Washington State Register

JULY 5, 1989

OLYMPIA, WASHINGTON

ISSUE 89-13

IN THIS ISSUE

(Subject/Agency index at back of issue)
This issue contains documents officially filed not later than June 21, 1989

STATE PRINTING PLANT OLYMPIA, WASHINGTON

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.

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CERTIFICATE

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

DENNIS W. COOPER
Code Reviser

STATE MAXIMUM INTEREST RATE

The maximum allowable interest rate applicable for the month of July 1989 pursuant to RCW 19.52.020 is twelve point four four percent (12.44%).

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

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

The maximum allowable retail installment contract service charge for the purchase of a motor vehicle pursuant to RCW 63.14.130(2)(a) is fourteen point seven five percent (14.75%) for the third calendar quarter of 1989.

WASHINGTON STATE REGISTER

(ISSN 0164-6389) is published twice each month by the Statute Law Committee, Office of the Code Reviser, Olympia, WA 98504, pursuant to RCW 34.08.020. Subscription rate is $161.70 per year, sales tax included, postpaid to points in the United States. Second-class postage paid at Olympia, Washington.

Changes of address notices, subscription orders, and undelivered copies should be sent to:

WASHINGTON STATE REGISTER
Code Reviser's Office
Legislative Building
Olympia, WA 98504

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STYLE AND FORMAT OF THE WASHINGTON STATE REGISTER

1. ARRANGEMENT OF THE REGISTER

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

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

The three types of rule-making actions taken under the Administrative Procedure Act (chapter 34.04 RCW) or the Higher Education Administrative Procedure Act (chapter 28B.19 RCW) may be distinguished by the size and style of type in which they appear.

(a) **Proposed rules** are those rules pending permanent adoption by an agency and are set forth in eight point type.

(b) **Adopted rules** have been permanently adopted and are set forth in ten point type.

(c) **Emergency rules** have been adopted on an emergency basis and are set forth in ten point oblique type.

3. PRINTING STYLE—INDICATION OF NEW OR DELETED MATERIAL

RCW 34.04.058 requires the use of certain marks to indicate amendments to existing agency rules. This style quickly and graphically portrays the current changes to existing rules as follows:

(a) In amendatory sections—
  (i) underlined material is new material;
  (ii) ~~deleted material is ((lined out and bracketed between double parentheses))~~;

(b) Complete new sections are prefaced by the heading NEW SECTION;

(c) The repeal of an entire section is shown by listing its WAC section number and caption under the heading REPEALER.

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

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

5. EFFECTIVE DATE OF RULES

(a) Permanently adopted agency rules take effect thirty days after the rules and the agency order adopting them are filed with the code reviser's office. This effective date may be delayed, but not advanced, and a delayed 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 and remain effective for a maximum of ninety days from that date.

(c) Rules of the state Supreme Court generally contain an effective date clause in the order adopting the rules.

6. EDITORIAL CORRECTIONS

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

7. INDEX AND TABLES

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

1988 – 1989

DATES FOR REGISTER CLOSING, DISTRIBUTION, AND FIRST AGENCY ACTION

Issue No.	Closing Dates[1]			Distribution Date	First Agency Action Date[3]
	Non–OTS & 30 p. or more	Non–OTS & 11 to 29 p.	OTS[2] or 10 p. max. Non–OTS		
For Inclusion in—	*File no later than—*			*Count 20 days from—*	*For hearing/adoption on or after*
88–18	Aug 10	Aug 24	Sep 7	Sep 21	Oct 11
88–19	Aug 24	Sep 7	Sep 21	Oct 5	Oct 25
88–20	Sep 7	Sep 21	Oct 5	Oct 19	Nov 8
88–21	Sep 21	Oct 5	Oct 19	Nov 2	Nov 22
88–22	Oct 5	Oct 19	Nov 2	Nov 16	Dec 6
88–23	Oct 26	Nov 9	Nov 23	Dec 7	Dec 27
88–24	Nov 9	Nov 23	Dec 7	Dec 21	Jan 10, 1989
89–01	Nov 23	Dec 7	Dec 21, 1988	Jan 4, 1989	Jan 24
89–02	Dec 7	Dec 21, 1988	Jan 4, 1989	Jan 18	Feb 7
89–03	Dec 21, 1988	Jan 4, 1989	Jan 18	Feb 1	Feb 21
89–04	Jan 4	Jan 18	Feb 1	Feb 15	Mar 7
89–05	Jan 18	Feb 1	Feb 15	Mar 1	Mar 21
89–06	Feb 1	Feb 15	Mar 1	Mar 15	Apr 4
89–07	Feb 22	Mar 8	Mar 22	Apr 5	Apr 25
89–08	Mar 8	Mar 22	Apr 5	Apr 19	May 9
89–09	Mar 22	Apr 5	Apr 19	May 3	May 23
89–10	Apr 5	Apr 19	May 3	May 17	Jun 6
89–11	Apr 26	May 10	May 24	Jun 7	Jun 27
89–12	May 10	May 24	Jun 7	Jun 21	Jul 11
89–13	May 24	Jun 7	Jun 21	Jul 5	Jul 25
89–14	Jun 7	Jun 21	Jul 5	Jul 19	Aug 8
89–15	Jun 21	Jul 5	Jul 19	Aug 2	Aug 22
89–16	Jul 5	Jul 19	Aug 2	Aug 16	Sep 5
89–17	Jul 26	Aug 9	Aug 23	Sep 6	Sep 26
89–18	Aug 9	Aug 23	Sep 6	Sep 20	Oct 10
89–19	Aug 23	Sep 6	Sep 20	Oct 4	Oct 24
89–20	Sep 6	Sep 20	Oct 4	Oct 18	Nov 7
89–21	Sep 20	Oct 4	Oct 18	Nov 1	Nov 21
89–22	Oct 4	Oct 18	Nov 1	Nov 15	Dec 5
89–23	Oct 25	Nov 8	Nov 22	Dec 6	Dec 26
89–24	Nov 8	Nov 22	Dec 6	Dec 20	Jan 9, 1990

[1]All documents are due at the code reviser's office by 5:00 p.m. on or before the applicable closing date for inclusion in a particular issue of the Register; see WAC 1–12–035 or 1–13–035.

[2]A filing of any length will be accepted on the closing dates of this column if it has been prepared by the order typing service (OTS) of the code reviser's office; see WAC 1–12–220 or 1–13–240. 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.

[3]"No proceeding may be held on any rule until twenty days have passed from the distribution date of the Register in which notice thereof was contained." RCW 28B.19.030(4) and 34.04.025(4). These dates represent the twentieth day after the distribution date of the applicable Register.

WSR 89-12-010
ADOPTED RULES
COMMISSION ON JUDICIAL CONDUCT
[Filed May 26, 1989]

Shown below are the recently adopted revised rules of the Commission on Judicial Conduct. These rules are promulgated under the rule-making authority of the Commission on Judicial Conduct, as authorized in Article IV, Section 31 of the Washington State Constitution. Pursuant to RCW 34.08.020, please publish them in the next available State Register and in the upcoming Volume 0 of the Revised Code of Washington.

Esther Garner
Executive Director

COMMISSION ON JUDICIAL CONDUCT RULES (CJCR)

REVISED AND ADOPTED MAY 5, 1989

TABLE OF RULES

RULE 1. SCOPE AND TITLE

(a) SCOPE. These rules apply to proceedings before the Commission on Judicial Conduct created by Article IV, Section 31, of the Constitution of the State of

Washington, implemented by chapter 2.64 RCW and delegated in part by Discipline Rules for Judges (DRJ). These rules govern the procedure for considering complaints that a judge has violated a rule of judicial conduct, or has a disability which is permanent or likely to become permanent and which seriously interferes with the performance of judicial duties.

(b) TITLE. These rules shall be known as the Commission on Judicial Conduct Rules and may be abbreviated as CJCR.

(c) SUPREME COURT RULES. Supreme Court consideration of Commission on Judicial Conduct recommendations is governed by the Discipline Rules for Judges (DRJ) adopted by the Supreme Court.

RULE 2. DEFINITIONS

In these rules,

(a) "Admonishment", when issued by the commission, means a written informal disposition of a complaint consented to by the judge which cautions the judge not to engage in certain proscribed behavior and may contain agreed corrective action to be taken by the judge. (See DRJ 1(d) and 12.)

(b) "Chairperson" includes the acting chairperson.

(c) "Commission" means the Commission on Judicial Conduct.

(d) "Complaint" means a statement or communication alleging facts which may upon investigation lead to a finding of judicial misconduct or disability.

(e) "Fact–Finder" means the commission, or at the discretion of the commission, a three–member subcommittee consisting of any members or alternates of the commission or a master.

(f) "Hearing" means a meeting for the purpose of taking evidence and conducted by a fact–finder.

(g) "Judge" means a judge or justice and includes justices of the supreme court, judges of the court of appeals, judges of the superior court, judges of any court organized under Titles 3, 35, or 35A RCW, judges pro tempore, court commissioners and magistrates. The term includes full–time and part–time judges and judges who have been or have not been admitted to the practice of law in Washington.

(h) "Master" means a person appointed by the commission to hear and take evidence with respect to charges against a judge.

(i) "Meeting" means a meeting of the commission for any purpose other than the taking of evidence for fact–finding.

(j) "Member" means a member of the commission and includes alternates acting as members.

(k) "Party" means the judge or the commission.

(l) "Reprimand", when issued by the commission, is an informal action of the commission, consented to by the judge, finding that the judge's conduct is unacceptable but correctable and does not require a formal recommendation for discipline to the Supreme Court. (See DRJ 1(d) and 12.)

(m) "Statement of Charges" means the formal charge of judicial misconduct or disability filed by the commission and forming the basis for a fact–finding hearing.

(n) "Verified Statement" means a sworn statement which includes facts showing that a judge may have violated a rule of judicial conduct or may be suffering a disability that seriously interferes with the performance of judicial duties and is or is likely to become permanent.

RULE 3. ORGANIZATION OF THE COMMISSION

(a) OFFICERS. The commission shall elect from its members a chairperson, a vice–chairperson, and secretary, each of whom shall serve a term of two years or until they cease to be members of the commission, whichever period is shorter. The vice–chairperson shall act as chairperson in the absence of the chairperson. In the absence of both the chairperson and the vice–chairperson, the members present may select a temporary chairperson.

(b) EXECUTIVE DIRECTOR AND STAFF. The commission will hire an executive director and such other personnel as necessary for the effective performance of the commission's duties and the exercise of its powers.

(c) MEETINGS.

(1) Meetings of the commission shall be held at the call of the chairperson or the written request of four members of the commission.

(2) The commission may conduct meetings by telephone conference call.

(d) QUORUM. Five members must be present for the transaction of business by the commission. A final decision of the commission, other than a decision recommending discipline or retirement, must be supported by a majority of the members present. A final decision recommending discipline or retirement in any form must be supported by five members of the commission.

(e) ALTERNATES. The chairperson will call upon an alternate member selected by the appropriate appointing authority to serve in the place of a member whenever a member is disabled, disqualified, or unable to serve. The chairperson shall announce when an alternate member is serving in the place of a commission member.

RULE 4. CONFIDENTIALITY OF PROCEEDINGS

(a) GENERALLY. Except as provided in this rule and in Rules 7 and 8, the fact that a complaint has been made, or a statement has been given to the commission and all papers and matters submitted to the commission and proceedings conducted pursuant to these rules, shall be confidential. However, the person filing a complaint or giving a statement to the commission is not prohibited by these rules from informing any third party, or the public generally, of the factual basis upon which a complaint is based, or a statement is given.

(b) WAIVER BY JUDGE. After a verified statement is filed with the commission, the initial proceedings remain confidential. The judge may thereafter waive confidentiality of the fact that there is a commission investigation.

(c) PUBLIC PROCEEDINGS. The statement of charges alleging judicial misconduct shall be available for public inspection. The fact–finding hearing before the commission, a subcommittee of the commission or a master shall be open to the public.

(d) RELEASE OF INFORMATION. The commission may, with due consideration for the interests of the judge, make a public statement regarding complaints concerning the judge which would otherwise be confidential in the following circumstances:

(1) If public statements that charges are pending before the commission are substantially unfair to a judge.

(2) If a judge is publicly associated with violating a rule of judicial conduct or with having a disability, and the commission, after a preliminary investigation has determined there is no basis for further proceedings or for a recommendation of discipline or retirement.

(e) NOTICE TO COMPLAINANT. After final commission action on a complaint, the commission will disclose to the person making a complaint that after an investigation of the charges (i) the commission has found no basis for action by the commission against the judge, (ii) the commission has determined that the matter involved legal issues over which it has no jurisdiction, and involves no misconduct or disability, (iii) the commission has taken appropriate corrective action, or (iv) the commission has filed a recommendation with the Supreme Court for the discipline or retirement of the judge. The name of the judge, in the discretion of the commission, shall not be used in written communication to the complainant.

(f) RELEASE OF INFORMATION TO BAR ASSOCIATION, JUDICIAL APPOINTIVE AUTHORITY OR LAW ENFORCEMENT AGENCIES. The commission may, in its discretion, release information to the Washington State Bar Association, American Bar Association, a judicial authority, any judicial appointive, selection or confirmation authority, or to law enforcement agencies when required in the interests of justice, or to maintain confidence in the selection of judges or administration of the judiciary. The person to whom the information relates may, in the commission's discretion, be informed of any information released.

(g) CONTEMPT. Unless otherwise permitted by these rules, no person shall disclose information obtained by that person during commission proceedings or from papers filed with the commission. Any person violating confidentiality rules may be subject to contempt proceedings.

RULE 5. PRELIMINARY INVESTIGATION

(a) COMPLAINTS OF MISCONDUCT OR DISABILITY. Any organization, association, or person, including a member of the commission, may make a complaint of judicial misconduct or disability to the commission. A complaint may be made orally or in writing.

(b) DISTINGUISHED FROM APPEAL. The commission will not recommend the discipline of a judge for the exercise of discretion in making findings of fact, reaching a legal conclusion, or applying the law as the judge understands it.

