-07-098	180-16	PREP	02-08-044	180-55-090	REP-E	02-08-038
173-224-015	REP-X	02-07-099	180-16-002	AMD-E	02-08-038	180-55-095	REP-E	02-08-038
173-224-020	REP-X	02-07-038	180-16-006	REP-E	02-08-038	180-55-100	REP-E	02-08-038
173-224-020	REP-W	02-07-098	180-16-195	AMD-E	02-08-038	180-55-105	REP-E	02-08-038
173-224-020	REP-X	02-07-099	180-16-220	AMD-E	02-08-038	180-55-110	REP-E	02-08-038
173-224-030	AMD-P	02-06-091	180-16-227	NEW-E	02-08-038	180-55-115	REP-E	02-08-038
173-224-030	REP-X	02-07-038	180-18	PREP	02-08-039	180-55-120	REP-E	02-08-038
173-224-030	REP-W	02-07-098	180-18-010	AMD-E	02-08-038	180-55-125	REP-E	02-08-038
173-224-030	REP-X	02-07-099	180-18-020	REP-E	02-08-038	180-55-130	REP-E	02-08-038
173-224-040	AMD-P	02-06-091	180-22	PREP	02-08-045	180-55-135	REP-E	02-08-038
173-224-040	REP-X	02-07-038	180-23	PREP	02-08-045	180-55-150	NEW-E	02-08-038
173-224-040	REP-W	02-07-098	180-24	PREP	02-06-052	180-72	PREP	02-06-067
173-224-040	REP-X	02-07-099	180-24-400	AMD-E	02-08-035	180-77	AMD	02-04-018
173-224-050	AMD-P	02-06-091	180-24-405	REP-E	02-08-035	180-77	PREP	02-06-068
173-224-050	REP-X	02-07-038	180-24-410	AMD-E	02-08-035	180-77-002	AMD	02-04-018
173-224-050	REP-W	02-07-098	180-24-415	AMD-E	02-08-035	180-77-003	AMD	02-04-018
173-224-050	REP-X	02-07-099	180-25	PREP	02-06-053	180-77-005	AMD	02-04-018
173-224-060	REP-X	02-07-038	180-26	PREP	02-06-054	180-77-012	AMD	02-04-018
173-224-060	REP-W	02-07-098	180-27	PREP	02-06-055	180-77-014	AMD	02-04-018
173-224-060	REP-X	02-07-099	180-29	PREP	02-06-056	180-77-020	AMD	02-04-018
173-224-080	REP-X	02-07-038	180-31	PREP	02-06-057	180-77-025	AMD	02-04-018
173-224-080	REP-W	02-07-098	180-32	PREP	02-06-058	180-77-031	AMD	02-04-018
173-224-080	REP-X	02-07-099	180-33	PREP	02-06-059	180-77-041	AMD	02-04-018
173-224-090	REP-X	02-07-038	180-34	PREP	02-08-046	180-77-068	AMD	02-04-018
173-224-090	REP-W	02-07-098	180-36	PREP	02-06-060	180-77-070	AMD	02-04-018
173-224-090	REP-X	02-07-099	180-38	PREP	02-08-043	180-77-075	AMD	02-04-018
173-224-100	REP-X	02-07-038	180-39	PREP	02-06-061	180-77-080	AMD	02-04-018
173-224-100	REP-W	02-07-098	180-40	PREP	02-06-062	180-77-110	AMD	02-04-018
173-224-100	REP-X	02-07-099	180-41	PREP	02-06-063	180-77-120	AMD	02-04-018
173-224-110	REP-X	02-07-038	180-43	PREP	02-08-042	180-77-122	AMD	02-04-018
173-224-110	REP-W	02-07-098	180-44	PREP	02-06-064	180-77A	AMD	02-04-018
173-224-110	REP-X	02-07-099	180-46	PREP	02-06-065	180-77A	PREP	02-06-069
173-224-120	REP-X	02-07-038	180-50	PREP	02-06-066	180-77A-004	AMD	02-04-018
173-224-120	REP-W	02-07-098	180-52-070	NEW-P	02-08-092	180-77A-006	AMD	02-04-018
173-224-120	REP-X	02-07-099	180-53	PREP	02-08-039	180-77A-025	AMD	02-04-018
173-226-090	AMD	02-05-055	180-53-005	REP-E	02-08-038	180-77A-029	AMD	02-04-018
173-303	PREP	02-05-054	180-53-010	REP-E	02-08-038	180-77A-030	AMD	02-04-018
173-303-071	AMD-E	02-04-030	180-53-020	REP-E	02-08-038	180-77A-033	AMD	02-04-018
173-312-010	AMD	02-05-070	180-53-025	REP-E	02-08-038	180-77A-037	AMD	02-04-018
173-312-020	AMD	02-05-070	180-53-030	REP-E	02-08-038	180-77A-040	AMD	02-04-018
173-312-040	AMD	02-05-070	180-53-035	REP-E	02-08-038	180-77A-057	AMD	02-04-018
173-312-050	AMD	02-05-070	180-53-040	REP-E	02-08-038	180-77A-165	AMD	02-04-018
173-312-060	AMD	02-05-070	180-53-045	REP-E	02-08-038	180-77A-180	AMD	02-04-018
173-312-070	AMD	02-05-070	180-53-050	REP-E	02-08-038	180-77A-195	AMD	02-04-018
173-312-080	AMD	02-05-070	180-53-055	REP-E	02-08-038	180-78A	PREP	02-06-070
173-312-090	AMD	02-05-070	180-53-060	REP-E	02-08-038	180-78A-209	AMD	02-04-018
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173-422-020	AMD-P	02-09-066	180-55-010	REP-E	02-08-038	180-78A-264	AMD	02-04-014
173-422-030	AMD-P	02-09-066	180-55-015	AMD-E	02-08-038	180-78A-270	AMD	02-04-018
173-422-031	AMD-P	02-09-066	180-55-020	AMD-E	02-08-038	180-78A-505	PREP	02-06-051
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180- 79A-130	AMD	02-04-018	192- 16-033	REP-E	02-03-074	208-472-025	AMD	02-04-094
180- 79A-140	AMD	02-04-018	192- 16-033	PREP	02-07-064	208-472-030	NEW	02-04-094
180- 79A-150	AMD	02-04-018	192- 16-033	REP-E	02-07-065	208-472-035	NEW	02-04-094
180- 79A-206	PREP	02-05-061	192- 16-036	REP-E	02-03-074	208-472-041	REP	02-04-094
180- 79A-211	AMD	02-04-018	192- 16-036	PREP	02-07-064	208-472-045	REP	02-04-094
180- 79A-250	PREP	02-05-060	192- 16-036	REP-P	02-07-065	208-472-050	REP	02-04-094
180- 81	PREP	02-06-072	192- 16-040	REP-E	02-03-074	208-472-060	REP	02-04-094
180- 82	PREP	02-06-073	192- 16-040	PREP	02-07-064	208-472-065	REP	02-04-094
180- 82-105	AMD	02-04-018	192- 16-040	REP-P	02-07-065	208-472-070	REP	02-04-094
180- 82-202	AMD	02-04-018	192- 16-042	REP-E	02-03-074	208-472-075	REP	02-04-094
180- 82-322	AMD	02-04-018	192- 16-042	PREP	02-07-064	208-472-080	REP	02-04-094
180- 82-346	AMD	02-04-016	192- 16-042	REP-P	02-07-065	212- 12-001	PREP	02-07-018
180- 82-350	AMD	02-04-018	192- 16-045	REP-E	02-03-074	212- 12-005	PREP	02-07-018
180- 82A-002	NEW	02-04-013	192- 16-045	PREP	02-07-064	212- 12-010	PREP	02-07-018
180- 82A-200	NEW	02-04-013	192- 16-045	REP-P	02-07-065	212- 12-011	PREP	02-07-018
180- 82A-202	NEW	02-04-013	192- 16-047	REP-E	02-03-074	212- 12-015	PREP	02-07-018
180- 82A-204	NEW	02-04-013	192- 16-047	PREP	02-07-064	212- 12-020	PREP	02-07-018
180- 82A-206	NEW	02-04-013	192- 16-047	REP-P	02-07-065	212- 12-025	PREP	02-07-018
180- 82A-215	NEW	02-04-013	192-150-055	NEW-X	02-08-071	212- 12-030	PREP	02-07-018
180- 83	PREP	02-06-074	192-150-060	NEW	02-08-072	212- 12-035	PREP	02-07-018
180- 85	PREP	02-06-075	192-170-050	NEW	02-08-072	212- 12-040	PREP	02-07-018
180- 85-035	AMD	02-04-017	192-180-012	NEW	02-08-072	212- 12-044	PREP	02-07-018
180- 85-075	AMD	02-04-017	192-240-010	NEW-E	02-03-074	212- 12-200	NEW-E	02-03-060
180- 85-075	PREP	02-06-081	192-240-015	NEW-E	02-03-074	212- 12-210	NEW-E	02-03-060
180- 86	PREP	02-06-076	192-240-020	NEW-E	02-03-074	212- 12-220	NEW-E	02-03-060
180- 86-020	PREP	02-03-084	192-240-025	NEW-E	02-03-074	212- 12-230	NEW-E	02-03-060
180- 86-055	PREP	02-03-084	192-240-030	NEW-E	02-03-074	212- 12-240	NEW-E	02-03-060
180- 87	PREP	02-06-077	192-240-030	NEW-E	02-07-065	212- 12-250	NEW-E	02-03-060
180- 90	PREP	02-06-078	192-240-035	NEW-E	02-03-074	212- 12-260	NEW-E	02-03-060
180- 90-105	AMD-E	02-08-037	192-240-040	NEW-E	02-03-074	212- 12-270	NEW-E	02-03-060
180- 90-110	REP-E	02-08-037	192-240-040	NEW-E	02-07-065	212- 12-280	NEW-E	02-03-060
180- 90-112	AMD-E	02-08-037	192-240-045	NEW-E	02-07-065	212- 12-290	NEW-E	02-03-060
180- 90-115	REP-E	02-08-037	196- 26-020	REP-P	02-08-075	212- 12-300	NEW-E	02-03-060
180- 90-119	REP-E	02-08-037	196- 26-030	REP-P	02-08-075	212- 12-310	NEW-E	02-03-060
180- 90-120	REP-E	02-08-037	196- 26A-010	NEW-P	02-08-075	212- 12-320	NEW-E	02-03-060
180- 90-123	REP-E	02-08-037	196- 26A-020	NEW-P	02-08-075	212- 12-330	NEW-E	02-03-060