(c) SCREENING OF COMPLAINT. Upon receipt of a complaint not obviously unfounded or frivolous, the executive director shall make a prompt, discreet, preliminary investigation and evaluation. Failure of a person making the complaint to supply requested additional information may result in dismissal of that complaint. On every complaint received, the executive director shall make a recommendation to the commission as to whether to commence initial proceedings.

(d) COMMISSION DETERMINATION. If the commission determines to commence initial proceedings, the person making the complaint may be requested to file a verified statement with the commission. If a verified statement is not filed by the person making the complaint, the executive director shall prepare and file a verified statement. Initial proceedings will begin upon filing of a verified statement.

RULE 6. INITIAL PROCEEDINGS

(a) CONDUCT OF INITIAL PROCEEDINGS. The executive director will supervise the investigation.

(b) NOTIFICATION OF INVESTIGATION. The judge who is the subject of initial proceedings will be notified by the commission within 7 days after the filing of a verified statement. The judge shall also be advised of the nature of the complaint with sufficient specificity to permit an adequate response which may, in the commission's discretion, include a copy of the verified statement. The judge shall further be advised that these proceedings are confidential and that the judge has the right to waive the confidentiality of the fact that an investigation is proceeding. In its discretion, the commission may disclose to the judge the name of the individual making the complaint or verified statement.

(c) JUDGE'S RESPONSE. The judge shall be afforded a reasonable opportunity in the course of the initial proceedings to present such matters as he or she may choose.

(d) ORDER FOR MEDICAL EXAMINATION. If the initial proceedings concern a judge who may be suffering a possible physical and/or mental disability which may seriously impair the performance of judicial duties, the commission may order a judge to submit to physical and/or mental examinations at commission expense. The failure or refusal of a judge to submit to physical and/or mental examination ordered by the commission may, in the discretion of the commission, preclude the judge from presenting the results of other physical and/or mental examinations on his or her own behalf.

(e) RESULT OF INITIAL PROCEEDINGS. (1) If the commission determines that there are insufficient grounds for further commission proceedings, the judge and the person making the complaint will be so notified.

(2) If the commission determines that probable cause exists that the judge has violated a rule of judicial conduct or may be suffering from a disability that seriously interferes with the performance of judicial duties and is permanent or is likely to become permanent, the commission may order the filing of a statement of charges pursuant to Rule 7 or may informally dispose of the matter pursuant to Rule 19.

(f) STIPULATIONS. After initial proceedings and when prior approval is given by the commission, either the executive director or counsel retained by the commission may enter into a proposed stipulation of facts and/or discipline with the respondent judge. Such a stipulation may contain the imposition of terms and conditions and such other provisions as may appear appropriate. If a

stipulation is not adopted by the commission, it shall be of no force and effect.

RULE 7. STATEMENT OF CHARGES

(a) GENERALLY. The commission may file a statement of charges alleging the violation of a rule of judicial conduct or the disability of a judge that is or is likely to become permanent. The statement of charges will be served on the judge within 7 days after filing of the statement of charges in the commission's office and shall after service be available to the public.

(b) DECISION TO FILE STATEMENT OF CHARGES. When a statement of charges is filed, no further factual information shall be considered by the commission prior to a fact–finding hearing unless notice is given to both parties. The executive director will continue to assist commission counsel.

(c) FORM OF STATEMENT OF CHARGES. The statement of charges will state in ordinary and concise language the basis for commission action and the facts supporting the statement of charges. The statement of charges shall also inform the judge that he or she may file a written answer to the charges as provided in paragraph (d).

(d) ANSWER. The judge may file with the commission an answer to the statement of charges. The answer must be filed within 14 days after service of the statement of charges on the judge. If the judge does not file a written answer, a general denial will be entered on behalf of the judge. The statement of charges and the answer shall be the only pleadings required. Once filed, the answer shall be available to the public.

RULE 8. FACT–FINDING HEARING

(a) PUBLIC HEARING. Upon filing of a statement of charges, a public hearing will be scheduled at a location selected by the commission. All papers, files and records made part of the record at the hearing shall be public.

(b) SCHEDULING HEARING. The executive director will set a time and place for the public hearing to be held no later than 42 days after the time for answer has expired or after the answer is filed, whichever is earlier. The judge will be given at least 14 days notice of the hearing which will include the name or names of the fact–finder and the presiding officer, if any.

RULE 9. DISQUALIFICATION OF FACT–FINDER

(a) DISQUALIFICATION OF MEMBER OR MASTER. A member of the commission or a master must disqualify himself or herself in any proceedings involving his or her own conduct or alleged disability. A member of the commission or a master must disqualify himself or herself if he or she cannot impartially consider the statement of charges against a judge.

(b) CHALLENGE FOR CAUSE. A judge may file an affidavit challenging for cause any member or a master who the judge believes will not impartially consider the statement of charges. The affidavit must be filed within 7 days after notice of the fact–finding hearing. The commission will decide any challenge for cause if the member or master does not disqualify himself or herself.

(c) PEREMPTORY CHALLENGE. A judge may file one peremptory challenge against one member of the commission. The challenge must be filed within 7 days after notice of a fact–finding hearing. If the judge has unsuccessfully challenged a member for cause, any peremptory challenge against that member must be filed within 3 days after service of notice of the determination of the challenge for cause.

RULE 10. PROCEDURAL RIGHTS OF JUDGE

(a) GENERALLY. The judge has a right to notice of the complaints concerning the judge which have been found by the commission to warrant initial proceedings. The judge shall have the right and reasonable opportunity at a fact–finding hearing to defend against the allegations in the statement of charges by the introduction of evidence. The judge has the privilege against self–incrimination. The judge may be represented by counsel and may examine and cross–examine witnesses. The judge has the right to testify or not to testify on his or her own behalf. The judge has the right to issuance of subpoenas for the attendance of witnesses to testify or produce evidentiary matters. The judge has the right to a prompt resolution of the allegations in the statement of charges.

(b) COMPLIANCE WITH ETHICS ADVISORY OPINION. A judge's compliance with an opinion by the Ethics Advisory Committee shall be considered by the commission as evidence of good faith.

(c) TRANSCRIPTS. The judge will be provided, without cost, a copy of any report of proceedings prepared by the commission. The judge may, in addition, have all or any portion of the testimony in the proceedings transcribed at his or her own expense.

(d) WITNESS FEES. All witnesses shall receive fees and expenses in the amount allowed by law. Expenses of witnesses shall be borne by the party calling them, unless the commission determines that the imposition of costs and expert witness fees would work a financial hardship or injustice upon the judge and orders that those fees be reimbursed.

RULE 11. GUARDIAN AD LITEM

If it appears to the commission at any time during the proceedings that the judge is not competent to act, or if it has been previously judicially determined that the judge is not competent to act, the commission will appoint a guardian ad litem for the judge unless the judge already has a guardian who will represent the judge's interests. In the appointment of a guardian ad litem, consideration may be given to the wishes of the members of the judge's immediate family. The guardian or guardian ad litem may claim and exercise any right and privilege and make any defense for the judge which the judge could have claimed, exercised, or made if competent. Any notice to be served on the judge will also be served on the guardian or guardian ad litem.

RULE 12. DISCOVERY PROCEDURE BEFORE FACT–FINDING

(a) REQUEST FOR WITNESSES AND DOCUMENTS. Upon written demand, the opposing party will disclose within 7 days thereof, with a continuing obligation thereafter, the following:

(1) names and addresses of all witnesses whose testimony that party expects to offer at the hearing,

(2) a brief summary of the expected testimony of each witness,

(3) copies of signed or recorded statements of anticipated witnesses, and,

(4) copies of documents which may be offered. Witnesses or documents not disclosed may be excluded.

(b) DISCOVERY. The taking of depositions, the requesting of admissions and all other procedures authorized by Rules 26 through 37 of the Superior Court Civil Rules are available upon stipulation of the parties or upon prior permission of the master or presiding officer. A request for discovery shall be granted, unless the master or presiding officer determines that the request if frivolous, will create an undue burden on the party, or will result in undue delay.

(c) DISCLOSURE BY COMMISSION'S COUNSEL. The commission's counsel shall disclose to the judge any material or information within his or her knowledge which tends to negate the complaints against the judge or mitigate the degree of discipline which may be imposed.

(d) PREHEARING MOTIONS. The judge or counsel for either party may make prehearing motions to the designated presiding officer, who may make rulings or defer rulings to the commission. Motions shall be in writing and shall be filed and served on the opposing party. The responding party shall be allowed five days from service to respond, unless the time is shortened by the presiding officer for good cause. Motions will be promptly decided by written order filed in the commission office. Motions will be decided on the written materials submitted unless the presiding officer requests argument, which may be heard by conference telephone call.

RULE 13. AMENDMENTS TO STATEMENT OF CHARGES OR ANSWER

The fact–finder, at any time prior to the conclusion of the hearing, or the commission, at any time prior to its decision, may allow or require amendments to the statement of charges or the answer. The statement of charges may be amended to conform to the proof or set forth additional facts, whether occurring before or after the commencement of the hearing. Except for amendments to conform to the proof at a fact–finding hearing, if an amendment substantially affects the nature of the charges, the judge will be given reasonable time to answer the amendment and prepare and present a defense against the new matter raised.

RULE 14. PROCEDURE AT FACT–FINDING HEARING

(a) ORDER OF PRESENTATION. The order of presentation shall be in the same manner as in civil cases in superior court.

(b) COMMISSION REPRESENTED BY COUNSEL. The case for the commission shall be presented by counsel retained by the commission.

(c) RULES OF EVIDENCE. The Rules of Evidence (ER) as applicable in civil proceedings shall govern the fact–finding hearing.

(d) STANDARD OF PROOF. Any finding that the judge has violated a rule of judicial conduct or that the judge has a disability which is or is likely to become permanent and which seriously interferes with the performance of judicial duties must be supported by clear, cogent and convincing evidence.

(e) PRESIDING OFFICER. Unless the fact–finding hearing is before a master, the chairperson may appoint a member to be presiding officer or to rule on motions and objections made during the hearing. If the hearing is before the commission, a member may appeal a ruling to the commission members present. A majority vote will determine the motion.

(f) FAILURE TO ANSWER OR APPEAR. The failure of a judge to answer or to appear at the hearing or to submit to a mental or physical examination required by the commission will not prevent the commission from proceeding.

(g) VERBATIM RECORD. Unless the judge and the commission stipulate to a different record, a verbatim record will be made and kept of the fact–finding hearing. The commission shall determine whether the verbatim record will be by court reporter or electronic recording device.

(h) MEDIA COVERAGE. Canon 3 (A)(7) shall be followed for media participation in public hearings.

RULE 15. REPORT OF FACT–FINDER

(a) WHEN FACT–FINDER OTHER THAN COMMISSION. The fact–finder, when other than the entire commission, shall prepare a report containing a brief statement of the procedure followed and the proposed findings of fact, conclusions of law, and a recommendation with respect to the issues presented at the fact–finding hearing. The report and verbatim record shall be filed in the commission office within 35 days after the hearing. The report and record shall be served on the parties within 14 days thereafter. The original fact–finder may request the prevailing party to prepare the findings of fact and conclusions of law.

(b) OBJECTIONS. A party may file with the commission a statement of objections to the report of the fact–finder. The statement shall set forth all objections to the report and state reasons therefor. The objections must be filed with the commission and served on the opposing party within 14 days after service of the report on the party.

(c) NO OBJECTIONS FILED. If no statement of objections to the report of the fact–finder is filed within the time provided in paragraph (b), the report may be adopted without argument.

(d) OBJECTIONS FILED. If a statement of objections is timely filed, the commission may schedule oral argument, or consider the matter on the record along with briefs of the parties. The parties shall be given at least 14 days written notice of the time and place for argument.

(e) COMMISSION MODIFICATION. If the commission proposes to modify or reject the original fact–finder's report, the commission shall schedule a time for oral argument on the record along with briefs of the parties. The parties shall be given at least 14 days written notice of the time and place for argument.

RULE 16. COMMISSION DECISION

(a) COMMISSION SITTING AS FACT-FINDER. When the commission serves as fact-finder, it will file a decision including findings of fact, conclusions of law, and a recommendation with respect to the issues presented at the fact-finding hearing. The prevailing party may be requested to prepare the findings of fact and conclusions of law. The commission's decision will be served upon the judge pursuant to CJCR 16(d). Any motions for reconsideration or objections shall be timely filed in accordance with CJCR 16(e).

(b) DECISION. Only upon the affirmative vote of at least five members will the commission recommend discipline or retirement of a judge or effect an informal disposition pursuant to CJCR 19. The commission's decision will include written findings of fact, conclusions of law, a recommendation and any record to be filed with the Supreme Court. The commission may adopt the report of the original fact-finder, in whole or in part, by reference. To vote on a matter, a nonsitting member must consider the verbatim record and any report of a fact-finder. Any commission member may file a dissent.

(c) USE OF PRIOR ACTION. Upon finding misconduct or disability, in determining appropriate disposition, the commission shall consider previous actions taken concerning the judge.

(d) NOTICE TO JUDGE. The commission's decision will be served upon the judge and his or her counsel of record within 14 days after the decision is filed in the commission's office.

(e) MOTION FOR RECONSIDERATION AND OBJECTIONS TO RECORD. A party may file objections to the record or a motion for reconsideration of the commission decision within 14 days after the decision and record have been served. Objections will be determined by the chairperson or, in his or her discretion, by the commission.

(f) FINALITY OF DECISION. The commission decision is final 14 days after service unless a motion for reconsideration or objection is earlier filed. If a motion for reconsideration or objection is denied, the decision is then final. If either the motion for reconsideration or objection is granted, the reconsidered decision is final when filed in the commission's office.

(g) NOTICE OF COMMISSION DECISION. When the decision is final, the commission will notify the person making the complaint of its decision.

RULE 17. ADDITIONAL EVIDENCE

The commission may order a public hearing for the taking of additional evidence at any time before its decision is final. The order will set the time and place of the hearing and will specify the matters on which the additional evidence is to be taken. A copy of the order shall be served upon the judge at least 14 days prior to the date set for hearing. The hearing will be conducted in the manner provided in Rules 8 through 16.

RULE 18. SUPREME COURT PROCEDURES

(a) CERTIFICATION TO SUPREME COURT. Within 14 days after the decision is final, a commission decision recommending the discipline or retirement of a judge will be filed in the Supreme Court and served on the judge. The notice of the decision served on the judge shall state the date the decision was filed in the Supreme Court and shall specify the period during which the judge may challenge the commission recommendation as provided in DRJ 2.