180- 90-125	REP-E	02-08-037	196- 26A-025	NEW-P	02-08-075	212- 12-340	NEW-E	02-03-060
180- 90-130	AMD-E	02-08-037	196- 26A-030	NEW-P	02-08-075	212- 12-350	NEW-E	02-03-060
180- 90-133	REP-E	02-08-037	196- 26A-035	NEW-P	02-08-075	212- 12-360	NEW-E	02-03-060
180- 90-135	REP-E	02-08-037	196- 26A-040	NEW-P	02-08-075	212- 12-370	NEW-E	02-03-060
180- 90-137	REP-E	02-08-037	196- 26A-045	NEW-P	02-08-075	212- 12-380	NEW-E	02-03-060
180- 90-141	AMD-E	02-08-037	196- 26A-050	NEW-P	02-08-075	212- 12-390	NEW-E	02-03-060
180- 90-160	AMD-E	02-08-037	196- 26A-055	NEW-P	02-08-075	212- 12-400	NEW-E	02-03-060
180- 95	PREP	02-06-079	196- 26A-060	NEW-P	02-08-075	212- 12-410	NEW-E	02-03-060
180- 96	PREP	02-06-080	196- 26A-070	NEW-P	02-08-075	212- 12-420	NEW-E	02-03-060
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180- 97-003	AMD-E	02-08-034	204- 36-040	AMD	02-07-055	220- 16-410	AMD-W	02-05-035
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180- 97-015	REP-E	02-08-034	204- 91A-030	AMD	02-07-056	220- 16-780	NEW	02-08-048
180- 97-020	REP-E	02-08-034	204- 91A-060	AMD	02-07-056	220- 16-790	NEW	02-08-048
180- 97-040	AMD-E	02-08-034	204- 91A-090	AMD	02-07-056	220- 20-010	AMD	02-08-048
180- 97-050	REP-E	02-08-034	204- 91A-120	AMD	02-07-056	220- 20-016	PREP	02-06-107
180- 97-060	AMD-E	02-08-034	204- 91A-130	AMD	02-07-056	220- 20-025	AMD	02-08-048
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180- 97-080	AMD-E	02-08-034	204- 91A-170	AMD	02-07-056	220- 20-100	NEW	02-08-048
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180- 97-100	REP-E	02-08-034	208-472	AMD	02-04-094	220- 32-05100L	NEW-E	02-04-073
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220-32-05100M	REP-E	02-07-011	220-52-07300V	REP-E	02-07-046	220-77-020	AMD	02-06-018
220-32-05100M	REP-E	02-07-044	220-52-07300W	NEW-E	02-07-092	220-77-040	AMD	02-06-018
220-32-05100N	NEW-E	02-07-044	220-52-07300W	REP-E	02-07-092	220-77-09000A	NEW-E	02-04-069
220-32-05100N	REP-E	02-07-044	220-52-07500D	NEW-E	02-09-021	220-77-09000A	REP-E	02-04-089
220-33-01000I	NEW-E	02-04-077	220-56-100	AMD	02-08-048	220-77-09000B	NEW-E	02-04-089
220-33-01000I	REP-E	02-04-077	220-56-105	AMD	02-08-048	220-130-040	AMD-W	02-02-089
220-33-01000J	NEW-E	02-05-056	220-56-115	AMD	02-09-001	222-10-040	AMD-P	02-05-087
220-33-01000J	REP-E	02-05-056	220-56-116	AMD	02-08-048	222-10-041	AMD-P	02-05-087
220-33-01000J	REP-E	02-07-010	220-56-128	AMD	02-08-048	222-16-050	AMD-E	02-05-086
220-33-01000K	NEW-E	02-07-010	220-56-210	AMD	02-08-048	222-16-050	PREP	02-07-023
220-33-01000K	REP-E	02-07-010	220-56-235	AMD	02-09-001	222-21-010	AMD	02-05-084
220-33-01000K	REP-E	02-07-094	220-56-23500L	NEW-E	02-03-002	222-21-020	AMD	02-05-084
220-33-01000L	NEW-E	02-07-094	220-56-23500L	REP-E	02-07-004	222-21-045	AMD	02-05-084
220-33-01000L	REP-E	02-07-094	220-56-23500M	NEW-E	02-07-004	222-21-050	AMD	02-05-084
220-33-01000L	REP-E	02-08-014	220-56-25000D	NEW-E	02-07-025	222-21-061	NEW	02-05-084
220-33-01000M	NEW-E	02-08-014	220-56-25000D	REP-E	02-07-025	226-01-040	AMD-X	02-03-038
220-33-01000M	REP-E	02-08-025	220-56-25500X	NEW-E	02-09-045	226-01-040	AMD	02-08-076
220-33-01000N	NEW-E	02-08-025	220-56-265	AMD	02-08-048	226-01-050	AMD-X	02-03-038
220-33-01000N	REP-E	02-08-025	220-56-270	AMD	02-08-048	226-01-050	AMD	02-08-076
220-33-04000N	REP-E	02-04-072	220-56-27000L	REP-E	02-06-036	226-12-080	AMD-X	02-03-038
220-33-04000P	NEW-E	02-04-072	220-56-27000M	NEW-E	02-06-036	226-12-080	AMD	02-08-076
220-33-04000P	REP-E	02-04-072	220-56-27000M	REP-E	02-06-036	226-16-160	AMD-X	02-03-038
220-33-04000P	REP-E	02-04-102	220-56-282	AMD	02-08-048	226-16-160	AMD	02-08-076
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220-33-04000Q	REP-E	02-04-102	220-56-28200D	REP-E	02-06-017	226-20-010	AMD	02-08-076
220-33-04000Q	REP-E	02-06-036	220-56-285	AMD	02-08-048	230-02-145	REP-P	02-07-081
220-33-04000R	NEW-E	02-06-036	220-56-28500B	NEW-E	02-05-010	230-02-205	AMD-S	02-03-077
220-33-04000R	REP-E	02-06-036	220-56-307	REP	02-08-048	230-04-064	AMD-P	02-06-037
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220-48-005	AMD	02-08-026	220-56-31500A	NEW-E	02-09-003	230-12-330	AMD-P	02-06-038
220-49-013	AMD	02-08-026	220-56-31500A	REP-E	02-09-003	230-12-340	AMD-P	02-06-038
220-49-056	AMD	02-08-026	220-56-32500T	NEW-E	02-08-028	230-20-111	REP-P	02-07-081
220-52-04000F	REP-E	02-03-068	220-56-32500T	REP-E	02-09-003	230-20-125	REP-P	02-07-081
220-52-04600A	REP-E	02-03-024	220-56-33000D	NEW-E	02-03-051	230-20-230	REP-P	02-07-081
220-52-04600B	NEW-E	02-03-024	220-56-33000D	REP-E	02-05-001	230-20-244	AMD	02-06-006
220-52-04600B	REP-E	02-03-050	220-56-33000E	NEW-E	02-05-001	230-20-246	AMD	02-06-006
220-52-04600C	NEW-E	02-03-050	220-56-33000E	REP-E	02-07-037	230-20-249	AMD	02-06-006
220-52-04600C	REP-E	02-04-093	220-56-33000F	NEW-E	02-07-037	230-30-033	AMD	02-06-007
220-52-04600D	NEW-E	02-04-093	220-56-33000F	REP-E	02-07-075	230-30-045	AMD	02-06-007
220-52-04600D	REP-E	02-07-037	220-56-33000G	NEW-E	02-07-075	230-30-072	AMD	02-06-007
220-52-04600E	NEW-E	02-07-037	220-56-33000G	REP-E	02-08-070	230-30-106	AMD-P	02-06-038
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220-52-04600F	NEW-E	02-07-075	220-56-335	AMD	02-08-048	230-40-897	REP-P	02-07-081
220-52-04600F	REP-E	02-08-070	220-56-350	AMD	02-08-048	232-12-011	AMD-P	02-06-122
220-52-04600G	NEW-E	02-08-070	220-56-35000J	REP-E	02-06-035	232-12-011	AMD	02-08-048
220-52-04600G	REP-E	02-08-070	220-56-35000K	NEW-E	02-06-035	232-12-014	AMD-P	02-06-122
220-52-05100Y	NEW-E	02-09-021	220-56-355	AMD	02-08-048	232-12-019	AMD	02-08-048
220-52-05100Y	REP-E	02-09-067	220-56-35500B	NEW-E	02-07-076	232-12-147	REP	02-08-048
220-52-05100Z	NEW-E	02-09-067	220-56-36000L	NEW-E	02-03-053	232-12-151	REP	02-08-048
220-52-07300Q	REP-E	02-03-025	220-56-36000L	REP-E	02-03-053	232-12-168	AMD	02-08-048
220-52-07300R	NEW-E	02-03-025	220-56-36000L	REP-E	02-04-039	232-12-16800B	NEW-E	02-07-095
220-52-07300R	REP-E	02-03-067	220-56-36000M	NEW-E	02-04-039	232-12-16800B	REP-E	02-07-095
220-52-07300S	NEW-E	02-03-067	220-56-36000M	REP-E	02-04-039	232-12-253	NEW	02-05-021
220-52-07300S	REP-E	02-03-090	220-56-36000N	NEW-E	02-07-012	232-12-272	NEW	02-08-048
220-52-07300T	NEW-E	02-03-090	220-56-36000N	REP-E	02-07-012	232-12-619	AMD	02-08-048
220-52-07300T	REP-E	02-04-035	220-56-380	AMD	02-08-048	232-28-02220	AMD-P	02-06-124
220-52-07300U	NEW-E	02-04-035	220-56-38000C	REP-E	02-06-035	232-28-02240	AMD-P	02-06-124
220-52-07300U	REP-E	02-04-078	220-56-38000D	NEW-E	02-06-035	232-28-248	AMD-P	02-06-124

TABLE

Table of WAC Sections Affected

WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
232- 28-266	AMD-P	02-06-121	246-224-0060	NEW-P	02-07-021	246-810-332	REP	02-09-041
232- 28-273	AMD-P	02-06-121	246-224-0070	NEW-P	02-07-021	246-810-340	REP	02-09-041
232- 28-277	AMD-P	02-06-125	246-224-0080	NEW-P	02-07-021	246-810-520	REP	02-09-041
232- 28-278	AMD-P	02-06-126	246-224-0090	NEW-P	02-07-021	246-810-521	REP	02-09-041
232- 28-279	AMD-P	02-06-123	246-224-010	REP-P	02-07-021	246-810-532	REP	02-09-041
232- 28-42500C	NEW-E	02-03-052	246-224-0100	NEW-P	02-07-021	246-810-540	REP	02-09-041
232- 28-42500C	REP-E	02-03-052	246-224-0110	NEW-P	02-07-021	246-810-720	REP	02-09-041
232- 28-619	AMD	02-08-048	246-224-0120	NEW-P	02-07-021	246-810-721	REP	02-09-041
232- 28-61900A	NEW-E	02-08-022	246-224-020	REP-P	02-07-021	246-810-732	REP	02-09-041
232- 28-61900B	NEW-E	02-08-004	246-224-050	REP-P	02-07-021	246-810-740	REP	02-09-041
232- 28-61900B	REP-E	02-08-004	246-224-060	REP-P	02-07-021	246-811-081	NEW	02-07-083
232- 28-61900C	NEW-E	02-09-023	246-224-070	REP-P	02-07-021	246-811-082	NEW	02-07-083
232- 28-61900C	REP-E	02-09-023	246-224-090	REP-P	02-07-021	246-811-200	NEW	02-07-084
232- 28-61900D	REP-E	02-05-075	246-224-100	REP-P	02-07-021	246-811-210	NEW	02-07-084
232- 28-61900D	NEW-E	02-09-009	246-229-0001	NEW-P	02-07-021	246-811-220	NEW	02-07-084
232- 28-61900H	REP-E	02-03-014	246-229-001	REP-P	02-07-021	246-811-230	NEW	02-07-084
232- 28-61900I	NEW-E	02-03-022	246-229-0010	NEW-P	02-07-021	246-811-240	NEW	02-07-084
232- 28-61900I	REP-E	02-03-022	246-229-0020	NEW-P	02-07-021	246-811-250	NEW	02-07-084
232- 28-61900J	NEW-E	02-03-023	246-229-0030	NEW-P	02-07-021	246-811-260	NEW	02-07-084
232- 28-61900K	NEW-E	02-03-014	246-229-0040	NEW-P	02-07-021	246-811-270	NEW	02-07-084
232- 28-61900L	NEW-E	02-03-015	246-229-0050	NEW-P	02-07-021	246-811-990	AMD	02-07-083
232- 28-61900L	REP-E	02-03-015	246-229-0060	NEW-P	02-07-021	246-826-100	AMD	02-06-115
232- 28-61900M	NEW-E	02-03-066	246-229-0070	NEW-P	02-07-021	246-826-300	NEW	02-06-115
232- 28-61900N	NEW-E	02-04-019	246-229-0080	NEW-P	02-07-021	246-826-301	NEW	02-06-115
232- 28-61900N	REP-E	02-04-019	246-229-0090	NEW-P	02-07-021	246-826-302	NEW	02-06-115
232- 28-61900P	NEW-E	02-04-103	246-229-0100	NEW-P	02-07-021	246-826-303	NEW	02-06-115
232- 28-61900Q	NEW-E	02-05-007	246-229-020	REP-P	02-07-021	246-840-020	PREP	02-04-033
232- 28-61900R	NEW-E	02-05-008	246-229-030	REP-P	02-07-021	246-840-030	PREP	02-04-033
232- 28-61900R	REP-E	02-05-008	246-229-050	REP-P	02-07-021	246-840-040	PREP	02-04-033
232- 28-61900S	NEW-E	02-05-010	246-229-060	REP-P	02-07-021	246-840-050	PREP	02-04-033
232- 28-61900S	REP-E	02-09-009	246-229-070	REP-P	02-07-021	246-840-060	PREP	02-04-033
232- 28-61900T	NEW-E	02-05-075	246-229-080	REP-P	02-07-021	246-840-070	PREP	02-04-033
232- 28-61900T	REP-E	02-07-096	246-229-090	REP-P	02-07-021	246-840-080	PREP	02-04-031
232- 28-61900U	REP-E	02-03-022	246-229-100	REP-P	02-07-021	246-840-090	PREP	02-04-031
232- 28-61900U	NEW-E	02-06-100	246-229-110	REP-P	02-07-021	246-840-700	AMD	02-06-117
232- 28-61900U	REP-E	02-06-100	246-254-053	AMD-P	02-04-034	246-840-705	AMD	02-06-117
232- 28-61900V	NEW-E	02-06-099	246-254-053	AMD	02-07-085	246-840-710	AMD	02-06-117
232- 28-61900V	REP-E	02-06-099	246-254-070	AMD	02-04-025	246-840-715	REP	02-06-117
232- 28-61900W	NEW-E	02-07-061	246-254-080	AMD	02-04-025	246-843-015	REP-X	02-06-116
232- 28-61900W	REP-E	02-07-061	246-254-090	AMD	02-04-025	246-851-150	AMD-C	02-04-090
232- 28-61900X	NEW-E	02-07-019	246-254-100	AMD	02-04-025	246-851-160	AMD-C	02-04-090
232- 28-61900X	REP-E	02-07-019	246-254-120	AMD	02-04-025	246-851-250	AMD-C	02-04-090
232- 28-61900Y	NEW-E	02-07-066	246-272	PREP	02-03-137	246-851-300	AMD-C	02-04-090
232- 28-61900Y	REP-E	02-07-066	246-338-020	PREP	02-03-138	246-851-310	AMD-C	02-04-090
232- 28-61900Z	NEW-E	02-07-096	246-338-020	AMD-P	02-09-026	246-851-330	AMD-C	02-04-090
232- 28-61900Z	REP-E	02-07-096	246-338-990	PREP	02-03-138	246-851-520	AMD-C	02-04-090
232- 28-621	AMD	02-08-048	246-338-990	AMD-P	02-09-026	246-883-020	AMD-X	02-07-086
246- 12-040	AMD-X	02-09-042	246-388	PREP	02-08-017	246-918-990	AMD	02-05-009
246- 50	PREP-W	02-09-027	246-650	PREP	02-03-136	246-919-990	AMD	02-05-009
246-100-206	AMD-P	02-08-018	246-650	PREP-W	02-04-024	246-976-500	AMD-P	02-09-043
246-100-207	AMD-P	02-08-018	246-790-010	AMD-P	02-07-020	246-976-510	AMD-P	02-09-043
246-100-208	AMD-P	02-08-018	246-790-050	AMD-P	02-07-020	246-976-550	AMD-P	02-09-043
246-215-150	AMD-P	02-04-091	246-790-065	AMD-P	02-07-020	246-976-560	AMD-P	02-09-043
246-215-150	AMD	02-09-028	246-790-070	AMD-P	02-07-020	246-976-600	AMD-P	02-09-043
246-224	AMD-P	02-07-021	246-790-080	AMD-P	02-07-020	246-976-610	AMD-P	02-09-043
246-224-0001	NEW-P	02-07-021	246-790-085	AMD-P	02-07-020	246-976-650	AMD-P	02-09-043
246-224-001	REP-P	02-07-021	246-790-090	AMD-P	02-07-020	246-976-720	AMD-P	02-09-043
246-224-0010	NEW-P	02-07-021	246-790-100	AMD-P	02-07-020	246-976-730	AMD-P	02-09-043
246-224-0020	NEW-P	02-07-021	246-790-120	AMD-P	02-07-020	246-976-770	AMD-P	02-09-043
246-224-0030	NEW-P	02-07-021	246-790-130	AMD-P	02-07-020	246-976-780	AMD-P	02-09-043
246-224-0040	NEW-P	02-07-021	246-810-320	REP	02-09-041	246-976-810	AMD-P	02-09-043
246-224-0050	NEW-P	02-07-021	246-810-321	REP	02-09-041	246-976-820	AMD-P	02-09-043

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Table of WAC Sections Affected

WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
246-976-886	NEW-P	02-09-043	296-24-40505	REP-P	02-07-100	296-52-501	REP	02-03-125
246-976-887	NEW-P	02-09-043	296-24-40507	REP-P	02-07-100	296-52-505	REP	02-03-125
246-976-935	AMD	02-04-045	296-24-40509	REP-P	02-07-100	296-52-509	REP	02-03-125
250-66-030	AMD	02-05-006	296-24-40511	REP-P	02-07-100	296-52-510	REP	02-03-125
251-01-240	AMD-P	02-04-081	296-24-40513	REP-P	02-07-100	296-52-550	REP	02-03-125
251-01-240	AMD	02-07-051	296-24-40515	REP-P	02-07-100	296-52-552	REP	02-03-125
251-12-073	REP-P	02-04-079	296-24-51009	AMD-X	02-05-077	296-52-555	REP	02-03-125
251-12-073	REP	02-07-048	296-24-51011	AMD-X	02-05-077	296-52-600	NEW-W	02-06-102
251-17-200	AMD-P	02-04-080	296-24-51015	AMD-X	02-05-077	296-52-60005	NEW	02-03-125
251-17-200	AMD	02-07-050	296-24-60205	AMD-X	02-05-077	296-52-60010	NEW	02-03-125
251-19-120	AMD-P	02-04-081	296-24-63499	AMD-X	02-05-077	296-52-60015	NEW	02-03-125
251-19-120	AMD	02-07-051	296-24-67513	AMD-X	02-05-077	296-52-60020	NEW	02-03-125
259-04-010	AMD	02-06-014	296-24-67515	AMD-X	02-05-077	296-52-60025	NEW-W	02-06-102
259-04-050	AMD	02-06-014	296-28-001	REP-P	02-07-101	296-52-60030	NEW	02-03-125
259-04-070	AMD	02-06-014	296-28-005	REP-P	02-07-101	296-52-60035	NEW	02-03-125
260-36-040	AMD-P	02-05-029	296-28-010	REP-P	02-07-101	296-52-60040	NEW-W	02-06-102
260-48-930	NEW-P	02-05-028	296-28-015	REP-P	02-07-101	296-52-60045	NEW	02-03-125
260-48-930	NEW-W	02-05-033	296-28-020	REP-P	02-07-101	296-52-60050	NEW	02-03-125
260-70-650	AMD-P	02-05-030	296-28-025	REP-P	02-07-101	296-52-60055	NEW	02-03-125
260-70-660	PREP	02-05-027	296-28-030	REP-P	02-07-101	296-52-60060	NEW	02-03-125
284-04-120	AMD	02-08-019	296-28-035	REP-P	02-07-101	296-52-60065	NEW	02-03-125