(b) TEMPORARY SUSPENSION. If the commission recommendation is that the judge be removed, the judge shall be suspended, with salary, from that judicial position effective upon filing the recommendation with the Supreme Court; such suspension with pay to remain in effect until a final determination is made by the Supreme Court.

(c) RECORD FOR SUPREME COURT REVIEW. The chairperson shall certify the record of commission proceedings to the Supreme Court, having transmitted to the judge those portions of the record required by DRJ 4.

(d) REMAND FROM THE SUPREME COURT. If the Supreme Court remands a case, the commission will proceed in accordance with the order on remand.

RULE 19. INFORMAL DISPOSITION

A violation of a rule of judicial conduct which in the view of the commission does not warrant a recommendation to the Supreme Court for discipline, may be disposed of by a proposal to the judge for a public admonishment or reprimand. (See DRJ 1(d) and 12.) The proposal will provide whether acceptance of the proposal may be considered as an admission of misconduct by the judge. If the judge accepts the proposal in writing within 14 days after service of the proposal, a letter of admonishment or reprimand will be issued and no further action will be taken by the commission. If the judge accepts the proposal, the person making the complaint shall be notified of the action taken by the commission and shall be provided with a copy of the public admonishment or reprimand. If the judge does not accept or fails to respond to the proposal, proceedings will continue.

RULE 20. REINSTATEMENT OF ELIGIBILITY

A former judge whose eligibility for judicial office had been removed by the Supreme Court may file with the commission a petition for reinstatement of eligibility. Rules 4, 8 through 18 and 20 through 22 apply to commission review of a petition for reinstatement of eligibility. The commission will recommend to the Supreme Court in writing that the former judge should or should not be reinstated to eligibility to hold judicial office as provided in DRJ 11.

RULE 21. EXTENSION OF TIME

Upon a showing of good cause the chairperson or fact-finder may extend the time within which an act must be done under these rules.

RULE 22. SERVICE

(a) SERVICE ON JUDGE. A statement of charges under Rule 7 shall be served on a judge in person, unless the judge cannot be found within the state. If the judge cannot be found, the statement of charges may be served by mail addressed to the judge's last known business and residence addresses. All other papers in commission proceedings may be served on a judge in person or by mail.

If counsel has appeared for a judge, papers, other than a statement of charges, may be served on counsel in lieu of service upon the judge.

(b) SERVICE ON COMMISSION. Service of papers on the commission shall be given by delivering or mailing the papers to the commission's office.

(c) WHEN SERVICE ACCOMPLISHED. If service is by mail, a paper is timely served if mailed within the time permitted for service. If a paper is served by mail, a time period dependent on the service begins to run 3 days after the paper is mailed.

RULE 23. RULE ADOPTION, AMENDMENT OR REPEAL

(a) GENERALLY. The commission may adopt, amend, or repeal a rule on its own motion or on a petition of any person.

(b) PETITION. The petition must set out the proposed rule, or amendments to any existing rule, in full. The petition must also include reasons in support of the request.

(c) COMMISSION REVIEW. The executive director shall recommend to the commission whether to adopt, amend, or repeal a rule as requested in a petition. The chairperson may order a public hearing for further consideration of the petition.

(d) RULE ADOPTION. The commission will order the publication of any proposed rule modification for written public comment before taking final action to adopt, amend, or repeal a rule in the official advance sheets of the Washington Reports and the Washington State Register. Adopted rules will be submitted to the Code Reviser for publication where other court rules are published in the Revised Code of Washington and to the Reporter of Decisions for publication in the official codification of Washington court rules.

(e) NOTICE TO PETITIONER. The commission will notify the petitioner of its final action within a reasonable time after disposition of the petition.

WSR 89-13-001
NOTICE OF PUBLIC MEETINGS
SOUTH PUGET SOUND COMMUNITY COLLEGE
[Memorandum—June 8, 1989]

The board of trustees of South Puget Sound Community College District 24 will hold a special meeting, Monday, June 12, 1989, beginning at 3:00 p.m. in the Boardroom, South Puget Sound Community College, 2011 Mottman Road S.W., Olympia, WA. The trustees plan to discuss and take action on the 1989-90 college operating budget.

Action is expected to be taken as a result of the special meeting.

Under RCW 42.30.110, an executive session may be held for the purpose of receiving and evaluating complaints against or reviewing the qualifications of an applicant for public employment or reviewing the performance of a public employee; consultation with legal counsel regarding agency enforcement actions or actual or potential agency litigation; considering the sale of [or] acquisition of real estate; and/or reviewing professional negotiations.

No action will be taken as a result of the executive session.

WSR 89-13-002
ADOPTED RULES
DEPARTMENT OF LICENSING
(Board of Medical Examiners)
[Order PM 850—Filed June 8, 1989—Eff. September 30, 1989]

Be it resolved by the Washington State Board of Medical Examiners, acting at Seattle, Washington, that it does adopt the annexed rules relating to:

New	WAC 308-52-630	Practice of medicine—Surgical procedures.
New	WAC 308-52-640	Noncertified physician assistant—Surgical assistant.
New	WAC 308-52-650	Basic surgical assistant duties.
New	WAC 308-52-660	Surgical assistant—Utilization and supervision.
New	WAC 308-52-670	Surgical assistant qualifications effective January 1, 1990.

This action is taken pursuant to Notice No. WSR 89-09-067 filed with the code reviser on April 19, 1989. These rules shall take effect at a later date, such date being September 30, 1989.

This rule is promulgated pursuant to RCW 18.71A-.020 and is intended to administratively implement that statute.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW), and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED June 2, 1989.

By Barbara S. Schneidman, M.D.
Vice-Chair

NEW SECTION

WAC 308-52-630 PRACTICE OF MEDICINE—SURGICAL PROCEDURES. The following duties constitute the practice of medicine under chapters 18.71 and 18.71A RCW if performed by persons who are not registered, certified, or licensed by an agency of the state to perform these tasks when utilized by surgeons as assistants and are not otherwise exempted by RCW 18.71.030:

(1) Assisting surgeons in opening incisions by use of any surgical method including laser, scalpel, scissors, or cautery;

(2) Assisting surgeons in closing of incisions by use of suture material, staples, or other means;

(3) Controlling bleeding with direct tissue contact by the clamping and tying of blood vessels, cautery, and surgical clips;

(4) Suturing or stapling tissue; and

(5) Tying of closing sutures in any tissues.

NEW SECTION

WAC 308-52-640 NONCERTIFIED PHYSICIAN ASSISTANT-SURGICAL ASSISTANT. (1) Any persons performing the tasks outlined in WAC 308-52-630 who are not licensed, registered, or certified by an agency of the state to perform those tasks must register with the board of medical examiners as a noncertified physician assistant-surgical assistant hereinafter referred to as a surgical assistant.

(2) The board establishes the following standards for program approval for surgical assistants.

(3) The board shall require the completion of the following board approved program prior to December 31, 1989, for those applying to register as surgical assistants. Those seeking registration shall submit with their application the following:

(a) Documented proof of 4,000 hours of experience or 2,000 surgical cases as first assistants to surgeons on major surgical procedures within the five years immediately preceding the date of application for registration;

(b) Letters of reference from three practicing surgeons licensed in the state of Washington;

(c) Letters of reference from the hospital(s) in which the applicant trained or assisted the surgeons;

(d) The surgical assistant performs only those tasks which have been authorized by the board; and

(e) Document eight college level academic hours of anatomy and physiology or other didactic equivalence as approved by the board.

NEW SECTION

WAC 308-52-650 BASIC SURGICAL ASSISTANT DUTIES. The surgical assistant who is not eligible to take the NCCPA certifying exam shall:

(1) Function only in the operating room as approved by the board;

(2) Only be allowed to close skin and subcutaneous tissue, placing suture ligatures, clamping, tying and clipping of blood vessels, use of cautery for hemostasis under direct supervision;

(3) Not be allowed to perform any independent surgical procedures, even under direct supervision, and will be allowed to only assist the operating surgeon;

(4) Have no prescriptive authority; and

(5) Not write any progress notes or order on hospitalized patients.

NEW SECTION

WAC 308-52-660 SURGICAL ASSISTANT—UTILIZATION AND SUPERVISION. (1) Utilization plan. The application for registration of a surgical assistant must include a detailed plan describing the manner in which the surgical assistant will be utilized. Such utilization plan shall specify which surgical assistant tasks set forth in WAC 308-52-650 will be performed by the surgical assistant.

(2) Limitations, geographic. No surgical assistant shall be utilized in a place geographically separated from the institution in which the assistant and the supervising physician are authorized to practice.

(3) Responsibility of supervising physician(s). Each surgical assistant shall perform those tasks he or she is authorized to perform only under the supervision and control of the supervising physician(s), but such supervision and control shall not be construed to necessarily require the personal presence of the supervising physician at the place where the services are rendered. It shall be the responsibility of the supervising physician(s) to insure that:

(a) The operating surgeon in each case directly supervises and reviews the work of the surgical assistant. Such supervision and review shall include remaining in the surgical suite until the surgical procedure is complete;

(b) The surgical assistant, at all times when meeting with patients, wears an identifying badge in a prominent place on his or her person identifying him or her as a surgical assistant (noncertified physician assistant);

(c) The surgical assistant does not advertise himself or herself in any manner which would tend to mislead the public or patients as to his or her role.

NEW SECTION

WAC 308-52-670 SURGICAL ASSISTANT QUALIFICATIONS EFFECTIVE JANUARY 1, 1990. Individuals applying to the board under chapter 18.71A RCW after December 31, 1989, shall be required to have graduated from a board approved program and be NCCPA examination eligible.

WSR 89-13-003
EMERGENCY RULES
DEPARTMENT OF FISHERIES
[Order 89-42—Filed June 8, 1989]

I, Joseph R. Blum, director of the Department of Fisheries, do promulgate and adopt at Olympia, Washington, the annexed rules relating to personal use rules.

I, Joseph R. Blum, find that an emergency exists and that this order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting the emergency is the defined area in the permanent WAC's is not sufficient to protect the upstream migrating salmon milling below the dam. Local patrol officers have requested the area be expanded. There is inadequate time to promulgate permanent regulations.

These rules are therefore adopted as emergency rules to take effect upon filing with the code reviser.

This rule is promulgated pursuant to RCW 75.08.080 and is intended to administratively implement that statute.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED June 5, 1989.
By Joseph R. Blum
Director

NEW SECTION

WAC WAC 220-57-16000Y COLUMBIA RIVER. Notwithstanding the provisions of WAC 220-57-160, effective immediately until further notice, the following are closed waters:

(1) Rocky Reach, Rock Island and Wanapum Dams - waters between the base of the downstream side of these dams to points 400 feet downstream of the dams.

(2) Priest Rapids Dam - waters between the upstream line of Priest Rapids Dam downstream to the boundary markers 400 feet below the fishways on each side of the river.

WSR 89-13-004
ADOPTED RULES
DEPARTMENT OF FISHERIES
[Order 89-44—Filed June 8, 1989]

I, Joseph R. Blum, director of the Department of Fisheries, do promulgate and adopt at Olympia, Washington, the annexed rules relating to commercial fishing rules.

This action is taken pursuant to Notice No. WSR 89-09-080 filed with the code reviser on April 19, 1989. These rules shall take effect thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2).

This rule is promulgated pursuant to RCW 75.08.080 and is intended to administratively implement that statute.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED June 7, 1989.
By Joseph R. Blum
Director

AMENDATORY SECTION (Amending Order 86-191, filed 11/26/86)

WAC 220-20-017 COMMERCIAL SALMON LICENSES—RENEWAL. The license application deadline for ((~~1987~~)) commercial salmon licenses is December 31((~~, 1987~~)).

AMENDATORY SECTION (Amending Order 88-48, filed 7/6/88)

WAC 220-22-030 PUGET SOUND SALMON MANAGEMENT AND CATCH REPORTING AREAS. (1) Area 4B shall include those waters of Puget Sound easterly of a line projected from the Bonilla Point light on Vancouver Island to the Tatoosh Island light, thence to the most westerly point on Cape Flattery and westerly of a line projected true north from the fishing boundary marker at the mouth of the Sekiu River.

(2) Area 5 shall include those waters of Puget Sound easterly of a line projected true north from the fishing boundary marker at the mouth of the Sekiu River and westerly of a line projected true north from Low Point.

(3) Area 6 shall include those waters of Puget Sound easterly of a line projected from the Angeles Point Monument to the William Head light on Vancouver Island, northerly of a line projected from the Dungeness Spit light to the Partridge Point light, westerly of a line projected from the Partridge Point light to the Smith Island light, and southerly of a line projected from the Smith Island light to vessel traffic lane buoy R to the Trial Island light.

(4) Area 6A shall include those waters of Puget Sound easterly of a line projected from the Partridge Point light to the Smith Island light to the most northeasterly of the Lawson Reef lighted buoys (RB 1 Qk Fl Bell) to Northwest Island to the Initiative 77 marker on Fidalgo Island and westerly of a line projected from Reservation Head on Fidalgo Island to West Point on Whidbey Island.

(5) Area 6B shall include those waters of Puget Sound southerly of a line projected from the Dungeness Spit light to the Partridge Point light, westerly of a line projected from the Partridge Point light to the Point Wilson light and easterly of a line projected 155° true from Dungeness Spit light to Kulo Kala Point.

(6) Area 6C shall include those waters of Puget Sound easterly of a line projected true north from Low Point and westerly of a line projected from the Angeles Point Monument to the William Head light on Vancouver Island.

(7) Area 6D shall include those waters of Puget Sound westerly of a line projected 155° true from Dungeness Spit light to Kulo Kala Point.

(8) Area 7 shall include those waters of Puget Sound southerly of a line projected true east-west ((~~from the~~)) through Sandy Point Light No. 2 (48 degrees, 47.2 minutes north latitude, 122 degrees, 42.7 minutes west longitude as per U.S. Coast Guard Light List No. 19880), northerly of a line projected from the Trial Island light to vessel traffic lane buoy R to the Smith Island light to the most northeasterly of the Lawson Reef lighted buoys (RB 1 Qk Fl Bell) to Northwest Island to the Initiative 77 marker on Fidalgo Island, and westerly of a line projected from Sandy Point Light No. 2 to Point Migley, thence along the eastern shore-line of Lummi Island to Carter Point, thence to the most northerly tip of Vendovi Island, thence to Clark Point on Guemes Island following the shoreline to Southeast Point on Guemes Island, thence to March Point on Fidalgo Island, excluding those waters of East Sound northerly of a line projected due west from Rosario Point on Orcas Island.

(9) Area 7A shall include those waters of Puget Sound northerly of a line projected true east-west ((~~from the~~)) through Sandy Point Light No. 2 (48 degrees, 47.2 minutes north latitude, 122 degrees, 42.7 minutes west longitude as per U.S. Coast Guard Light

List No. 19880), terminating on the west at the international boundary and on the east at the landfall on Sandy Point.

(10) Area 7B shall include those waters of Puget Sound westerly of a line projected 154 degrees true from ((~~the most westerly point of Gooseberry Point to the westernmost tip of~~)) Sandy Point Light No. 2 (48 degrees, 47.2 minutes north latitude, 122 degrees, 42.7 minutes west longitude as per U.S. Coast Guard Light List No. 19880) to the landfall on Gooseberry Point, easterly of a line projected from ((~~the westernmost tip of~~)) Sandy Point Light No. 2 to Point Migley, thence along the eastern shoreline of Lummi Island to Carter Point, thence to the most northerly tip of Vendovi Island, thence to Clark Point on Guemes Island following the shoreline to Southeast Point on Guemes Island, thence to March Point on Fidalgo Island, northerly of the Burlington Northern railroad bridges at the north entrances to Swinomish Channel and westerly of a line projected from William Point light on Samish Island 28° true to the range light near Whiskey Rock on the north shore of Samish Bay.

(11) Area 7C shall include those waters of Puget Sound easterly of a line projected from William Point light on Samish Island 28° true to the range light near Whiskey Rock on the north shore of Samish Bay.

(12) Area 7D shall include those waters of Puget Sound easterly of a line projected ((~~from the westernmost tip of~~)) 154 degrees true from Sandy Point Light No. 2 (48 degrees, 47.2 minutes north latitude, 122 degrees, 42.7 minutes west longitude as per U.S. Coast Guard Light List No. 19880) to the ((~~most westerly point of~~)) landfall on Gooseberry Point and south of a line projected true east from Sandy Point Light No. 2 to the landfall on Sandy Point.

(13) Area 7E shall include those waters of Puget Sound within East Sound northerly of a line projected due west from Rosario Point on Orcas Island.

(14) Area 8 shall include those waters of Puget Sound easterly of a line projected from West Point on Whidbey Island to Reservation Head on Fidalgo Island, westerly of a line projected from the light on East Point 340° true to the light on Camano Island (Saratoga Pass light #2, Fl Red 4 Sec) southerly of the Burlington Northern railroad bridges at the north entrances to Swinomish Channel and northerly of the state highway 532 bridges between Camano Island and the mainland.

(15) Area 8A shall include those waters of Puget Sound easterly of a line projected from the East Point light on Whidbey Island 340° true to the light on Camano Island (Saratoga Pass light #2, Fl Red 4 Sec), northerly of a line projected from the southern tip of Possession Point 110° true to the shipwreck on the opposite shore, southerly of the State Highway 532 bridges between Camano Island and the mainland excluding those waters of Area 8D.

(16) Area 8D shall include those waters of Puget Sound inside and easterly of a line projected 225 degrees from the pilings at old Bower's Resort to a point 2,000 feet offshore, thence northwesterly to a point 2,000 feet off Mission Point, thence across the mouth of Tulalip Bay to a point 2,000 feet off Hermosa Point, thence northwesterly following a line 2,000 feet offshore to the intersection with a line projected 233 degrees from the fishing boundary marker on the shore at the slide north of Tulalip Bay.

(17) Area 9 shall include those waters of Puget Sound southerly and easterly of a line projected from the Partridge Point light to the Point Wilson light, northerly of the site of the Hood Canal Floating Bridge, northerly of a line projected true west from the shoreward end of the Port Gamble tribal dock on Point Julia to the mainland in the community of Port Gamble, southerly of a line projected from the southern tip of Possession Point 110° true to the shipwreck on the opposite shore and northerly of a line projected from the Apple Cove Point light to the light at the south end of the Edmond's breakwater at Edwards Point.

(18) Area 9A shall include those waters of Puget Sound known as Port Gamble Bay southerly of a line projected true west from the shoreward end of the Port Gamble tribal dock on Point Julia to the mainland in the community of Port Gamble.

(19) Area 10 shall include those waters of Puget Sound southerly of a line projected from the Apple Cove Point light to the light at the south end of the Edmond's breakwater at Edwards Point, westerly of a line projected 233° true from the Acapulco Restaurant near Shilshole Marina through entrance piling No. 8 to the southern shore of the entrance to the Lake Washington Ship Canal, westerly of a line projected 185° true from the southwest corner of Pier 91 through the Duwamish Head light to Duwamish Head, northerly of a true east–west line passing through the Point Vashon light, easterly of a line projected from Orchard Point to Beans Point on Bainbridge Island, and northerly and easterly of a line projected true west from Agate Point on Bainbridge Island to the mainland.

(20) Area 10A shall include those waters of Puget Sound easterly of a line projected 185° true from the southwest corner of Pier 91 through the Duwamish Head light to Duwamish Head.

(21) Area 10C shall include those waters of Lake Washington southerly of the Evergreen Point Floating Bridge.

(22) Area 10D shall include those waters of the Sammamish River south of the State Highway 908 Bridge and Lake Sammamish.

(23) Area 10E shall include those waters of Puget Sound westerly of a line projected from Orchard Point to Beans Point on Bainbridge Island and southerly and westerly of a line projected true west from Agate Point on Bainbridge Island to the mainland.

(24) Area 10F shall include those waters of Puget Sound easterly of a line projected 233° true from the Acapulco Restaurant near Shilshole Marina through entrance piling Number 8 to the southern shore of the entrance to the Lake Washington Ship Canal and those waters of the Lake Washington Ship Canal westerly of a line projected from Webster Point true south to the Evergreen Point Floating Bridge including the waters of Salmon Bay, the Lake Washington Ship Canal, Lake Union and Portage Bay.

(25) Area 10G shall include those waters of Lake Washington northerly of the Evergreen Point Floating Bridge, easterly of a line projected from Webster Point true south to the Evergreen Point Floating Bridge and those waters of the Sammamish River north of the State Highway 908 Bridge.

(26) Area 11 shall include those waters of Puget Sound southerly of a true east–west line passing through the Point Vashon light, northerly of a line from Browns Point to the Asarco smelter stack on the opposite shore of Commencement Bay, and northerly of the Tacoma Narrows Bridge.

(27) Area 11A shall include those waters of Puget Sound southerly of a line from Browns Point to the Asarco smelter stack on the opposite shore of Commencement Bay.

(28) Area 12 shall include those waters of Puget Sound southerly of the site of the Hood Canal Floating Bridge and northerly and easterly of a line projected from the Tskutsko Point light to Misery Point.

(29) Area 12A shall include those waters of Puget Sound northerly of a line projected from Pulali Point true east to the mainland.

(30) Area 12B shall include those waters of Puget Sound southerly of a line projected from Pulali Point true east to the mainland, northerly of a line projected from Ayock Point true east to the mainland, and westerly of a line projected from the Tskutsko Point light to Misery Point.

(31) Area 12C shall include those waters of Puget Sound southerly of a line projected from Ayock Point true east to the mainland and northerly and westerly of a line projected from Ayres Point to the public boat ramp at Union.

(32) Area 12D shall include those waters of Puget Sound easterly of a line projected from Ayres Point to the public boat ramp at Union.

(33) Area 13 shall include those waters of Puget Sound southerly of the Tacoma Narrows Bridge and a line projected from Green Point to Penrose Point and northerly and easterly of a line projected from the Devil's Head light to Treble Point, thence through lighted buoy No. 3 to the mainland and westerly of the railroad trestle at the mouth of Chambers Bay.

(34) Area 13A shall include those waters of Puget Sound northerly of a line projected from Green Point to Penrose Point.

(35) Area 13C shall include those waters of Puget Sound easterly of the railroad trestle at the mouth of Chambers Bay.

(36) Area 13D shall include those waters of Puget Sound westerly of a line projected from the Devil's Head light to Treble Point, thence through lighted buoy Number 3 to the mainland, northerly of a line projected from Johnson Point to Dickenson Point, northerly of a line projected from the light at Dofflemeyer Point to Cooper Point, easterly of a line projected from Cooper Point to the southeastern shore of Sanderson Harbor, easterly of a line projected from the northern tip of Steamboat Island to the light at Arcadia to Hungerford Point and southerly of a line projected true east–west through the southern tip of Stretch Island.

(37) Area 13E shall include those waters of Puget Sound southerly of a line projected from Johnson Point to Dickenson Point.

(38) Area 13F shall include those waters of Puget Sound southerly of a line projected from the light at Dofflemeyer Point to Cooper Point.

(39) Area 13G shall include those waters of Puget Sound southerly of a line projected from Cooper Point to the southeastern shore of Sanderson Harbor.

(40) Area 13H shall include those waters of Puget Sound southwesterly of a line projected from the northern tip of Steamboat Island to the light at Arcadia and those waters easterly of a line projected 64° true from Kamilche Point to the opposite shore.

(41) Area 13I shall include those waters of Puget Sound southwesterly of a line projected 64° true from Kamilche Point to the opposite shore.

(42) Area 13J shall include those waters of Puget Sound northwesterly of a line projected from the light at Arcadia to Hungerford Point.

(43) Area 13K shall include those waters of Puget Sound northerly of a line projected true east–west through the southern tip of Stretch Island.

AMENDATORY SECTION (Amending Order 88–48, filed 7/6/88)

WAC 220–47–311 PURSE SEINE—SEASONS. It is unlawful to take, fish for or possess salmon taken with purse seine gear for commercial purposes except in the following designated Puget Sound Salmon Management and Catch Reporting Areas during the seasons provided for hereinafter in each respective Management and Catch Reporting Area:

Areas 4B, 5, 6, 6A, 6B, 6C, 7 and 7A – closed.

Area 6D – September ((~~18~~)) 17 through October ((~~29~~)) 28.

Area 7B – September ((~~12~~)) 11 through November 30.

Areas 7C and 7D – closed.

Area 7E – July ((~~24~~)) 23 through ((~~September 3~~)) August 19.

Area 8 – ((~~closed~~)) October 29 through November 18.

Area 8A – ((~~July 24~~)) September 11 through November 30.

Area 8D – ((~~July 24~~)) September 24 through November 30.

Areas 9 and 9A – closed.

Areas 10 and 11 – September 11 through November 30.

Areas 10A, 10C, 10D, 10E, 10F, 10G, and 11A – closed.

Area 12 – ((~~October 23~~)) September 11 through November ((~~19~~)) 30.

Area 12A – September ((~~4~~)) 11 through ((~~October 15~~)) November 30.

Area 12B – ((~~July 24~~)) September 11 through November ((~~19~~)) 30.

Area 12C – ((~~July 24~~)) September 11 through November ((~~27~~)) 30.

Areas 12D and 13 – closed.

((~~Area 13A – September 18 through November 30.~~))

Areas 13A, 13C, 13D, 13E, 13F, 13G, 13H, 13I, 13J, 13K and all freshwater areas – closed.

AMENDATORY SECTION (Amending Order 88-48, filed 7/6/88)

WAC 220-47-312 PURSE SEINE—OPEN PERIODS. It is unlawful to take, fish for or possess salmon taken with purse seine gear except during the open periods hereinafter designated in the following Puget Sound Salmon Management and Catch Reporting Areas:

Area 6D – 5:00 a.m. Sunday ((~~9/19~~)) 9/17 through 4:00 p.m. Friday ((~~10/28~~)) 10/27.

Area 7B – 5:00 a.m. Monday ((~~9/12~~)) 9/11 through 4:00 p.m. Friday ((~~10/28~~)) 10/27;

5:00 a.m. ((~~– 8:00 p.m. daily, Tuesday 11/1 and Wednesday 11/2~~)) Monday 10/30 through 4:00 p.m. Friday 11/3;

5:00 a.m. ((~~– 8:00 p.m. daily, Monday 11/7 and Tuesday 11/8~~)) Monday 11/6 through 4:00 p.m. Friday 11/10.

((~~Area 8A – 5:00 a.m. – 9:00 p.m. Monday 10/24; 5:00 a.m. – 8:00 p.m. Tuesday 11/1.~~))

Areas 10 and 11 – 5:00 a.m. – 9:00 p.m. Tuesday ((~~9/13~~)) 9/12;

5:00 a.m. – 9:00 p.m. Monday ((~~9/19~~)) 9/18;

5:00 a.m. – 9:00 p.m. Tuesday ((~~9/27~~)) 9/26;

5:00 a.m. – 9:00 p.m. ((~~Monday 10/3~~)) Tuesday 10/17;

5:00 a.m. – 9:00 p.m. daily Monday 10/23 and Tuesday 10/24;

5:00 a.m. – 8:00 p.m. daily Tuesday ((~~11/1~~)) 10/31 and Wednesday 11/1.

Areas 12, 12A, and 12B – 5:00 a.m. – ((~~9:00 p.m. Monday 10/24~~)) Tuesday 9/12; 5:00 a.m. – 9:00 p.m. Monday 9/18;

5:00 a.m. – ((~~8:00~~)) 9:00 p.m. Monday 10/23; 5:00 a.m. to 8:00 p.m. Tuesday ((~~11/1~~)) 10/31.

AMENDATORY SECTION (Amending Order 88-48, filed 7/6/88)

WAC 220-47-313 PURSE SEINE—DAILY HOURS. It is unlawful during any open day to take, fish for or possess salmon taken with purse seine gear in the following Puget Sound Salmon Management and Catch Reporting Areas except during the daily open hours hereinafter designated:

Area((s)) 6D ((~~and 7B~~)) from September ((~~12~~)) 17 to October ((~~27~~)) 26 – 24 hours per day.