292-110-010	AMD	02-07-074	296-28-040	REP-P	02-07-101	296-52-60070	NEW-W	02-06-102
292-110-010	AMD-W	02-09-069	296-28-045	REP-P	02-07-101	296-52-60075	NEW	02-03-125
292-120-030	AMD	02-04-003	296-28-050	REP-P	02-07-101	296-52-60080	NEW	02-03-125
292-120-035	NEW	02-04-003	296-32-240	AMD-P	02-05-080	296-52-60085	NEW	02-03-125
296-05-007	AMD-X	02-04-004	296-32-250	AMD-X	02-05-077	296-52-60090	NEW	02-03-125
296-05-300	AMD-X	02-04-004	296-32-280	AMD-X	02-05-077	296-52-60095	NEW	02-03-125
296-05-316	AMD-X	02-04-004	296-33-010	NEW	02-06-024	296-52-60100	NEW	02-03-125
296-05-402	AMD-X	02-04-004	296-400A	PREP	02-04-106	296-52-60105	NEW	02-03-125
296-150C	PREP	02-04-106	296-401B	PREP	02-04-106	296-52-60110	NEW-W	02-06-102
296-150F	PREP	02-04-106	296-45-52530	AMD-P	02-05-080	296-52-60115	NEW	02-03-125
296-150M	PREP	02-04-106	296-46A	PREP	02-04-106	296-52-60120	NEW	02-03-125
296-150P	PREP	02-04-106	296-46A-910	AMD-P	02-09-095	296-52-60125	NEW	02-03-125
296-150R	PREP	02-04-106	296-46A-915	AMD-P	02-09-095	296-52-60130	NEW	02-03-125
296-150V	PREP	02-04-106	296-52	AMD	02-03-125	296-52-61005	NEW	02-03-125
296-17	PREP	02-07-102	296-52-401	REP	02-03-125	296-52-61010	NEW	02-03-125
296-17-35203	AMD-P	02-03-123	296-52-405	REP	02-03-125	296-52-61015	NEW	02-03-125
296-17-35203	AMD	02-09-093	296-52-409	REP	02-03-125	296-52-61020	NEW	02-03-125
296-17-52140	AMD-P	02-03-123	296-52-413	REP	02-03-125	296-52-61025	NEW	02-03-125
296-17-52140	AMD	02-09-093	296-52-417	REP	02-03-125	296-52-61030	NEW	02-03-125
296-17-52141	AMD-P	02-03-123	296-52-419	REP	02-03-125	296-52-61035	NEW	02-03-125
296-17-52141	AMD	02-09-093	296-52-421	REP	02-03-125	296-52-61040	NEW	02-03-125
296-17-52150	AMD-P	02-03-123	296-52-423	REP	02-03-125	296-52-61045	NEW	02-03-125
296-17-52150	AMD	02-09-093	296-52-425	REP	02-03-125	296-52-61050	NEW	02-03-125
296-17-52151	AMD-P	02-03-123	296-52-429	REP	02-03-125	296-52-62005	NEW	02-03-125
296-17-52151	AMD	02-09-093	296-52-433	REP	02-03-125	296-52-62010	NEW	02-03-125
296-200A	PREP	02-04-106	296-52-437	REP	02-03-125	296-52-62020	NEW-W	02-06-102
296-20-135	AMD-P	02-05-076	296-52-441	REP	02-03-125	296-52-62025	NEW	02-03-125
296-23-220	AMD-P	02-05-076	296-52-445	REP	02-03-125	296-52-62030	NEW	02-03-125
296-23-230	AMD-P	02-05-076	296-52-449	REP	02-03-125	296-52-62035	NEW	02-03-125
296-24	PREP	02-04-107	296-52-453	REP	02-03-125	296-52-62040	NEW	02-03-125
296-24	PREP	02-04-108	296-52-457	REP	02-03-125	296-52-62045	NEW	02-03-125
296-24	PREP	02-09-091	296-52-461	REP	02-03-125	296-52-63005	NEW	02-03-125
296-24-012	AMD-X	02-05-077	296-52-465	REP	02-03-125	296-52-63010	NEW	02-03-125
296-24-102	REP-X	02-08-080	296-52-469	REP	02-03-125	296-52-63015	NEW-W	02-06-102
296-24-10203	REP-X	02-08-080	296-52-477	REP	02-03-125	296-52-63020	NEW	02-03-125
296-24-14001	AMD-X	02-05-077	296-52-481	REP	02-03-125	296-52-63025	NEW	02-03-125
296-24-145	PREP	02-09-088	296-52-485	REP	02-03-125	296-52-63030	NEW	02-03-125
296-24-23003	AMD-X	02-05-077	296-52-487	REP	02-03-125	296-52-64005	NEW	02-03-125
296-24-405	REP-P	02-07-100	296-52-489	REP	02-03-125	296-52-64010	NEW-W	02-06-102
296-24-40501	REP-P	02-07-100	296-52-493	REP	02-03-125	296-52-64015	NEW-W	02-06-102
296-24-40503	REP-P	02-07-100	296-52-497	REP	02-03-125	296-52-64020	NEW	02-03-125

Table of WAC Sections Affected

WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
296- 52-64025	NEW-W	02-06-102	296- 52-67135	NEW	02-03-125	296- 52-69110	NEW	02-03-125
296- 52-64030	NEW	02-03-125	296- 52-67140	NEW	02-03-125	296- 52-69115	NEW	02-03-125
296- 52-64035	NEW	02-03-125	296- 52-67145	NEW	02-03-125	296- 52-69120	NEW	02-03-125
296- 52-64040	NEW	02-03-125	296- 52-67150	NEW-W	02-06-102	296- 52-69125	NEW	02-03-125
296- 52-64045	NEW	02-03-125	296- 52-67155	NEW-W	02-06-102	296- 52-700	NEW	02-03-125
296- 52-64050	NEW	02-03-125	296- 52-67160	NEW	02-03-125	296- 52-70005	NEW	02-03-125
296- 52-64055	NEW	02-03-125	296- 52-67165	NEW	02-03-125	296- 52-70010	NEW	02-03-125
296- 52-64060	NEW-W	02-06-102	296- 52-67170	NEW	02-03-125	296- 52-70015	NEW	02-03-125
296- 52-64065	NEW	02-03-125	296- 52-67175	NEW-W	02-06-102	296- 52-70020	NEW	02-03-125
296- 52-64070	NEW-W	02-06-102	296- 52-67180	NEW	02-03-125	296- 52-70025	NEW	02-03-125
296- 52-64075	NEW	02-03-125	296- 52-67185	NEW	02-03-125	296- 52-70030	NEW	02-03-125
296- 52-64080	NEW	02-03-125	296- 52-67190	NEW	02-03-125	296- 52-70035	NEW	02-03-125
296- 52-64085	NEW	02-03-125	296- 52-67195	NEW	02-03-125	296- 52-70040	NEW	02-03-125
296- 52-64090	NEW	02-03-125	296- 52-67200	NEW	02-03-125	296- 52-70045	NEW	02-03-125
296- 52-64095	NEW	02-03-125	296- 52-67205	NEW-W	02-06-102	296- 52-70050	NEW	02-03-125
296- 52-64100	NEW	02-03-125	296- 52-67210	NEW	02-03-125	296- 52-70055	NEW	02-03-125
296- 52-650	NEW	02-03-125	296- 52-67215	NEW	02-03-125	296- 52-70060	NEW	02-03-125
296- 52-65005	NEW	02-03-125	296- 52-67220	NEW	02-03-125	296- 52-70065	NEW	02-03-125
296- 52-65010	NEW	02-03-125	296- 52-67225	NEW	02-03-125	296- 52-70070	NEW	02-03-125
296- 52-65015	NEW	02-03-125	296- 52-67230	NEW	02-03-125	296- 52-70075	NEW-W	02-06-102
296- 52-65020	NEW	02-03-125	296- 52-67235	NEW	02-03-125	296- 52-70080	NEW	02-03-125
296- 52-65025	NEW	02-03-125	296- 52-67240	NEW	02-03-125	296- 52-70085	NEW	02-03-125
296- 52-65030	NEW	02-03-125	296- 52-67245	NEW	02-03-125	296- 52-710	NEW	02-03-125
296- 52-660	NEW	02-03-125	296- 52-67250	NEW-W	02-06-102	296- 52-71005	NEW-W	02-06-102
296- 52-66005	NEW	02-03-125	296- 52-68005	NEW-W	02-06-102	296- 52-71010	NEW-W	02-06-102
296- 52-66010	NEW	02-03-125	296- 52-68010	NEW	02-03-125	296- 52-71015	NEW	02-03-125
296- 52-66015	NEW	02-03-125	296- 52-68015	NEW	02-03-125	296- 52-71020	NEW	02-03-125
296- 52-66020	NEW	02-03-125	296- 52-68020	NEW	02-03-125	296- 52-71025	NEW	02-03-125
296- 52-66025	NEW-W	02-06-102	296- 52-68025	NEW	02-03-125	296- 52-71030	NEW-W	02-06-102
296- 52-66030	NEW	02-03-125	296- 52-68030	NEW	02-03-125	296- 52-71035	NEW	02-03-125
296- 52-66035	NEW	02-03-125	296- 52-68035	NEW-W	02-06-102	296- 52-71040	NEW	02-03-125
296- 52-66040	NEW	02-03-125	296- 52-68040	NEW	02-03-125	296- 52-71045	NEW	02-03-125
296- 52-66045	NEW	02-03-125	296- 52-68045	NEW	02-03-125	296- 52-71050	NEW-W	02-06-102
296- 52-66050	NEW	02-03-125	296- 52-68050	NEW	02-03-125	296- 52-71055	NEW	02-03-125
296- 52-66055	NEW	02-03-125	296- 52-68055	NEW	02-03-125	296- 52-71060	NEW	02-03-125
296- 52-66060	NEW	02-03-125	296- 52-68060	NEW	02-03-125	296- 52-71065	NEW	02-03-125
296- 52-67005	NEW-W	02-06-102	296- 52-68065	NEW	02-03-125	296- 52-71070	NEW-W	02-06-102
296- 52-67010	NEW	02-03-125	296- 52-68070	NEW-W	02-06-102	296- 52-71075	NEW	02-03-125
296- 52-67015	NEW-W	02-06-102	296- 52-68075	NEW	02-03-125	296- 52-71080	NEW	02-03-125
296- 52-67020	NEW	02-03-125	296- 52-68080	NEW	02-03-125	296- 52-71085	NEW-W	02-06-102
296- 52-67025	NEW	02-03-125	296- 52-68085	NEW	02-03-125	296- 52-71090	NEW	02-03-125
296- 52-67030	NEW	02-03-125	296- 52-69005	NEW	02-03-125	296- 52-71095	NEW	02-03-125
296- 52-67035	NEW	02-03-125	296- 52-69010	NEW	02-03-125	296- 52-71100	NEW	02-03-125
296- 52-67040	NEW	02-03-125	296- 52-69015	NEW	02-03-125	296- 52-71105	NEW	02-03-125
296- 52-67045	NEW	02-03-125	296- 52-69020	NEW	02-03-125	296- 52-720	NEW	02-03-125
296- 52-67050	NEW	02-03-125	296- 52-69025	NEW	02-03-125	296- 52-725	NEW	02-03-125
296- 52-67055	NEW	02-03-125	296- 52-69030	NEW	02-03-125	296- 62	PREP	02-04-107
296- 52-67060	NEW	02-03-125	296- 52-69035	NEW	02-03-125	296- 62-060	AMD-P	02-09-092
296- 52-67065	NEW	02-03-125	296- 52-69040	NEW	02-03-125	296- 62-070	AMD-P	02-09-092
296- 52-67070	NEW	02-03-125	296- 52-69045	NEW	02-03-125	296- 62-07302	AMD-X	02-05-077
296- 52-67075	NEW	02-03-125	296- 52-69050	NEW	02-03-125	296- 62-07304	AMD-X	02-05-077
296- 52-67080	NEW	02-03-125	296- 52-69055	NEW	02-03-125	296- 62-07312	AMD-X	02-05-077
296- 52-67085	NEW	02-03-125	296- 52-69060	NEW	02-03-125	296- 62-07314	AMD-X	02-05-077
296- 52-67090	NEW	02-03-125	296- 52-69065	NEW	02-03-125	296- 62-07421	AMD-X	02-05-077
296- 52-67095	NEW	02-03-125	296- 52-69070	NEW	02-03-125	296- 62-07501	AMD-X	02-05-077
296- 52-67100	NEW	02-03-125	296- 52-69075	NEW-W	02-06-102	296- 62-07527	AMD-X	02-05-077
296- 52-67105	NEW	02-03-125	296- 52-69080	NEW	02-03-125	296- 62-07540	AMD-X	02-05-077
296- 52-67110	NEW	02-03-125	296- 52-69085	NEW	02-03-125	296- 62-080	AMD-P	02-09-092
296- 52-67115	NEW	02-03-125	296- 52-69090	NEW	02-03-125	296- 62-11021	AMD-P	02-07-100
296- 52-67120	NEW-W	02-06-102	296- 52-69095	NEW	02-03-125	296- 62-130	AMD-P	02-09-092
296- 52-67125	NEW	02-03-125	296- 52-69100	NEW-W	02-06-102	296- 62-14105	AMD-X	02-05-077
296- 52-67130	NEW	02-03-125	296- 52-69105	NEW	02-03-125	296- 62-14110	AMD-X	02-05-077

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296-62-14171	AMD-X	02-05-077	296-155-605	AMD-P	02-05-080	296-401B-700	AMD-P	02-09-095
296-78-56501	AMD	02-03-124	296-155-606	NEW-P	02-05-080	296-402A-040	AMD-P	02-09-097
296-78-56505	AMD	02-03-124	296-155-607	NEW-P	02-05-080	296-402A-410	AMD-P	02-09-097
296-78-71015	AMD-P	02-07-100	296-155-608	NEW-P	02-05-080	296-402A-630	AMD-P	02-09-097
296-79-140	AMD-X	02-05-077	296-155-609	NEW-P	02-05-080	296-403-010	REP-P	02-09-097
296-86A-010	REP-P	02-09-095	296-155-610	AMD-P	02-05-080	296-403-020	REP-P	02-09-097
296-86A-020	REP-P	02-09-095	296-155-611	NEW-P	02-05-080	296-403-030	REP-P	02-09-097
296-86A-025	REP-P	02-09-095	296-155-612	NEW-P	02-05-080	296-403-040	REP-P	02-09-097
296-86A-028	REP-P	02-09-095	296-155-615	AMD-P	02-05-080	296-403-050	REP-P	02-09-097
296-86A-030	REP-P	02-09-095	296-155-655	AMD-P	02-05-080	296-403-060	REP-P	02-09-097
296-86A-040	REP-P	02-09-095	296-155-66405	AMD-X	02-05-077	296-403-070	REP-P	02-09-097
296-86A-060	REP-P	02-09-095	296-155-66411	AMD-X	02-05-077	296-403-080	REP-P	02-09-097
296-86A-065	REP-P	02-09-095	296-155-700	REP-P	02-06-114	296-403-090	REP-P	02-09-097
296-86A-070	REP-P	02-09-095	296-155-701	NEW-P	02-06-114	296-403-100	REP-P	02-09-097
296-86A-073	REP-P	02-09-095	296-155-702	NEW-P	02-06-114	296-403-110	REP-P	02-09-097
296-86A-074	REP-P	02-09-095	296-155-703	NEW-P	02-06-114	296-403-120	REP-P	02-09-097
296-86A-075	REP-P	02-09-095	296-155-704	NEW-P	02-06-114	296-403-130	REP-P	02-09-097
296-86A-080	REP-P	02-09-095	296-155-705	REP-P	02-06-114	296-403-140	REP-P	02-09-097
296-96	PREP	02-04-106	296-155-706	NEW-P	02-06-114	296-403-150	REP-P	02-09-097
296-96	PREP	02-09-090	296-155-707	NEW-P	02-06-114	296-403-160	REP-P	02-09-097
296-96-01010	AMD-P	02-09-095	296-155-708	NEW-P	02-06-114	296-403A-100	NEW-P	02-09-097
296-96-01012	NEW-P	02-09-095	296-155-709	NEW-P	02-06-114	296-403A-110	NEW-P	02-09-097
296-96-01015	REP-P	02-09-095	296-155-710	REP-P	02-06-114	296-403A-120	NEW-P	02-09-097
296-96-01025	AMD-P	02-09-095	296-155-711	NEW-P	02-06-114	296-403A-130	NEW-P	02-09-097
296-96-01027	AMD-P	02-09-095	296-155-714	NEW-P	02-06-114	296-403A-140	NEW-P	02-09-097
296-96-01030	AMD-P	02-09-095	296-155-715	REP-P	02-06-114	296-403A-150	NEW-P	02-09-097
296-96-01035	AMD-P	02-09-095	296-155-716	NEW-P	02-06-114	296-403A-160	NEW-P	02-09-097
296-96-01040	AMD-P	02-09-095	296-155-717	NEW-P	02-06-114	296-403A-170	NEW-P	02-09-097
296-96-01045	AMD-P	02-09-095	296-155-720	REP-P	02-06-114	296-403A-180	NEW-P	02-09-097
296-96-01050	AMD-P	02-09-095	296-155-72401	NEW-P	02-06-114	296-403A-190	NEW-P	02-09-097
296-96-01055	AMD-P	02-09-095	296-155-72402	NEW-P	02-06-114	296-403A-195	NEW-P	02-09-097
296-96-01060	AMD-P	02-09-095	296-155-72403	NEW-P	02-06-114	296-403A-200	NEW-P	02-09-097
296-96-01065	AMD-P	02-09-095	296-155-72404	NEW-P	02-06-114	296-403A-210	NEW-P	02-09-097
296-104	PREP	02-04-105	296-155-72405	NEW-P	02-06-114	296-403A-220	NEW-P	02-09-097
296-104	PREP	02-08-090	296-155-72406	NEW-P	02-06-114	296-403A-230	NEW-P	02-09-097
296-104-055	AMD-P	02-09-094	296-155-960	AMD-X	02-05-077	296-403A-240	NEW-P	02-09-097
296-104-060	AMD-P	02-09-094	296-200A-080	AMD-P	02-09-095	296-800	PREP	02-04-107
296-104-700	AMD-P	02-09-094	296-200A-900	AMD-P	02-09-095	296-800-110	AMD-P	02-09-092
296-150C-0800	AMD-P	02-09-095	296-305-04001	AMD-X	02-05-077	296-800-11040	NEW-P	02-09-092
296-150C-3000	AMD-P	02-09-095	296-305-05003	AMD-X	02-05-077	296-800-11045	NEW-P	02-09-092
296-150M-0020	AMD	02-03-048	296-307	PREP	02-04-107	296-800-130	AMD-P	02-09-092
296-150M-0049	NEW	02-03-048	296-307-039	AMD-X	02-05-077	296-800-13005	REP-P	02-09-092
296-150M-0140	AMD	02-03-048	296-307-08009	AMD-X	02-05-077	296-800-13010	REP-P	02-09-092
296-150M-0302	NEW	02-03-048	296-307-14520	PREP	02-07-103	296-800-13015	REP-P	02-09-092
296-150M-0304	NEW-W	02-09-070	296-400A	PREP	02-09-089	296-800-13020	NEW-P	02-09-092
296-150P-3000	AMD-P	02-09-095	296-400A	AMD-P	02-09-096	296-800-13025	NEW-P	02-09-092
296-150R-3000	AMD-P	02-09-095	296-400A-005	AMD-P	02-09-096	296-800-13030	NEW-P	02-09-092
296-150T-3000	AMD-P	02-09-095	296-400A-020	AMD-P	02-09-096	296-800-13035	NEW-P	02-09-092
296-150V-0800	AMD-P	02-09-095	296-400A-025	AMD-P	02-09-096	296-800-13040	NEW-P	02-09-092
296-150V-3000	AMD-P	02-09-095	296-400A-026	AMD-P	02-09-096	296-800-150	AMD-P	02-09-092
296-155	PREP	02-09-091	296-400A-030	AMD-P	02-09-096	296-800-15030	NEW-P	02-09-092
296-155-110	AMD-P	02-05-080	296-400A-031	AMD-P	02-09-096	296-800-15035	NEW-P	02-09-092
296-155-165	AMD-P	02-05-080	296-400A-035	AMD-P	02-09-096	296-800-15040	NEW-P	02-09-092
296-155-200	AMD-P	02-05-080	296-400A-045	AMD-P	02-09-096	296-800-16050	AMD-P	02-09-092
296-155-24525	AMD-X	02-05-077	296-400A-070	AMD-P	02-09-096	296-800-16070	AMD-P	02-09-092
296-155-441	AMD-X	02-05-077	296-400A-100	AMD-P	02-09-096	296-800-170	AMD-P	02-09-092
296-155-525	AMD-X	02-05-077	296-400A-120	AMD-P	02-09-096	296-800-17020	AMD-P	02-09-092
296-155-530	AMD-X	02-05-077	296-400A-121	AMD-P	02-09-096	296-800-17025	AMD-P	02-09-092
296-155-601	NEW-P	02-05-080	296-400A-122	NEW-P	02-09-096	296-800-17030	AMD-P	02-09-092