Area 7B from September 11 to October 26 – 24 hours per day.

Areas 6D and 7B on October ((~~28~~)) 27 – 12:01 a.m. to 4:00 p.m. Pacific daylight time.

All other open areas – July ((~~24~~)) 23 through October ((~~29~~)) 28: 5:00 a.m. to 9:00 p.m. Pacific daylight time. October ((~~30~~)) 29 through November 30: 5:00 a.m. to 8:00 p.m. Pacific standard time.

AMENDATORY SECTION (Amending Order 88-48, filed 7/6/88)

WAC 220-47-401 REEF NET—SEASONS. It is unlawful to take, fish for or possess salmon taken with reef net gear for commercial purposes except in the following designated Puget Sound Salmon Management and Catch Reporting Areas, during the seasons provided for hereinafter in each respective area:

Areas 7 and 7A – September ((~~25~~)) 3 through November 30.

AMENDATORY SECTION (Amending Order 88-48, filed 7/6/88)

WAC 220-47-411 GILL NET—SEASONS. It is unlawful to take, fish for or possess salmon taken with gill net gear for commercial purposes except in the following designated Puget Sound Salmon Management and Catch Reporting Areas during the seasons provided for hereinafter in each respective fishing area:

Areas 4B, 5, 6, 6A, 6B, 6C, 7 and 7A – closed.

Area 6D – September ((~~18~~)) 17 through October ((~~29~~)) 27.

Area 7B – July ((~~25~~)) 24 through November 30.

Area 7C – July ((~~25~~)) 24 through August ((~~27~~)) 26.

Area 7D – closed.

Area((s)) 7E ((~~and 8~~)) – July ((~~24~~)) 23 through ((~~September 3~~)) August 19.

Area 8 – August 20 through November 25.

Area 8A – July ((~~24~~)) 23 through November 30.

Area 8D – July ((~~24~~)) 23 through November 30.

Areas 9 and 9A – closed.

Area 10 – September ((~~11~~)) 10 through November 30.

Areas 10A, 10C, 10D, 10E, 10F, and 10G – closed.

Area 11 – September ((~~11~~)) 10 through November 30.

Area 11A – closed.

Area 12 – ((~~October 23~~)) September 10 through November ((~~19~~)) 30.

Area 12A – September ((~~4~~)) 10 through ((~~October 15~~)) November 30.

Area 12B – July ((~~24~~)) 23 through November 30.

Area 12C – July ((~~24~~)) 23 through November ((~~27~~)) 30.

((~~Areas 12D and 13 – closed. Area 13A – September 18 through November 30.~~))

Areas 12D, 13, 13A, 13C, 13D, 13E, 13F, 13G, 13H, 13I, 13J, 13K and all freshwater areas – closed.

AMENDATORY SECTION (Amending Order 88-48, filed 7/6/88)

WAC 220-47-412 GILL NET—OPEN PERIODS. It is unlawful to take, fish for or possess salmon taken with gill net gear except during the open periods hereinafter designated in the following Puget Sound Salmon Management and Catch Reporting Areas:

Area 6D – 5:00 p.m. Sunday ((~~9/18~~)) 9/17 through 4:00 p.m. Friday ((~~10/28~~)) 10/27.

Area 7B – 7:00 p.m. – 9:30 a.m. nightly, Monday ((~~7/25~~)) 7/24 and Tuesday ((~~7/26~~)) 7/25;

7:00 p.m. – 9:30 a.m. nightly, Monday ((~~8/1~~)) 7/31, Tuesday ((~~8/2~~)) 8/1, and Wednesday ((~~8/3~~)) 8/2;

6:00 p.m. – 9:00 a.m. nightly, Monday ((~~8/8~~)) 8/7, Tuesday ((~~8/9~~)) 8/8, and Wednesday ((~~8/10~~)) 8/9;

6:00 p.m. through 9:00 a.m. nightly, Monday 8/14 and Tuesday 8/15;

6:00 p.m. Sunday ((~~9/11~~)) 9/10 through 4:00 p.m. Friday ((~~10/28~~)) 10/27;

((~~4:00 p.m. - 8:00 a.m. nightly,~~)) 5:00 a.m. Monday ((~~10/31 and Tuesday 11/1~~)) 10/30 through 4:00 p.m. Friday 11/3;

((~~4:00 p.m. - 8:00 a.m. nightly,~~)) 5:00 a.m. Monday ((~~11/7 and Tuesday 11/8~~)) 11/6 through 4:00 p.m. Friday 11/10.

Area 7C - 7:00 p.m. - 9:30 a.m. nightly, Monday ((~~7/25~~)) 7/24 and Tuesday ((~~7/26~~)) 7/25;

7:00 p.m. - 9:30 a.m. nightly, Monday ((~~8/1~~)) 7/31, Tuesday ((~~8/2~~)) 8/1, and Wednesday ((~~8/3~~)) 8/2;

6:00 p.m. - 9:00 a.m. nightly, Monday ((~~8/8~~)) 8/7, Tuesday ((~~8/9~~)) 8/8, and Wednesday ((~~8/10~~)) 8/9;

6:00 p.m. through 9:00 a.m. nightly, Monday 8/14 and Tuesday 8/15.

((~~Area 8A - 5:00 p.m. - 9:00 a.m. Monday 10/24; 4:00 p.m. - 8:00 a.m. Monday 10/31.~~))

Areas 10 and 11 - 6:00 p.m. - 9:00 a.m. Monday ((~~9/12~~)) 9/11;

5:00 p.m. - 9:00 a.m. Monday ((~~9/19~~)) 9/18;

5:00 p.m. - 9:00 a.m. Monday ((~~9/26~~)) 9/25;

5:00 p.m. - 9:00 a.m. Monday ((~~10/3~~)) 10/16;

5:00 p.m. - 9:00 a.m. nightly Monday 10/23 and Tuesday 10/24;

4:00 p.m. - 8:00 a.m. nightly Monday 10/30 and Tuesday 10/31.

Areas 12, 12A, and 12B - 5:00 p.m. - 9:00 a.m. nightly Monday ((~~10/24~~)) 9/11, Monday 9/18, and Monday 10/23;

4:00 p.m. - 8:00 a.m. Monday ((~~10/31~~)) 10/30.

AMENDATORY SECTION (Amending Order 88-48, filed 7/6/88)

WAC 220-47-413 GILL NET—DAILY HOURS. It is unlawful during any open day to take, fish for or possess salmon taken with gill net gear in the following Puget Sound Salmon Management and Catch Reporting Areas except during the daily open hours hereinafter designated:

July ((~~24~~)) 23 through August ((~~6~~)) 5 - 7:00 p.m. to 9:30 a.m. Pacific daylight time in all open areas.

August ((~~7~~)) 6 through September ((~~17~~)) 16 - 6:00 p.m. to 9:00 a.m. Pacific daylight time in all open areas unless otherwise provided.

September ((~~11~~)) 10 through October ((~~27~~)) 26 - open 24 hours per day in Area 7B.

September ((~~18~~)) 17 through October ((~~27~~)) 26 - open 24 hours per day in Area 6D.

October ((~~28~~)) 27 - 12:01 a.m. to 4:00 p.m. Pacific daylight time in Areas 6D and 7B.

September ((~~18~~)) 17 through October ((~~29~~)) 28 - 5:00 p.m. to 9:00 a.m. Pacific daylight time in all open areas unless otherwise provided.

October ((~~30~~)) 29 through November ((~~12~~)) 11 - 4:00 p.m. to 8:00 a.m. Pacific standard time in all open areas.

November ((~~13~~)) 12 through November 30 - 3:00 p.m. to 9:00 a.m. Pacific standard time in all open areas.

AMENDATORY SECTION (Amending Order 88-48, filed 7/6/88)

WAC 220-47-414 GILL NET—MESH SIZES. It is unlawful to take or possess salmon taken with gill net gear containing mesh smaller than the minimum size stretch measure or larger than the maximum size stretch measure as hereinafter designated in the following Puget Sound Salmon Management and Catch Reporting Areas during the periods specified:

Area 6D - September ((~~18~~)) 17 through October ((~~29~~)) 28: 5 inch minimum mesh.

Area 7B - July ((~~24~~)) 23 through September ((~~10~~)) 9: 7 inch minimum mesh; September ((~~11~~)) 10 through October ((~~29~~)) 28: 5 inch minimum mesh; October ((~~30~~)) 29 through November 30: 6 inch minimum mesh.

Area 7C - July ((~~24~~)) 23 through August ((~~27~~)) 26: 7 inch minimum mesh.

Area((s)) 7E ((~~and 8~~)) - July ((~~24~~)) 23 through ((~~September 3~~)) August 19: 7 inch minimum mesh.

Area 8 - August 20 through September 16: 5 inch minimum and 6 inch maximum mesh; October 29 through November 25: 6 inch minimum mesh.

Area 8A - ((~~July 24~~)) August 20 through September ((~~10~~)) 9: ((~~7~~)) 5 inch minimum and 6 inch maximum mesh; September ((~~11~~)) 10 through October ((~~22~~)) 21: 5 inch minimum mesh; October ((~~23~~)) 22 through November ((~~12~~)) 11: 6 inch minimum mesh.

Area 8D - September ((~~25~~)) 24 through November ((~~12~~)) 11: 5 inch minimum mesh.

Areas 10 and 11 - September ((~~11~~)) 10 through October ((~~15~~)) 14: 5 inch minimum mesh; October ((~~16~~)) 15 through November ((~~12~~)) 25: 6 inch minimum mesh.

Areas 12 and 12A - September ((~~4~~)) 10 through October ((~~15~~)) 14: 5 inch minimum mesh; October ((~~16~~)) 15 through November ((~~12~~)) 30: 6 inch minimum mesh.

((~~Area 12A - September 4 through October 15: 5 inch minimum mesh.~~))

Area 12B - July ((~~24~~)) 23 through August ((~~13~~)) 12: 7 inch minimum mesh; September ((~~4~~)) 10 through October ((~~15~~)) 14: 5 inch minimum mesh; October ((~~16~~)) 15 through November 30: 6 inch minimum mesh.

Area 12C - July ((~~24~~)) 23 through August ((~~13~~)) 12: 7 inch minimum mesh. ((~~September 11 through October 22: 5 inch minimum mesh; October 23~~)) November 5 through November 30: 6 inch minimum mesh.

((~~Area 13A - September 18 through October 22: 5 inch minimum mesh; October 23 through November 30: 6 inch minimum mesh.~~))

WSR 89-13-005
ADOPTED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Public Assistance)

[Order 2811—Filed June 8, 1989]

I, Leslie F. James, director of Administrative Services, do promulgate and adopt at Olympia, Washington, the annexed rules relating to services available to recipients

of categorical needy medical assistance, amending WAC 388-86-005.

This action is taken pursuant to Notice No. WSR 89-10-020 filed with the code reviser on April 26, 1989. These rules shall take effect thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2).

This rule is promulgated under the general rule-making authority of the Department of Social and Health Services as authorized in RCW 74.08.090.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED June 8, 1989.

By Rosemary Carr
for Leslie F. James, Director
Administrative Services

AMENDATORY SECTION (Amending Order 2600, filed 3/2/88)

WAC 388-86-005 SERVICES AVAILABLE TO RECIPIENTS OF CATEGORICAL NEEDY MEDICAL ASSISTANCE. (1) The department shall provide the following Title XIX mandatory services:

(a) Early and periodic screening diagnosis and treatment services to eligible individuals ((~~under twenty-one~~)) twenty years of age or under;

(b) Family planning services;

(c) Home health agency services;

(d) Inpatient and outpatient hospital care;

(e) Other laboratory and x-ray services;

(f) Skilled nursing home care;

(g) Certified registered nurse practitioner services; and

(h) Physicians' services in the office or away from the office as needed for necessary and essential medical care.

(2) The department shall provide the following Title XIX optional services:

(a) Anesthetization services;

(b) Blood;

(c) Chiropractic services;

(d) Drugs and pharmaceutical supplies;

(e) Eyeglasses and examination;

(f) Hearing aids and examinations;

(g) Nurse and licensed midwife services;

(h) Oxygen;

(i) Personal care services;

(j) Physical therapy services;

((~~(j)~~)) (k) Private duty nursing services;

((~~(k)~~)) (l) Rural health clinic services;

((~~(l)~~)) (m) Surgical appliances;

((~~(m)~~)) (n) Prosthetic devices and certain other aids to mobility; and

((~~(n)~~)) (o) Dental services.

(3) The department shall limit organ transplants ((~~shall be limited~~)) to the cornea, heart, kidney, liver, and bone marrow.

(4) The department shall provide treatment, dialysis, equipment, and supplies for acute and chronic nonfunctioning kidneys ((~~shall be provided~~)) in the home, hospital, and kidney center. See WAC 388-86-050(5).

(5) The department shall provide detoxification and medical stabilization to chemically dependent pregnant women in a hospital or on an outpatient basis.

(6) The department shall not provide treatment to detoxify narcotic addiction cases, other than pregnant women, in a hospital or on an outpatient basis ((~~shall not be provided~~)) as a part of the medical assistance program. The department shall provide treatment for concurrent diseases and complications.

((~~(6)~~)) (7) The department shall provide detoxification of an acute alcoholic condition ((~~shall be provided~~)) only in a certified detoxification center or in a general hospital with certified detoxification facilities.

((~~(7)~~)) (8) The department shall approve requested services:

(a) That are listed in this section; and

(b) Where evidence is obtainable to establish medical necessity, ((~~as~~)) defined ((~~in~~)) under WAC 388-80-005, if the recipient or provider submits sufficient objective clinical information ((~~(~~))including, but not limited to((~~,~~)):

(i) A physiological description of the disease, injury, impairment, or other ailment;

(ii) Pertinent laboratory findings;

(iii) X-ray reports; and

(iv) Patient profiles((~~)~~)).

((~~(8)~~)) (9) The department shall deny a request for medical services ((~~shall be denied by the department~~)) if the requested service is:

(a) ((~~Is~~)) Not medically necessary as defined ((~~in~~)) under WAC 388-80-005; or

(b) ((~~Is~~)) Generally regarded by the medical profession as experimental in nature or as unacceptable treatment, unless the recipient can demonstrate through sufficient objective clinical evidence the existence of particular circumstances which render the requested service medically necessary.