296-155-602	NEW-P	02-05-080	296-400A-130	AMD-P	02-09-096	296-800-18010	AMD-P	02-09-092
296-155-603	NEW-P	02-05-080	296-400A-140	AMD-P	02-09-096	296-800-18015	AMD-P	02-09-092

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296-800-23010	AMD-P	02-09-092	308- 12-010	AMD-P	02-04-114	308- 20-130	REP	02-04-012
296-800-23020	AMD-P	02-09-092	308- 12-031	AMD-P	02-04-114	308- 20-150	REP	02-04-012
296-800-25015	AMD-P	02-09-092	308- 12-050	AMD-P	02-04-114	308- 20-155	REP	02-04-012
296-800-28040	AMD-P	02-09-092	308- 12-081	AMD-P	02-04-114	308- 20-171	REP	02-04-012
296-800-28045	AMD-P	02-09-092	308- 12-085	AMD-P	02-04-114	308- 20-172	REP	02-04-012
296-800-32025	AMD-P	02-09-092	308- 12-115	AMD-P	02-04-114	308- 20-210	AMD-P	02-04-088
296-800-35030	AMD-P	02-09-092	308- 12-150	AMD-P	02-04-114	308- 20-210	AMD	02-09-040
296-800-35040	AMD-P	02-09-092	308- 12-210	AMD-P	02-04-114	308- 20-310	REP	02-04-012
296-800-35056	AMD-P	02-09-092	308- 12-220	AMD-P	02-04-114	308- 20-590	REP	02-04-012
296-800-35076	AMD-P	02-09-092	308- 12-230	AMD-P	02-04-114	308- 56A-030	PREP	02-05-019
296-800-370	AMD-P	02-09-092	308- 12-240	AMD-P	02-04-114	308- 56A-040	PREP	02-05-019
296-832-10000	NEW-X	02-08-080	308- 12-320	AMD-P	02-04-114	308- 56A-056	PREP	02-05-019
296-832-10005	NEW-X	02-08-080	308- 12-321	REP-P	02-04-114	308- 56A-060	PREP	02-05-019
296-832-10010	NEW-X	02-08-080	308- 12-322	REP-P	02-04-114	308- 56A-070	PREP	02-05-015
296-832-10015	NEW-X	02-08-080	308- 12-323	REP-P	02-04-114	308- 56A-075	PREP	02-05-015
296-832-10020	NEW-X	02-08-080	308- 12-324	REP-P	02-04-114	308- 56A-110	PREP	02-05-019
296-832-10025	NEW-X	02-08-080	308- 12-325	REP-P	02-04-114	308- 56A-115	PREP	02-05-019
296-835-100	NEW-P	02-07-100	308- 12-330	NEW-P	02-04-114	308- 56A-140	PREP	02-05-018
296-835-110	NEW-P	02-07-100	308- 13-005	AMD-P	02-04-113	308- 56A-150	PREP	02-05-018
296-835-11005	NEW-P	02-07-100	308- 13-005	AMD	02-07-047	308- 56A-160	PREP	02-05-018
296-835-11010	NEW-P	02-07-100	308- 13-020	AMD-P	02-04-113	308- 56A-200	PREP	02-05-018
296-835-11015	NEW-P	02-07-100	308- 13-020	AMD	02-07-047	308- 56A-210	PREP	02-05-019
296-835-11020	NEW-P	02-07-100	308- 13-024	AMD-P	02-04-113	308- 56A-215	PREP	02-05-018
296-835-11025	NEW-P	02-07-100	308- 13-024	AMD	02-07-047	308- 56A-250	PREP	02-05-016
296-835-11030	NEW-P	02-07-100	308- 13-036	NEW-P	02-04-113	308- 56A-265	PREP	02-05-016
296-835-11035	NEW-P	02-07-100	308- 13-036	NEW	02-07-047	308- 56A-270	PREP	02-05-016
296-835-11040	NEW-P	02-07-100	308- 13-050	AMD-P	02-04-113	308- 56A-275	PREP	02-05-016
296-835-11045	NEW-P	02-07-100	308- 13-050	AMD	02-07-047	308- 56A-295	PREP	02-05-019
296-835-11050	NEW-P	02-07-100	308- 13-100	AMD-P	02-04-113	308- 56A-300	PREP	02-05-014
296-835-120	NEW-P	02-07-100	308- 13-100	AMD	02-07-047	308- 56A-305	PREP	02-05-014
296-835-12005	NEW-P	02-07-100	308- 13-150	PREP	02-08-033	308- 56A-310	PREP	02-05-014
296-835-12010	NEW-P	02-07-100	308- 14-085	AMD-P	02-08-074	308- 56A-315	PREP	02-05-014
296-835-12015	NEW-P	02-07-100	308- 14-090	REP-P	02-08-074	308- 56A-320	PREP	02-05-014
296-835-12020	NEW-P	02-07-100	308- 14-100	AMD-P	02-08-074	308- 56A-325	PREP	02-05-014
296-835-12025	NEW-P	02-07-100	308- 14-120	AMD-P	02-08-074	308- 56A-330	PREP	02-05-014
296-835-12030	NEW-P	02-07-100	308- 14-130	AMD-P	02-08-074	308- 56A-460	PREP	02-08-005
296-835-12035	NEW-P	02-07-100	308- 14-135	AMD-P	02-08-074	308- 56A-500	AMD-P	02-07-035
296-835-12040	NEW-P	02-07-100	308- 14-210	AMD-P	02-08-074	308- 56A-530	NEW-P	02-07-035
296-835-12045	NEW-P	02-07-100	308- 15-040	PREP	02-05-079	308- 56A-640	PREP	02-05-013
296-835-12050	NEW-P	02-07-100	308- 15-040	AMD-P	02-09-011	308- 56A-640	PREP	02-05-017
296-835-12055	NEW-P	02-07-100	308- 15-140	PREP	02-05-079	308- 66	PREP	02-04-059
296-835-12060	NEW-P	02-07-100	308- 15-140	NEW-P	02-09-011	308- 66-110	AMD-P	02-09-057
296-835-12065	NEW-P	02-07-100	308- 17-150	AMD-P	02-03-130	308- 66-120	AMD-P	02-09-057
296-835-130	NEW-P	02-07-100	308- 17-310	PREP	02-07-069	308- 90-040	AMD	02-05-073
296-835-13005	NEW-P	02-07-100	308- 17-320	PREP	02-07-069	308- 90-070	AMD	02-05-073
296-835-13010	NEW-P	02-07-100	308- 18-150	AMD-P	02-02-096	308- 90-080	AMD	02-05-073
296-835-13015	NEW-P	02-07-100	308- 18-150	AMD	02-07-068	308- 90-090	AMD	02-05-073
296-835-13020	NEW-P	02-07-100	308- 19-130	AMD-P	02-02-095	308- 90-100	AMD	02-05-073
296-835-13025	NEW-P	02-07-100	308- 19-130	AMD	02-07-067	308- 90-110	AMD	02-05-073
296-835-13030	NEW-P	02-07-100	308- 19-240	AMD-P	02-02-095	308- 90-130	AMD	02-05-073
296-835-140	NEW-P	02-07-100	308- 19-240	AMD	02-07-067	308- 90-140	AMD	02-05-073
296-860-100	NEW-P	02-07-101	308- 20-010	AMD	02-04-012	308- 90-150	AMD	02-05-073
296-860-10005	NEW-P	02-07-101	308- 20-030	REP	02-04-012	308- 90-160	AMD	02-05-073
296-860-10010	NEW-P	02-07-101	308- 20-040	AMD	02-04-012	308- 93-230	AMD	02-04-001
296-860-10020	NEW-P	02-07-101	308- 20-045	REP	02-04-012	308- 93-241	PREP	02-08-006
296-860-10025	NEW-P	02-07-101	308- 20-080	AMD	02-04-012	308- 93-242	PREP	02-08-006
296-860-10030	NEW-P	02-07-101	308- 20-090	AMD	02-04-012	308- 93-243	PREP	02-08-006
296-860-10040	NEW-P	02-07-101	308- 20-105	AMD	02-04-012	308- 93-244	PREP	02-08-006
296-860-10050	NEW-P	02-07-101	308- 20-107	AMD	02-04-012	308- 93-250	REP	02-04-001
296-860-10060	NEW-P	02-07-101	308- 20-110	AMD	02-04-012	308- 93-270	AMD	02-04-001
296-860-10070	NEW-P	02-07-101	308- 20-120	AMD	02-04-012	308- 93-275	NEW	02-04-001

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308-93-530	AMD	02-05-059	308-330-320	AMD	02-04-075	315-37-120	NEW-P	02-03-109
308-93-540	AMD	02-05-059	308-330-464	AMD	02-04-075	315-37-120	NEW	02-07-073
308-93-700	AMD	02-05-058	308-330-481	AMD	02-04-075	316-02-001	AMD-X	02-08-029
308-93-710	AMD	02-05-058	308-330-705	AMD	02-04-075	316-02-135	AMD-X	02-08-029
308-93-720	AMD	02-05-058	314-02-010	AMD-P	02-04-115	316-02-150	AMD-X	02-08-029
308-93-730	AMD	02-05-058	314-02-015	AMD-P	02-04-115	316-02-170	AMD-X	02-08-029
308-93-740	AMD	02-05-058	314-02-020	AMD-P	02-04-115	316-02-300	AMD-X	02-08-029
308-93-750	AMD	02-05-058	314-02-025	AMD-P	02-04-115	316-02-310	REP-X	02-08-029
308-93-760	AMD	02-05-058	314-02-030	AMD-P	02-04-115	316-02-340	REP-X	02-08-029
308-93-770	AMD	02-05-058	314-02-033	NEW-P	02-04-115	316-02-350	REP-X	02-08-029
308-94-050	AMD-P	02-07-024	314-02-035	AMD-P	02-04-115	316-02-360	REP-X	02-08-029
308-96A-005	PREP	02-09-004	314-02-045	AMD-P	02-04-115	316-02-370	REP-X	02-08-029
308-96A-046	PREP	02-05-002	314-02-050	REP-P	02-04-115	316-02-600	AMD-X	02-08-029
308-96A-050	PREP	02-05-002	314-02-055	AMD-P	02-04-115	316-02-610	AMD-X	02-08-029
308-96A-056	PREP	02-05-002	314-02-115	AMD-P	02-04-115	316-02-620	AMD-X	02-08-029
308-96A-057	PREP	02-05-002	314-02-125	AMD-P	02-04-115	316-02-630	AMD-X	02-08-029
308-96A-062	PREP	02-09-004	314-02-130	AMD-P	02-04-115	316-02-640	AMD-X	02-08-029
308-96A-064	PREP	02-09-004	314-11-015	AMD-P	02-04-110	316-02-650	AMD-X	02-08-029
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308-96A-074	PREP	02-05-002	314-11-025	AMD-P	02-04-110	316-02-820	AMD-X	02-08-029
308-96A-080	PREP	02-05-020	314-11-030	AMD-P	02-04-110	316-65-005	AMD-X	02-08-029
308-96A-085	PREP	02-05-020	314-11-035	AMD-P	02-04-110	332-30-106	AMD-P	02-03-111
308-96A-090	PREP	02-05-020	314-11-040	AMD-P	02-04-110	332-30-115	AMD-P	02-03-111
308-96A-095	PREP	02-05-020	314-11-045	AMD-P	02-04-110	332-30-139	AMD-P	02-03-111
308-96A-098	AMD-P	02-07-014	314-11-060	AMD-P	02-04-110	332-30-144	AMD-P	02-03-111
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308-96A-101	AMD-P	02-08-036	314-11-070	AMD-P	02-04-110	332-30-171	NEW-P	02-03-111
308-96A-110	PREP	02-03-086	314-11-072	NEW-P	02-04-110	332-150-030	AMD-X	02-09-046
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308-96A-161	AMD-P	02-07-014	314-21-005	NEW-P	02-04-112	356-06-065	NEW-E	02-07-054
308-96A-201	AMD-P	02-05-057	314-21-015	NEW-P	02-04-112	356-15-090	AMD-E	02-07-052
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308-96A-208	AMD-P	02-05-057	315-06-123	PREP	02-09-081	356-18-112	AMD-S	02-04-082
308-96A-220	AMD-P	02-07-036	315-10	PREP	02-05-048	356-18-112	AMD	02-07-049
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308-96A-312	AMD	02-04-002	315-37-010	NEW	02-07-073	356-26-140	AMD-P	02-04-080
308-96A-313	AMD	02-04-002	315-37-020	NEW-P	02-03-109	356-26-140	AMD	02-07-050
308-96A-314	AMD	02-04-002	315-37-020	NEW	02-07-073	356-30-025	AMD-S	02-04-082
308-96A-316	AMD	02-04-002	315-37-030	NEW-P	02-03-109	356-30-025	AMD	02-07-049
308-96A-530	PREP	02-05-002	315-37-030	NEW	02-07-073	356-30-065	AMD-S	02-04-082
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365-220-050	NEW	02-07-026	388- 14A-5525	AMD-P	02-03-096	388- 15-600	PREP-W	02-05-064
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365-220-060	NEW	02-07-026	388- 14A-5530	AMD-P	02-03-096	388- 15-630	PREP-W	02-05-064
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365-220-090	NEW	02-07-026	388- 15-011	NEW-P	02-03-118	388- 71-0435	PREP	02-04-096
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365-220-120	NEW	02-07-026	388- 15-033	NEW-P	02-03-118	388- 71-0500	PREP	02-04-096
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365-220-135	NEW	02-07-026	388- 15-045	NEW-P	02-03-118	388- 71-0820	PREP	02-04-096
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365-220-145	NEW	02-07-026	388- 15-053	NEW-P	02-03-118	388- 76-540	PREP	02-04-096
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365-220-190	NEW	02-07-026	388- 15-089	NEW-P	02-03-118	388- 76-64035	NEW-P	02-03-117
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388- 14A-2140	NEW	02-07-091	388- 15-202	PREP	02-04-096	388- 97-285	AMD-P	02-07-116
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388-97-620	NEW-P	02-07-116	388-148-1076	PREP	02-06-083	388-290-0130	AMD-P	02-08-060
388-97-625	NEW-P	02-07-116	388-148-1077	PREP	02-06-083	388-290-0135	PREP	02-04-097
388-97-630	NEW-P	02-07-116	388-148-1078	PREP	02-06-083	388-290-0135	AMD-P	02-08-060
388-97-635	NEW-P	02-07-116	388-148-1079	PREP	02-06-083	388-290-0143	NEW-P	02-09-064
388-97-640	NEW-P	02-07-116	388-148-1115	PREP	02-06-083	388-290-0145	PREP	02-04-097
388-97-645	NEW-P	02-07-116	388-148-1120	PREP	02-06-083	388-290-0145	AMD-P	02-09-064
388-97-650	NEW-P	02-07-116	388-148-1205	NEW-E	02-08-031	388-290-0150	PREP	02-04-097
388-97-655	NEW-P	02-07-116	388-148-1210	NEW-E	02-08-031	388-290-0150	AMD-P	02-09-064
388-97-660	NEW-P	02-07-116	388-148-1215	NEW-E	02-08-031	388-290-0155	PREP	02-04-097
388-97-665	NEW-P	02-07-116	388-148-1220	NEW-E	02-08-031	388-290-0155	AMD-P	02-09-064
388-97-670	NEW-P	02-07-116	388-148-1225	NEW-E	02-08-031	388-290-0160	PREP	02-04-097
388-97-675	NEW-P	02-07-116	388-148-1230	NEW-E	02-08-031	388-290-0160	AMD-P	02-09-064
388-97-680	NEW-P	02-07-116	388-148-1235	NEW-E	02-08-031	388-290-0165	PREP	02-04-097
388-97-685	NEW-P	02-07-116	388-148-1240	NEW-E	02-08-031	388-290-0165	AMD-P	02-09-064
388-97-690	NEW-P	02-07-116	388-148-1245	NEW-E	02-08-031	388-290-0167	NEW-P	02-09-064
388-97-695	NEW-P	02-07-116	388-148-1250	NEW-E	02-08-031	388-290-0180	PREP	02-04-097
388-98-001	REP-P	02-07-116	388-148-1255	NEW-E	02-08-031	388-290-0190	PREP	02-04-097
388-98-003	REP-P	02-07-116	388-148-1260	NEW-E	02-08-031	388-290-0190	AMD-P	02-08-060
388-98-010	REP-P	02-07-116	388-148-1265	NEW-E	02-08-031	388-290-0200	PREP	02-04-097
388-98-015	REP-P	02-07-116	388-148-1270	NEW-E	02-08-031	388-290-0200	AMD-P	02-08-060
388-98-020	REP-P	02-07-116	388-148-1275	NEW-E	02-08-031	388-290-0205	PREP	02-04-097
388-98-300	REP-P	02-07-116	388-148-1280	NEW-E	02-08-031	388-290-0205	AMD-P	02-08-060
388-98-320	REP-P	02-07-116	388-148-1285	NEW-E	02-08-031	388-290-0225	PREP	02-04-097
388-98-330	REP-P	02-07-116	388-148-1290	NEW-E	02-08-031	388-290-0225	AMD-P	02-08-060
388-98-340	REP-P	02-07-116	388-148-1295	NEW-E	02-08-031	388-290-0230	PREP	02-04-097
388-98-700	REP-P	02-07-116	388-148-1300	NEW-E	02-08-031	388-290-0230	AMD-P	02-08-060
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388-98-870	REP-P	02-07-116	388-151-097	AMD-P	02-03-095	388-290-0245	AMD-P	02-08-060
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434-236-040	REP-P	02-03-133	434-240-060	AMD-P	02-03-133	434-333-063	RECOD	02-09-007
434-236-040	REP	02-07-028	434-240-060	AMD	02-07-028	434-333-065	RECOD	02-09-007
434-236-050	REP-P	02-03-133	434-240-080	NEW-P	02-03-133	434-333-070	RECOD	02-09-007
434-236-050	REP	02-07-028	434-240-080	NEW	02-07-028	434-333-075	RECOD	02-09-007
434-236-055	NEW-P	02-03-133	434-240-090	AMD-P	02-03-133	434-333-082	RECOD	02-09-007
434-236-055	NEW	02-07-028	434-240-090	AMD	02-07-028	434-333-085	RECOD	02-09-007
434-236-055	DECOD	02-09-007	434-240-120	AMD-P	02-03-133	434-333-090	RECOD	02-09-007
434-236-060	AMD-P	02-03-133	434-240-120	AMD	02-07-028	434-333-095	RECOD	02-09-007
434-236-060	AMD	02-07-028	434-240-130	AMD-P	02-03-133	434-333-100	RECOD	02-09-007
434-236-060	DECOD	02-09-007	434-240-130	AMD	02-07-028	434-333-105	RECOD	02-09-007
434-236-070	AMD-P	02-03-133	434-240-150	AMD-P	02-03-133	434-333-110	RECOD	02-09-007
434-236-070	AMD	02-07-028	434-240-150	AMD	02-07-028	434-333-120	RECOD	02-09-007
434-236-070	DECOD	02-09-007	434-240-160	REP-P	02-03-133	434-333-125	RECOD	02-09-007
434-236-080	AMD-P	02-03-133	434-240-160	REP	02-07-028	434-333-127	RECOD	02-09-007
434-236-080	AMD	02-07-028	434-240-190	AMD-P	02-03-133	434-333-130	RECOD	02-09-007
434-236-080	DECOD	02-09-007	434-240-190	AMD	02-07-028	434-333-135	RECOD	02-09-007
434-236-090	AMD-P	02-03-134	434-240-200	AMD-P	02-03-134	434-333-140	RECOD	02-09-007
434-236-090	AMD	02-07-029	434-240-200	AMD	02-07-029	434-333-145	RECOD	02-09-007
434-236-090	DECOD	02-09-007	434-240-205	AMD-P	02-03-133	434-333-150	RECOD	02-09-007
434-236-100	AMD-P	02-03-133	434-240-205	AMD	02-07-028	434-333-155	RECOD	02-09-007