((~~(9)~~)) (10) The department shall:

(a) Approve or deny all requests for medical services within fifteen days of the receipt of the request; or

(b) If additional justifying information is necessary before a decision can be made, ((~~the request shall be~~)) neither ((~~approved~~)) approve nor ((~~denied~~)) deny the request, but shall ((~~be returned~~)) return the request to the provider within five working days of the original receipt. If additional justifying information is:

(i) ((~~Is~~)) Not returned within thirty days of the date ((~~it~~)) the request was returned to the provider, then the department shall approve or deny the original request ((~~shall be approved or denied~~)).

(ii) ((~~Is~~)) Returned to the department, the department shall act on the request ((~~shall be acted upon~~)) within five working days of the receipt of the additional justifying information.

((~~(10)~~)) (11) ((~~Whenever~~)) When the department denies a request for medical services, the department shall,

within five working days of the decision, give the recipient and the provider written notice of the denial ((~~to the recipient and the provider~~)). The notice shall state:

(a) The specific reasons for the department's conclusion to deny the requested service((:));

(b) The recipient has a right to a fair hearing if the request is made within ninety days of receipt of the denial, with the instruction on how to request the hearing((:));

(c) The recipient may be represented at the hearing by legal counsel or other representative((:));

(d) That upon request, the CSO shall furnish the recipient the name and address of the nearest legal services office((:)); and

(e) If a fair hearing is requested, a medical assessment other than that of the person or persons involved in making the original decision may be obtained at the expense of the department.

((~~(11)~~)) (12) For services available under:

(a) The limited casualty program–medically needy ((~~(f)~~)), see chapter 388–99 WAC((~~)~~)); and

(b) The limited casualty program–medically indigent ((~~(f)~~)), see chapter 388–100 WAC((~~)~~)).

((~~(12)~~)) (13) The department may require a second opinion and/or consultation prior to the approval of any elective surgical procedure.

((~~(13)~~)) (14) The department shall designate those surgical procedures which:

(a) Can be performed in other than a hospital in–patient setting; and

(b) Require prior approval by the ((~~area medical~~)) central authorization unit for a hospital admission.

((~~(14)~~)) (15) The department shall assure the ((~~availity (~~))availability((~~)~~)) of necessary transportation to and from covered Title XIX medical services.

WSR 89-13-006
ADOPTED RULES
HORSE RACING COMMISSION
[Order 89–02—Filed June 9, 1989]

Be it resolved by the Washington Horse Racing Commission, acting at the Sea–Tac Red Lion Inn, 18740 Pacific Highway South, Seattle, WA, that it does adopt the annexed rules relating to:

Amd	WAC 260–34–010	Primary purpose of chapter 260–40 WAC.
Amd	WAC 260–34–020	Use of controlled substances.
Amd	WAC 260–34–030	Testing.
Amd	WAC 260–34–040	Definitions.
Amd	WAC 260–34–050	Reasonable suspicion.
Amd	WAC 260–34–060	Refusal to test.
Amd	WAC 260–34–070	Responsibility to report valid prescriptions.
Amd	WAC 260–34–080	Testing procedure.
Amd	WAC 260–34–090	A positive test.
Amd	WAC 260–34–100	Confidentiality of test results.
Amd	WAC 260–34–180	Testing expense.
New	WAC 260–34–190	Severability.

This action is taken pursuant to Notice No. WSR 89–08–090 filed with the code reviser on April 5, 1989. These rules shall take effect thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2).

This rule is promulgated under the general rule–making authority of the Washington Horse Racing Commission as authorized in RCW 67.16.020 and 67.16.040.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW), and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED May 17, 1989.

By Warren Chinn
Chairman

AMENDATORY SECTION (Amending Order 88–02, filed 4/15/88)

WAC 260–34–010 PRIMARY PURPOSE. In order to protect the integrity of horse racing in the state of Washington, to protect the health and welfare of licensees and employees engaged in horse racing within the state of Washington, to prevent the exploitation of the public, licensees and/or employees engaged in horse racing in the state of Washington, to foster fairness of competition within the racing industry and in order to protect public safety within the state of Washington, the horse racing commission intends to regulate at all race meets licensed by it, the use of any controlled substance as listed in chapter 69.50 RCW or any ((~~prescription~~)) legend drug as defined in chapter 69.41 RCW unless such ((~~prescription~~)) legend drug was obtained directly and pursuant to a valid prescription from a duly licensed physician or dentist acting in the course of his or her professional practice. The commission recognizes that the most effective preventive measures are also measures considered by many to be most invasive of civil liberties, and intends to limit the impact on civil liberties by implementing limited preventative measures. The commission also recognizes that there are limits to the known correlation between the use of drugs, drug levels in bodily fluids and impairment from the presence of those drugs in the body, but that the known possible impairment and detriment to the integrity of the horse racing industry from the use of drugs warrants appropriate measures to prevent such use. This chapter shall be applicable to any licensee or employee who is responsible for the conduct of, or the officiating of, a race or whose duties include the training, exercising, riding, driving, or caring for a horse while the horse is on any association premises to participate in a horse racing meet.

AMENDATORY SECTION (Amending Order 88–02, filed 4/15/88)

WAC 260–34–020 ((~~INTOXICATION~~)) USE OF CONTROLLED SUBSTANCES. No licensee or employee of any racing association or any employee of the horse racing commission or applicant who is, or may be, responsible for the conduct of, or officiating of a race, or whose duties include the training, exercising, riding, driving, or caring for a horse while the horse is on any

association premises to participate in a horse racing meet or on grounds licensed by the horse racing commission, shall be under the influence of intoxicating liquor, ((~~the combined influence of intoxicating liquor and any drug, or under the influence of any narcotic or other drug~~)) or have within their body any drug or controlled substance unless obtained directly and used pursuant to a valid medical prescription from a duly licensed physician or dentist acting in the course of his or her professional practice while within the enclosure of or on the premises managed by any association. ((~~In addition, the personal use by any licensee or employee of any drug or abuse of any~~)) "Controlled substance" or "drug" as used in this chapter means any substance listed in chapter 69.50 RCW ((~~is prohibited without valid legal prescription~~)) or legend drug as defined in chapter 69.41 RCW.

AMENDATORY SECTION (Amending Order 88-02, filed 4/15/88)

WAC 260-34-030 TESTING. The board of stewards of the horse racing commission or the commission, acting through the executive secretary, may require any licensee, employee of any racing association, or employee of the horse racing commission, or applicant, who is, or may be, responsible for the conduct of, or officiating of, a race, or whose duties include the training, exercising, riding, driving, or caring for a horse while the horse is on any association premises to participate in a horse racing meet, or on grounds licensed by the horse racing commission, to provide blood and/or urine samples for the purpose of drug or alcohol analysis under any of the following circumstances:

(1) As part of a physical examination described in WAC 260-32-160, as close as practicable prior to the testee's participation in his/her first race meeting of a calendar year.

(2) When the board of stewards finds that there is reasonable suspicion to believe that the proposed testee has used any ((~~drug, narcotic, or~~)) controlled substance ((~~as defined in chapter 69.50 RCW or any prescription legend drug~~)) unless such ((~~prescription legend drug~~)) controlled substance was obtained directly and used pursuant to a valid medical prescription from a duly licensed physician or dentist acting in the course of his or her professional practice or, alcohol in excess of the limits prescribed in this chapter.

(3) At the discretion of the stewards when the proposed testee has a documented history of an unexplained positive test which indicates illegal drug usage or when the proposed testee has a documented history of ((~~sanction for drug usage or~~)) violating chapter 69.41, 69.45 or 69.50 RCW, WAC 260-34-020 or similar drug-related violation.

AMENDATORY SECTION (Amending Order 88-02, filed 4/15/88)

WAC 260-34-040 DEFINITIONS ((~~OF LICENSEE AND EMPLOYEES~~)). (1) "Licensee," "employee," or "applicant": For the purpose of this chapter, "licensee," ((~~or~~)) "employee," or "applicant" means and includes any person licensed or employed, or an applicant for a license or employment by the horse racing commission within the state of Washington or by any association whose duties include any of the following: Training, exercising, riding, driving, or caring for a horse while he/she is on the association grounds to participate in a horse racing meet, or on premises licensed by the horse racing commission, or any licensed racing official who is involved in the conduct of a horse racing meet including, but not limited to:

((~~(1)~~)) (a) Apprentice jockey;
((~~(2)~~)) (b) Assistant starter;
((~~(3)~~)) (c) Assistant trainer;
((~~(4)~~)) (d) Clerk of scales;
((~~(5)~~)) (e) Dentist;
((~~(6)~~)) (f) Driver;
((~~(7)~~)) (g) Exercise boy/girl;
((~~(8)~~)) (h) Groom;
((~~(9)~~)) (i) Horseshoer;
((~~(10)~~)) (j) Jockey;
((~~(11)~~)) (k) Jockey agent;
((~~(12)~~)) (l) Out rider;
((~~(13)~~)) (m) Paddock judge;
((~~(14)~~)) (n) Pony rider;
((~~(15)~~)) (o) Racing judge;
((~~(16)~~)) (p) Security officer;
((~~(17)~~)) (q) Starter;
((~~(18)~~)) (r) Steward;
((~~(19)~~)) (s) Trainer;
((~~(20)~~)) (t) Valet;
((~~(21)~~)) (u) Veterinarian;
((~~(22)~~)) (v) Veterinarian's assistant;
((~~(23)~~)) (w) Any other licensed personnel deemed appropriate by the horse racing commission where the person is involved in the conduct of a race.

(2) "Suspension": For purposes of this chapter, "suspension" means prevention from conducting the activities permitted or authorized by a license or employment or, if an applicant, prevention from obtaining a license or employment. "Suspension" is to be interpreted as a temporary remedial measure designed to protect the safety and integrity of the horse racing industry and the participants therein, and is not to be considered punitive.

AMENDATORY SECTION (Amending Order 88-02, filed 4/15/88)

WAC 260-34-050 REASONABLE SUSPICION. When ((~~ordering a drug or alcohol test based upon~~)) determining whether there is reasonable suspicion to require testing, the board of stewards may consider, but are not limited to, any of the following factors:

(1) Unexplained or continued rule violations which have a detrimental effect on racing.

(2) Involvement in any accident which causes injury to person or animal at the track as well as any near accident which created a clear danger of accident or injury to person or animal at the track.

(3) Willful conduct detrimental to horse racing as evidenced by continued rule violations, other disciplinary problems, behavioral problems, disturbances, or other similar conduct at the track.

(4) Observable physical or emotional impairment at the track.

(5) Involvement in a race of questionable outcome or circumstance as determined by the board of stewards in the exercise of their expertise.

(6) Willful abuse of animal or person who is engaged in a race, work, or exercise engagement at the track.

(7) Prior positive test or tests, excluding those where a valid legal prescription has been revealed.

(8) Performance of prescribed duties in a manner which indicates a best effort to win is not present at the track.

(9) Information supplied by a law enforcement agency, the thoroughbred racing protective bureau, or horse racing commission of any state or country which is verified in writing relating to drug or alcohol abuse or both.

(10) Any other physical conduct at the track which can be documented which would indicate ((~~the possibility of drug or narcotic~~)) reasonable grounds to believe the existence of dependence on or usage, of a controlled substance, or alcohol abuse.

(11) Repeated wrongful refusal to take a test when requested to do so within this chapter.

AMENDATORY SECTION (Amending Order 88-02, filed 4/15/88)

WAC 260-34-060 REFUSAL TO TEST. (1) When any licensee ((~~or~~)), employee, or applicant is requested to submit to a test in a manner prescribed by this chapter, ((~~he/she~~)) the person shall do so in a prompt manner. Refusal to supply such sample shall result in:

((~~(1)~~)) (a) Immediate suspension of the licensee ((~~or~~)), employee((~~,~~)), or applicant; and

((~~(2)~~)) (b) A hearing before the board of stewards in accordance with WAC 260-24-440 with written notice of the issue to be addressed prepared by the presiding steward, to be held within the next two racing days ((~~of the delivery~~)) or seven calendar days, whichever is less, after service of the notice or sooner or later if the licensee ((~~or~~)), employee, or applicant and the board of stewards agree ((~~to it~~)). Service shall be to the licensee, employee, or applicant personally, by leaving the notice at the person's residence with someone of reasonable age and discretion residing therein, or by mailing the notice to the person's last known address. If by mail, service shall be deemed completed on the third day after mailing.

((~~(3)~~)) (2) If the board of stewards ((~~shall confirm the facts with respect to the refusal to test at the hearing and where substantiated~~)) finds at the hearing that said refusal to test occurred without just cause, the licensee ((~~or~~)), employee, or applicant shall be suspended from racing for and until such time as a ((~~negative~~)) test has been obtained in conformance with this chapter. In the event of a finding of just cause, the licensee, employee, or applicant must submit to a test immediately once the conditions which justly prevented testing abate or can be eliminated.

((~~(4) Continued~~)) (3) Repeated refusal without just cause to submit to an ordered test ((~~will~~)) may result in license revocation and banning from race meets in the state of Washington by the commission after a hearing pursuant to chapters 260-08 and 260-88 WAC.

AMENDATORY SECTION (Amending Order 88-02, filed 4/15/88)

WAC 260-34-070 RESPONSIBILITY TO REPORT VALID PRESCRIPTIONS. Whenever any licensee ((~~or~~)), employee, or applicant has been directed ((~~by the stewards~~)) to submit to a drug test and that licensee ((~~or~~)), employee, or applicant is taking a controlled substance pursuant to a valid prescription on order of a duly licensed physician or dentist, it shall be the ((~~licensee or~~)) licensee's, employee's, or applicant's responsibility to ((~~given~~)) give immediately prior to testing written notice to the ((~~chief of security, or his~~)) medical staff member designated pursuant to WAC 260-34-080 or designated representative of the Washington horse racing commission containing the following:

(1) Name of the licensee ((~~or~~)), employee, or applicant.

(2) The name, quantity, and dosage of the controlled substance ((~~prescription~~)) prescribed.

(3) The name of the duly licensed physician or dentist prescribing same.

(4) The date the prescription was prescribed.

(5) The time and date next preceding the date of the test when the prescribed controlled substance was ingested by the licensee, employee, or applicant.

All such notices shall become part of the records of the drug test and preserved to maintain strict confidentiality of the contents.

AMENDATORY SECTION (Amending Order 88-02, filed 4/15/88)

WAC 260-34-080 TESTING PROCEDURE. (1) When the drug testing is ((~~a result of a~~)) required ((~~physical examination or~~)) as described in WAC ((~~236-34-030~~)) 260-34-030(1), the following procedure will be used:

(a) The licensee ((~~or~~)), employee, or applicant will report to the specified physician where a member of the medical staff designated by the physician will supervise the sample being given. The supervision need not include actual observance of the delivery of the sample but the sample shall be taken under such circumstances that the integrity of the sample is maintained without unnecessarily interfering with the individual rights of the ((~~licensee~~)) person tested, including the right to be free from unnecessary embarrassment. Intentional contamination of the sample by any ((~~licensee~~)) person tested which is likely to prevent appropriate analysis of the sample shall be grounds for the suspension or revocation of the ((~~licensee's license~~)) person tested.

((~~Any~~)) (b) The urine sample will be at least 75 ml in volume. The urine sample will be divided into two parts of at least 25 ml and 50 ml in the presence of the person tested. If the licensee, employee, or applicant is unable to provide 75 ml of urine, the licensee, employee, or applicant may waive in writing the division of the sample and preservation of an untested portion of the sample as provided in (c) of this subsection and subsection (4) of

this section. If the person tested is unable to provide a sufficiently large sample, either 75 ml or 50 ml with a waiver, the person shall not be suspended, but shall not participate in racing until such time as he or she is able to provide sufficient urine and completes the test. All portions of the sample shall be placed in ((a)) containers and sealed ((together)) with ((a)) double identification tags in the presence of the person being tested.

(c) The 25 ml (or more) container will be preserved pursuant to subsection (3) of this section by the medical facility obtaining the sample. Both licensee, employee, or applicant and member of the medical staff, chief of security, or designated representative of the horse racing commission will sign the tag to attest to the sealing and labeling of the sample.

(d) The 50 ml (or more) container will be prepared for transportation as follows: One portion of ((such)) the container's tag bearing a printed identification number shall remain with the sealed container. The other portion of such tag bearing the same printed identification number, shall be detached in the presence of the person tested and a member of the medical staff ((and)), the chief of security or ((his)) designated representative of the horse racing commission. The licensee ((or)), employee, or applicant will ((attest by signature on)) initial or sign the designated portion of the tag to ((indicate)) attest witnessing such action. The member of the medical staff ((and)), the chief of security or ((his)) designated representative of the horse racing commission will ((further attest by signature to indicate)) also sign the detached portion of the tag to attest witnessing such action. The sample will then be handled in a manner consistent with an evidentiary chain of custody ((by the chief of security or his designated representative of the horse racing commission)) throughout the transportation and laboratory testing process. The sample and the tag identifying ((same)) the sample which is to be provided to the laboratory for analysis shall not identify the person by name, but only by number assigned and recorded by the members of the medical staff, chief of security, or ((his)) designated representative of the horse racing commission.

(2) When the testing is to be done as a result of reasonable suspicion or the result of mandatory testing being conducted after a positive test, the same procedure for handling the specimens shall be utilized as in subsection (1) of this section, but the sample may be taken at the track and witnessed by the chief of security or ((his)) designated representative of the horse racing commission. The witness must be of the same sex as the person being tested. After the sample is taken, divided and sealed, the chief of security or ((his)) designated representative of the horse racing commission will be responsible for the evidentiary chain of custody and transportation of one portion of the sample to the laboratory and storage of the other portion pursuant to subsection (3) of this section. The chief of security of the horse racing commission will maintain a checklist of procedures ((in implementing)) to implement these steps ((which)); the checklist will be marked as ((they)) the steps are carried out and it will be maintained as part of security records.

(3) Each portion of the sample supplied by the person tested will be preserved by the member of the medical staff, chief of security, representative of the horse racing commission, or laboratory for thirty days unless there is a positive test result. If there is a positive test result, the samples will be preserved until released by the executive secretary of the horse racing commission after all hearings and appeals have been terminated. The samples will be preserved in a secured location by refrigeration or freezing for the first thirty days and thereafter by freezing.

(4) Either or both portions of the sample may be retested at the request of the licensee, employee, or applicant at either the laboratory used by the horse racing commission or a separate equally or better qualified and reputable laboratory designated by the licensee, employee, or applicant. If the untested sample is transported for testing, transportation will be performed by the chief of security or designated representative of the horse racing commission using an evidentiary chain of custody. None of the originally untested 25 ml portion is required to be saved after testing for retesting. The licensee, employee, or applicant is responsible for all costs of transporting and testing or retesting a sample at his or her request.

AMENDATORY SECTION (Amending Order 88-02, filed 4/15/88)

WAC 260-34-090 A POSITIVE TEST. ((In order to be considered positive, any test must be confirmed by at least two independent testing methods which are state-of-the-art as determined by the laboratory conducting the tests.)) A drug test shall be positive when the presence of a controlled substance is confirmed by two independent tests performed on the same sample supplied by a licensee, employee, or applicant. The tests used will be the E.M.I.T. screen test, followed by a gas chromatography/mass spectrometry confirmatory test, or other tests which the scientific community recognizes are equally or more accurate and reliable. If marijuana ((is)) or its derivatives, salts, isomers, or salts of isomers are detected in a drug test, ((it)) such a result will not be reported positive unless found at ((the)) levels of at least one hundred nanograms per milliliter.

A positive ((controlled substance or prescription)) drug ((result)) test shall be reported by the laboratory to the presiding steward at the track. On receiving written notice from the laboratory that a specimen has been found positive for a controlled substance ((or prescription legend drug, the procedure shall be as follows)), the presiding steward shall initiate the following procedure:

(1) ((The presiding steward shall give)) Written notice shall be given to the licensee ((or)), employee ((in writing)) or applicant, setting a hearing by the board of stewards in accordance with WAC 260-24-440 within the next two racing days ((of delivery)) or seven calendar days, whichever is less, after service of the notice ((or sooner)). The hearing may be held within a shorter or longer period of time if the licensee ((or)), employee, or applicant named and the board of stewards agree. Service shall be to the licensee, employee, or applicant

personally, by leaving the notice at the person's residence with someone of reasonable age and discretion residing therein, or by mail to the person's last known address. If by mail, service shall be deemed completed on the third day after mailing.

(2) The hearing shall be conducted before the board of stewards pursuant to WAC 260-24-440. At the hearing, the licensee ((~~or~~)), employee, or applicant shall be provided an opportunity to explain the positive test.

(3) ((~~This~~)) The board of stewards' hearing shall be closed and the ((~~findings~~)) facts therein will be kept confidential unless for use with respect to any subsequent contested hearing or order ((~~issued pursuant to this chapter or any administrative~~)) by the horse racing commission or judicial hearing with regard to such ((~~a finding~~)) facts. Closure of the hearing and confidentiality of the proceedings may be waived by the licensee, employee, or applicant. The board may issue a public ruling which complies with the confidentiality requirements of this section and WAC 260-34-100.

(4) Lacking a satisfactory explanation and documentation or upon the licensee ((~~or~~)), employee, or applicant agreeing with the test results, the board of stewards shall suspend the licensee, employee, or applicant until:

(a) ((~~Suspend the licensee or employee until such time as~~)) A negative test can be submitted by that licensee ((~~or~~)), employee, or applicant and the results reviewed by the board of stewards((~~:~~)); and

(b) ((~~Refer~~)) The licensee ((~~or~~)), employee, or applicant is referred to an approved agency for a drug evaluation interview and completes the evaluation.

(i) If ((~~after such~~)) the evaluation((~~,~~)) concludes that the licensee ((~~or employee's condition proves nonaddictive and not detrimental to the best interests of racing as determined by the board of stewards~~)), employee, or applicant is not addicted or habituated, and if the board of stewards determines that the licensee's, employee's, or applicant's condition is not detrimental to the best interests of racing, the licensee ((~~or~~)), employee, or applicant shall be allowed to participate in racing provided he or she agrees that further testing may be done as described in WAC 260-34-030(3).

((~~(c)~~)) (ii) If((~~, after~~)) such ((~~professional~~)) drug evaluation((~~,~~)) concludes that the licensee ((~~or employee's condition proves addictive~~)), employee, or applicant is addicted or habituated, or the board of stewards determines that the licensee's, employee's, or applicant's condition is detrimental to the best interests of racing, the licensee ((~~or~~)), employee, or applicant shall not be allowed to participate in racing until such time as he or she can produce a negative test result and show official documentation that he or she has successfully completed a certified drug rehabilitation program approved by the board of stewards, in consultation with the executive secretary of the horse racing commission. The licensee ((~~or~~)), employee, or applicant must agree to further testing as described in WAC 260-34-030(3).

(5) For a second ((~~offense~~)) positive drug test in the calendar year, the licensee ((~~or~~)), employee, or applicant shall be suspended for the balance of the calendar year or one hundred twenty days, whichever is greater, and ((~~he or she~~)) the person is required to complete a certified drug rehabilitation program approved by the board of stewards in consultation with the executive secretary of the horse racing commission before applying for a reinstatement of license. The licensee, employee, or applicant must agree to further testing as described in WAC 260-34-030(3).

(6) When any licensee ((~~or~~)), employee, or applicant has a history of more than two ((~~drug-related~~)) violations of ((~~this chapter, that licensee or employee may be declared~~)) WAC 260-34-020 or positive drug tests, the horse racing commission may, pursuant to a hearing conducted under chapter 260-08 WAC, declare such person detrimental to the best interests of racing and ((~~sanctioned as such~~)) revoke that person's license or application. Reapplication shall not be permitted for such period of months or years as the commission determines is necessary to ensure the person's freedom from use of controlled substances and not until meeting the requirements of subsection (5) of this section.

AMENDATORY SECTION (Amending Order 88-02, filed 4/15/88)

WAC 260-34-100 CONFIDENTIALITY OF TEST RESULTS. The ((~~chief of security~~)) executive secretary of the horse racing commission shall maintain all test results and records, both negative and positive, confidential. He or she shall document the process which will ensure the confidentiality of the handling of such results. Information contained in the test results shall remain confidential at all times except for use with respect to any contested hearing or order ((~~issued pursuant to this chapter or any administrative~~)) by the horse racing commission or judicial hearing with regard to such an order. Access to the reports of any test results shall be limited to the executive secretary, the board of stewards, the chief of security of the commission at the track, the physician or member of the medical staff obtaining and preserving samples, the laboratory and the person being tested, except in the instance of a contested ((~~matter~~)) commission hearing. The information obtained as a result of a test being required under the rules of the horse racing commission shall be considered privileged and shall be used for administrative purposes only and, further, shall be exempt from use as evidence in any criminal prosecution involving the violation of offenses listed in chapter 69.50 RCW.

AMENDATORY SECTION (Amending Order 88-02, filed 4/15/88)

WAC 260-34-180 TESTING EXPENSE. Except for retesting requested by a licensee, employee, or applicant pursuant to WAC 260-34-080(4), all testing, whether blood, urine, or breath, ordered pursuant to this chapter shall be at the expense of the horse racing commission. All expense of drug and/or alcohol evaluation, treatment, reports, and fees shall be at the expense of the licensee ((~~or~~)), employee, or applicant undergoing such evaluation or treatment.

NEW SECTION

WAC 260-34-190 SEVERABILITY. If any section, subsection, or provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or application of the section, subsection, or provision to other persons or circumstances is not affected.

WSR 89-13-007
ADOPTED RULES
HORSE RACING COMMISSION
[Order 89-03—Filed June 9, 1989]

Be it resolved by the Washington Horse Racing Commission, acting at the Sea-Tac Red Lion Inn, 18740 Pacific Highway South, Seattle, WA, that it does adopt the annexed rules relating to:

Amd	WAC 260-36-020	Licenses required of jockeys, apprentices, owners, trainers.
Amd	WAC 260-36-030	Veterinarians, platers, dentists—License required—Ineligible as trainers.
Amd	WAC 260-36-040	Registration of personnel other than owners, trainers, and jockeys—Fee.

This action is taken pursuant to Notice No. WSR 89-08-070 filed with the code reviser on April 4, 1989. These rules shall take effect thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2).

This rule is promulgated under the general rule-making authority of the Washington Horse Racing Commission as authorized in RCW 67.16.020 and 67.16.040.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW), and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED May 17, 1989.

By Warren Chinn
Chairman

AMENDATORY SECTION (Amending Order 86-02, filed 4/21/86)

WAC 260-36-020 LICENSES REQUIRED OF JOCKEYS, APPRENTICES, OWNERS, TRAINERS. All jockeys and apprentice jockeys must first secure occupational license before accepting a mount; no trial ride will be permitted without such occupational license, except as provided in WAC 260-32-020(1). Each owner and trainer must secure occupational license before entering a horse and the racing secretary shall be required to secure such occupational license number of owner and trainer making such entry. The license fee for jockeys, apprentices, owners, and trainers shall be for ((~~three~~)) one year((s)) and shall be ((~~$45.00~~)) $15.00.

AMENDATORY SECTION (Amending Order 86-02, filed 4/21/86)

WAC 260-36-030 VETERINARIANS, PLATERS, AND DENTISTS—LICENSE REQUIRED—INELIGIBLE AS TRAINERS. The license fee for veterinarians, platers and dentists shall be for ((~~three~~)) one year((s)) and shall be ((~~$45.00~~)) $15.00. They must be approved by the commission before practicing their professions on the grounds of an association. They shall not be eligible to hold a license to train horses while holding said occupational license.

AMENDATORY SECTION (Amending Resolution No. 87-02, filed 7/8/87)

WAC 260-36-040 REGISTRATION OF PERSONNEL OTHER THAN OWNERS, TRAINERS AND JOCKEYS—FEE. (1) Any person acting in an official capacity or any person employed on a race track ((~~other than a groom or concession employee~~)) shall be licensed by the Washington horse racing commission for ((~~three~~)) one year((s)) and the fee shall be ((~~$15.00~~)) $5.00.