434-236-100	AMD	02-07-028	434-240-230	AMD-P	02-03-133	434-333-160	RECOD	02-09-007
434-236-100	DECOD	02-09-007	434-240-230	AMD	02-07-028	434-333-165	RECOD	02-09-007
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434-236-110	AMD	02-07-028	434-240-235	AMD	02-07-028	434-333-175	RECOD	02-09-007
434-236-110	DECOD	02-09-007	434-240-240	AMD-P	02-03-134	434-334-010	DECOD	02-09-007
434-236-120	DECOD	02-09-007	434-240-240	AMD	02-07-029	434-334-015	DECOD	02-09-007
434-236-140	AMD-P	02-03-133	434-240-250	AMD-P	02-03-133	434-334-020	DECOD	02-09-007
434-236-140	AMD	02-07-028	434-240-250	AMD	02-07-028	434-334-025	DECOD	02-09-007
434-236-140	DECOD	02-09-007	434-240-320	AMD-P	02-03-133	434-334-030	DECOD	02-09-007
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434-334-045	DECOD	02-09-007	468- 38-390	AMD-P	02-03-049	478-117-230	NEW-P	02-03-085
434-334-050	DECOD	02-09-007	468- 38-390	AMD	02-06-106	478-117-230	NEW-E	02-04-087
434-334-055	DECOD	02-09-007	468-300-010	AMD-P	02-05-062	478-117-230	NEW	02-08-023
434-334-060	DECOD	02-09-007	468-300-010	AMD	02-09-010	478-117-240	NEW-P	02-03-085
434-334-063	DECOD	02-09-007	468-300-020	AMD-P	02-05-062	478-117-240	NEW-E	02-04-087
434-334-065	DECOD	02-09-007	468-300-020	AMD	02-09-010	478-117-240	NEW	02-08-023
434-334-070	DECOD	02-09-007	468-300-040	AMD-P	02-05-062	478-117-250	NEW-P	02-03-085
434-334-075	DECOD	02-09-007	468-300-040	AMD	02-09-010	478-117-250	NEW-E	02-04-087
434-334-082	DECOD	02-09-007	468-300-220	AMD-P	02-05-062	478-117-250	NEW	02-08-023
434-334-085	DECOD	02-09-007	468-300-220	AMD	02-09-010	478-117-260	NEW-P	02-03-085
434-334-090	DECOD	02-09-007	468-550	PREP	02-06-004	478-117-260	NEW-E	02-04-087
434-334-095	DECOD	02-09-007	478-108-010	AMD-P	02-03-085	478-117-260	NEW	02-08-023
434-334-100	DECOD	02-09-007	478-108-010	AMD-E	02-04-087	478-117-270	NEW-P	02-03-085
434-334-105	DECOD	02-09-007	478-108-010	AMD-E	02-06-042	478-117-270	NEW-E	02-04-087
434-334-110	DECOD	02-09-007	478-108-010	AMD	02-08-023	478-117-270	NEW	02-08-023
434-334-120	DECOD	02-09-007	478-108-010	AMD-P	02-08-066	478-117-280	NEW-P	02-03-085
434-334-125	DECOD	02-09-007	478-116-131	PREP	02-06-045	478-117-280	NEW-E	02-04-087
434-334-127	DECOD	02-09-007	478-117-005	NEW-P	02-03-085	478-117-280	NEW	02-08-023
434-334-130	DECOD	02-09-007	478-117-005	NEW-E	02-04-087	478-117-300	NEW-P	02-03-085
434-334-135	DECOD	02-09-007	478-117-005	NEW	02-08-023	478-117-300	NEW-E	02-04-087
434-334-140	DECOD	02-09-007	478-117-010	NEW-P	02-03-085	478-117-300	NEW	02-08-023
434-334-145	DECOD	02-09-007	478-117-010	NEW-E	02-04-087	478-117-310	NEW-P	02-03-085
434-334-150	DECOD	02-09-007	478-117-010	NEW	02-08-023	478-117-310	NEW-E	02-04-087
434-334-155	DECOD	02-09-007	478-117-020	NEW-P	02-03-085	478-117-310	NEW	02-08-023
434-334-160	DECOD	02-09-007	478-117-020	NEW-E	02-04-087	478-117-320	NEW-P	02-03-085
434-334-165	DECOD	02-09-007	478-117-020	NEW	02-08-023	478-117-320	NEW-E	02-04-087
434-334-170	DECOD	02-09-007	478-117-030	NEW-P	02-03-085	478-117-320	NEW	02-08-023
434-334-175	DECOD	02-09-007	478-117-030	NEW-E	02-04-087	478-117-400	NEW-P	02-03-085
456- 09-950	AMD-P	02-09-029	478-117-030	NEW	02-08-023	478-117-400	NEW-E	02-04-087
456- 10-750	AMD-P	02-09-029	478-117-040	NEW-P	02-03-085	478-117-400	NEW	02-08-023
458- 12-090	REP-P	02-09-020	478-117-040	NEW-E	02-04-087	478-117-410	NEW-P	02-03-085
458- 12-135	REP-X	02-09-018	478-117-040	NEW	02-08-023	478-117-410	NEW-E	02-04-087
458- 12-140	AMD-P	02-09-019	478-117-050	NEW-P	02-03-085	478-117-410	NEW	02-08-023
458- 12-270	REP-P	02-09-020	478-117-050	NEW-E	02-04-087	478-118	PREP	02-04-037
458- 12-275	REP-P	02-09-020	478-117-050	NEW	02-08-023	478-118-010	NEW-E	02-06-042
458- 12-280	REP-P	02-09-020	478-117-060	NEW-P	02-03-085	478-118-010	NEW-P	02-08-066
458- 16-115	AMD-P	02-09-020	478-117-060	NEW-E	02-04-087	478-118-020	NEW-E	02-06-042
458- 16-560	PREP	02-07-077	478-117-060	NEW	02-08-023	478-118-020	NEW-P	02-08-066
458- 18-220	AMD	02-03-039	478-117-070	NEW-P	02-03-085	478-118-030	NEW-E	02-06-042
458- 20-151	PREP	02-04-054	478-117-070	NEW-E	02-04-087	478-118-030	NEW-P	02-08-066
458- 20-208	PREP	02-09-068	478-117-070	NEW	02-08-023	478-118-040	NEW-E	02-06-042
458- 20-252	PREP	02-06-030	478-117-080	NEW-P	02-03-085	478-118-040	NEW-P	02-08-066
458- 20-260	AMD-W	02-02-088	478-117-080	NEW-E	02-04-087	478-118-050	NEW-E	02-06-042
458- 20-260	AMD-P	02-06-032	478-117-080	NEW	02-08-023	478-118-050	NEW-P	02-08-066
458- 20-265	PREP	02-06-030	478-117-090	NEW-P	02-03-085	478-118-060	NEW-E	02-06-042
458- 29A-400	PREP	02-08-067	478-117-090	NEW-E	02-04-087	478-118-060	NEW-P	02-08-066
458- 30-262	AMD	02-03-040	478-117-090	NEW	02-08-023	478-118-070	NEW-E	02-06-042
458- 30-590	AMD	02-03-041	478-117-100	NEW-P	02-03-085	478-118-070	NEW-P	02-08-066
458- 30-700	NEW	02-05-043	478-117-100	NEW-E	02-04-087	478-118-080	NEW-E	02-06-042
458- 40-610	PREP	02-08-068	478-117-100	NEW	02-08-023	478-118-080	NEW-P	02-08-066
458- 40-660	PREP	02-06-031	478-117-110	NEW-P	02-03-085	478-118-090	NEW-E	02-06-042
458- 53-030	PREP	02-06-108	478-117-110	NEW-E	02-04-087	478-118-090	NEW-P	02-08-066
458- 53-050	PREP	02-06-108	478-117-110	NEW	02-08-023	478-118-100	NEW-E	02-06-042
458- 53-090	PREP	02-06-108	478-117-200	NEW-P	02-03-085	478-118-100	NEW-P	02-08-066
458- 53-140	PREP	02-06-108	478-117-200	NEW-E	02-04-087	478-118-200	NEW-E	02-06-042
460- 12A-010	NEW-P	02-07-027	478-117-200	NEW	02-08-023	478-118-200	NEW-P	02-08-066
461- 08-320	AMD	02-06-008	478-117-210	NEW-P	02-03-085	478-118-210	NEW-E	02-06-042
461- 08-355	AMD	02-06-009	478-117-210	NEW-E	02-04-087	478-118-210	NEW-P	02-08-066
461- 08-500	AMD	02-06-010	478-117-210	NEW	02-08-023	478-118-220	NEW-E	02-06-042
461- 08-505	AMD	02-06-010	478-117-220	NEW-P	02-03-085	478-118-220	NEW-P	02-08-066
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478-118-250	NEW-E	02-06-042	516- 12-420	AMD	02-07-045			
478-118-250	NEW-P	02-08-066	516- 12-430	AMD	02-07-045			
478-118-260	NEW-E	02-06-042	516- 12-440	AMD	02-07-045			
478-118-260	NEW-P	02-08-066	516- 12-450	AMD	02-07-045			
478-118-270	NEW-E	02-06-042	516- 12-460	AMD	02-07-045			
478-118-270	NEW-P	02-08-066	516- 12-470	AMD	02-07-045			
478-118-280	NEW-E	02-06-042	516- 12-480	AMD	02-07-045			
478-118-280	NEW-P	02-08-066	516- 13-030	AMD	02-07-045			
478-118-400	NEW-E	02-06-042	516- 13-080	AMD	02-07-045			
478-118-400	NEW-P	02-08-066	516- 13-090	AMD	02-07-045			
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478-118-420	NEW-E	02-06-042						
478-118-420	NEW-P	02-08-066						
478-118-500	NEW-E	02-06-042						
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480-120-153	REP-P	02-08-081						
480-120-154	REP-P	02-08-081						
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480-120-205	NEW-P	02-08-081						
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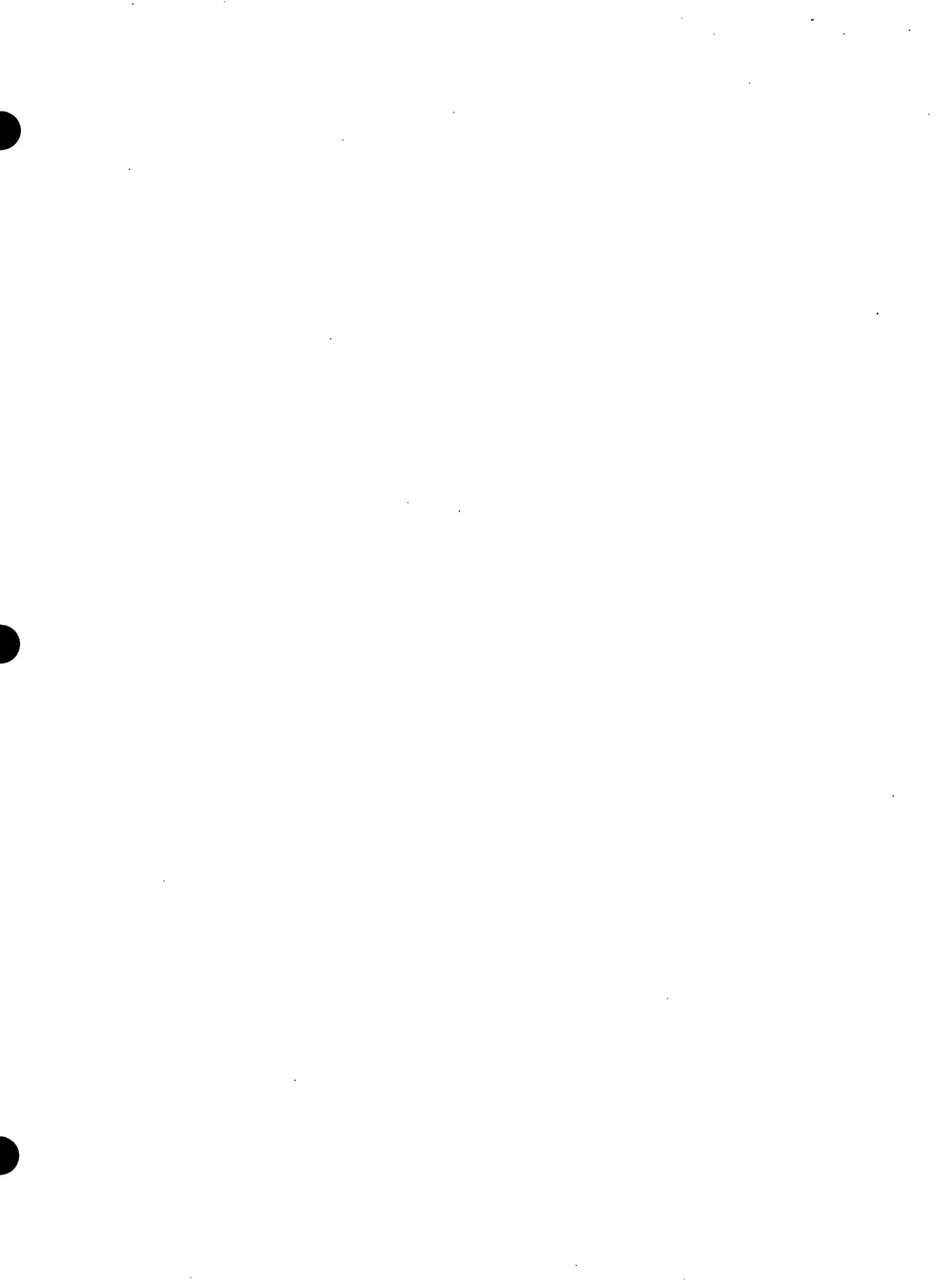












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