(2) ((~~All grooms and concession employees shall be licensed by the Washington horse racing commission for one year and the fee shall be $5.00.~~

~~(3) Any person who serves as a volunteer and is not an owner, trainer, or jockey shall be licensed by the Washington horse racing commission for one year and the fee shall be $5.00.~~

~~(4)~~)) All employees of the Washington horse racing commission shall be exempt from any license fees but shall be issued a photo identification badge which shall be displayed in the same manner as all other licensees while in the performance of their duties at the track.

WSR 89-13-008
ADOPTED RULES
HORSE RACING COMMISSION
[Order 89-04—Filed June 9, 1989]

Be it resolved by the Washington Horse Racing Commission, acting at the Radisson Hotel, 17001 Pacific Highway South, Seattle, WA, that it does adopt the annexed rules relating to:

New	WAC 260-48-327	Daily triple.
Rep	WAC 260-48-329	Limited sweepstakes.

This action is taken pursuant to Notice No. WSR 89-09-064 filed with the code reviser on April 19, 1989. These rules shall take effect thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2).

This rule is promulgated under the general rule-making authority of the Washington Horse Racing Commission as authorized in RCW 67.16.020 and 67.16.040.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW), and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED May 23, 1989.

By Warren Chinn
Chairman

NEW SECTION

WAC 260-48-327 DAILY TRIPLE. (1) The Daily Triple parimutuel pool is not a parlay and has no connection with or relation to any other parimutuel pool conducted by the association, nor to any win, place, and show pool shown on the totalisator board, nor to the rules governing the distribution of such other pools.

(2) A valid Daily Triple ticket shall be evidence of the binding contract between the holder of the ticket and the racing association, and the said ticket shall constitute an acceptance of Daily Triple provisions and rules contained in the rules and regulations of the Washington horse racing commission.

(3) A Daily Triple may be given a distinctive name to be selected by the association conducting such races, such as "PICK 3," subject to prior approval of the commission.

(4) The Daily Triple parimutuel pool consists of amounts contributed for a selection for win only in each of three consecutive races designated by the association with the prior approval of the commission. Each person purchasing a Daily Triple ticket shall designate the winning horse in each of the three races comprising the Daily Triple.

(5) No Daily Triple pool shall be operated on any race when there is an entry or mutuel field.

(6) The net amount in the parimutuel pool subject to distribution among winning ticket holders shall be distributed among the holders of tickets which correctly designate the winners in all three races comprising the Daily Triple.

(7) If no ticket is sold combining the three winners of the Daily Triple, the net amount in the parimutuel pool shall be distributed among the holders of tickets which include the winners of at least two of the three races comprising the Daily Triple.

(8) If no ticket is sold combining at least two winners of the Daily Triple, the net amount in the parimutuel pool shall be distributed among holders of tickets which include the winner of any race comprising the Daily Triple.

(9) If no ticket is sold that would require distribution of the Daily Triple pool to a winner under this section, the association shall make a complete and full refund of the Daily Triple pool.

(10) If for any reason one of the races comprising the Daily Triple is cancelled, the net amount of the parimutuel pool shall be distributed as provided in subsections (6), (7), and (8) of this section.

(11) If for any reason two or more of the races comprising the Daily Triple are cancelled, a full and complete refund will be made of the Daily Triple pool.

(12) In the event a Daily Triple ticket designated a selection in any one or more of the races comprising the Daily Triple and that selection is scratched, excused, or determined by the stewards to be a nonstarter in the race, the actual favorite, as evidenced by the amounts wagered in the win pool at the time of the start of the race, will be substituted for the nonstarting selection for all purposes, including pool calculations and payoffs.

(13) In the event of a dead heat for win between two or more horses in any Daily Triple race, all such horses in the dead heat for win shall be considered as winning horses in the race for the purpose of calculating the pool.

(14) No parimutuel ticket for the Daily Triple pool shall be sold, exchanged, or cancelled after the time of the closing of wagering in the first of the three races comprising the Daily Triple, except for such refunds on Daily Triple tickets as required by this section, and no person shall disclose the number of tickets sold in the Daily Triple pool or the number or amount of tickets selecting winners of Daily Triple races until such time as the stewards have determined the last race comprising the Daily Triple to be official. At the conclusion of the second of the three races comprising the Daily Triple, an association may, with the prior approval of the commission, display potential distributions to ticket holders depending upon the outcome of the third race of the Daily Triple.

WSR 89-13-009
EMERGENCY RULES
DEPARTMENT OF PERSONNEL
(Personnel Board)

[Order 319—Filed June 9, 1989]

Be it resolved by the State Personnel Board, acting at 521 South Capitol Way, Department of Personnel, Olympia, WA, that it does adopt the annexed rules relating to shared leave, new WAC 356-18-112.

We, the State Personnel Board, find that an emergency exists and that this order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting the emergency is the ESSB 5733 passed with an emergency clause that went into effect upon the governor's signature. Section 7 of that bill stated that Department of Personnel will adopt temporary emergency policies and procedures to implement the program after the effective date of this act.

These rules are therefore adopted as emergency rules to take effect upon filing with the code reviser.

This rule is promulgated pursuant to RCW 41.06.150 and is intended to administratively implement that statute.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW), and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED June 8, 1989.

By Robert Boysen
Acting Director

NEW SECTION

WAC 356-18-112 SHARED LEAVE. (1) The purpose of the state leave sharing program is to permit state employees to donate vacation leave to a fellow state employee who is suffering from or has a relative or household member suffering from an extraordinary or severe illness, injury, impairment, or physical or mental condition which has caused or is likely to cause the employee to take leave without pay or terminate his or her employment. For purposes of the Washington state leave sharing program, the following definitions apply:

(a) "Employees's relative" normally shall be limited to the employees's spouse, child, step child, grandchild, grandparent, or parent.

(b) "Household members" is defined as persons who reside in the same home who have reciprocal duties to and do provide financial support for one another. This term shall include foster children and legal wards even if they do not live in the household. The term does not include persons sharing the same general house, when the living style is primarily that of a dormitory or commune.

(c) "Severe" or "extraordinary" condition is defined as serious or extreme and/or life threatening.

(2) An employee may be eligible to receive shared leave under the following conditions:

(a) The employees's agency head determines that the employee meets the criteria described in this section.

(b) The employee is not eligible for time loss compensation under chapter 51.32 RCW. If the time loss claim is approved at a later time, all leave received shall be returned to the donors, and the employee will return any and all overpayments to the agency.

(c) The employee has abided by agency policies regarding the use of sick leave.

(d) Donated vacation leave is transferable between employees in different state agencies with the agreement of both agency heads.

(3) An employee may donate vacation leave to another employee only under the following conditions:

(a)(i) The receiving employee has exhausted, or will exhaust, his or her vacation leave, and sick leave due to an illness, injury, impairment, or physical or mental condition, which is of an extraordinary or severe nature, and involves the employee, the employee's relative or household member; and

(ii) The condition has caused, or is likely to cause, the employee to go on leave without pay or terminate state employment; and

(iii) The agency head permits the leave to be shared with an eligible employee.

(b) The donating employee may donate any amount of vacation leave provided the donation does not cause the employee's vacation leave balance to fall below eighty hours.

(c) Employees may not donate excess vacation leave that the donor would not be able to take due to an approaching anniversary date.

(4) The agency head shall determine the amount of donated leave an employee may receive and may only authorize an employee to use up to a maximum of two hundred sixty one days of shared leave during total state employment.

(5) The agency head shall require the employee to submit, prior to approval or disapproval, a medical certificate from a licensed physician or health care practitioner verifying the severe or extraordinary nature and expected duration of the condition.

(6) Any donated leave may only be used by the recipient for the purposes specified in this section.

(7) The receiving employee shall be paid his or her regular rate of pay; therefore, one hour of shared leave may cover more or less than one hour of the recipient's salary. The calculation of the recipient's leave value shall be in accordance with office of financial management policies, regulations, and procedures. The dollar value of the leave is converted from the donor to the recipient. The leave received will be coded as shared leave and be maintained separately from all other leave balances.

(8) All forms of paid leave available for use must be used prior to using shared leave.

(9) Any shared leave not used by the recipient during each incident/occurrence as determined by the agency director shall be returned to the donor(s). The shared leave remaining will be divided among the donors on a prorated basis based on the original donated value and returned at its original donor value and reinstated to each donor's vacation leave balance.

(10) All donated leave must be given voluntarily. No employee shall be coerced, threatened, intimidated, or financially induced into donating vacation leave for purposes of this program.

(11) Agencies shall maintain records which contain sufficient information to provide for legislative review.

WSR 89-13-010

EMERGENCY RULES

SUPERINTENDENT OF PUBLIC INSTRUCTION

[Order 89-2—Filed June 9, 1989]

I, Judith A. Billings, Superintendent of Public Instruction, do promulgate and adopt at Olympia, Washington, the annexed rules relating to conduct of administrative hearings, WAC 392-101-010.

I, Judith A. Billings, find that an emergency exists and that this order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting the emergency is recently enacted federal regulations mandate an independent review of agency decisions

regarding nonpayment of claims. This emergency rule change is necessary to allow for that review in a timely manner.

These rules are therefore adopted as emergency rules to take effect upon filing with the code reviser.

This rule is promulgated pursuant to RCW 34.04.020 and is intended to administratively implement that statute.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED June 9, 1989.

By Judith A. Billings
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending Order 87-5, filed 4/28/87)

WAC 392-101-010 CONDUCT OF ADMINISTRATIVE HEARINGS. The superintendent of public instruction hereby assigns the following administrative hearings to the office of administrative hearings and hereby delegates to the administrative law judge conducting any such hearing the authority to render the final decision by the superintendent of public instruction:

(1) Nonresident transfer appeals pursuant to WAC 392-137-055(2).

(2) Special education hearings pursuant to WAC 392-171-531.

(3) Equal educational opportunity complaints pursuant to WAC 392-190-075.

(4) Professional certification appeals pursuant to WAC 180-75-030.

(5) Child Care Food Program and Summer Food Service Program appeals pursuant to 7 C.F.R. Parts 225 and 226.

WSR 89-13-011
EMERGENCY RULES
STATE BOARD OF EDUCATION
[Order 13-89—Filed June 9, 1989]

Be it resolved by the State Board of Education, acting at the Board Room of the Bellingham School District, 1306 Dupont Street, Bellingham, WA, that it does adopt the annexed rules relating to project approval moratorium, WAC 180-25-300.

We, the State Board of Education, find that an emergency exists and that this order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting the emergency is the state board's moratorium upon the approval of construction projects has had the effect of discouraging a number of school districts that were prepared from going forward at their own expense, thereby likely increasing the cost of the projects to the public but for this action.

These rules are therefore adopted as emergency rules to take effect upon filing with the code reviser.

This rule is promulgated pursuant to RCW 28A.47-.060, 28A.47.802 and 28A.47.830 and is intended to administratively implement that statute.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW), and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED May 19, 1989.

By Monica Schmidt
Secretary

AMENDATORY SECTION (Amending Order 7-89, filed 4/5/89)

WAC 180-25-300 PROJECT APPROVAL MORATORIUM. (1) Notwithstanding any provision of this chapter to the contrary, the state board of education hereby imposes a moratorium upon granting any project approval pursuant to WAC 180-25-040, 180-25-045, 180-29-025, and 180-29-030.

(2) Notwithstanding subsection (1) of this section, a school district may elect to proceed in compliance with the procedural requirements of chapters 180-25 through 180-33 WAC with a project for which a completed request for state board approval was filed with the superintendent of public instruction during the period January 1 through March 30, 1989, at the district's expense and risk; and, the project may be approved for state assistance purposes by the board subsequent to the termination of this moratorium subject to the terms and conditions of chapters 180-25 through 180-33 WAC, as hereafter revised and in effect at the time of approval.

WSR 89-13-012
NOTICE OF PUBLIC MEETINGS
BOARD FOR VOCATIONAL EDUCATION
[Memorandum—June 6, 1989]

The Washington State Board for Vocational Education's regular meeting, previously scheduled for June 22, 1989, is hereby canceled.

The Washington State Board for Vocational Education has rescheduled its June 22 board meeting for July 12-13, 1989. The state board will hold a work study session on July 12 and its regular meeting on July 13. Both meetings will start at 8:30 a.m. and be held in the Sunshine Room of the Resource Center at Clover Park Vocational-Technical Institute in Tacoma.

People needing special accommodations, please call Patsi Justice at (206) 753-5660 or 234-5660 scan.

WSR 89-13-013
NOTICE OF PUBLIC MEETINGS
COMMISSION ON
ASIAN AMERICAN AFFAIRS
[Memorandum—June 7, 1989]

The commission's September meeting has been changed from September 16 to September 23. The exact location in Spokane has not been determined yet.

WSR 89-13-014
EMERGENCY RULES
STATE BOARD OF EDUCATION
[Order 14-89—Filed June 9, 1989]

Be it resolved by the State Board of Education, acting at the Board Room of the Bellingham School District, 1306 Dupont Street, Bellingham, WA, that it does adopt the annexed rules relating to project approval moratorium, WAC 180-29-300.

We, the State Board of Education, find that an emergency exists and that this order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting the emergency is the state board's moratorium upon the approval of construction projects has had the effect of discouraging a number of school districts that were prepared from going forward at their own expense, thereby likely increasing the cost of the projects to the public but for this action.

These rules are therefore adopted as emergency rules to take effect upon filing with the code reviser.

This rule is promulgated pursuant to RCW 28A.47-.060, 28A.47.802 and 28A.47.830 and is intended to administratively implement that statute.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW), and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED May 19, 1989.
By Monica Schmidt
Secretary

AMENDATORY SECTION (Amending Order 8-89, filed 4/5/89)

WAC 180-29-300 PROJECT APPROVAL MORATORIUM. (1) Notwithstanding any provision of this chapter to the contrary, the state board of education hereby imposes a moratorium upon granting any project approval pursuant to WAC 180-25-040, 180-25-045, 180-29-025, and 180-29-030.

(2) Notwithstanding subsection (1) of this section, a school district may elect to proceed in compliance with the procedural requirements of chapters 180-25 through 180-33 WAC with a project for which a completed request for state board approval was filed with the superintendent of public instruction during the period January 1 through March 30, 1989, at the district's expense and risk; and, the project may be approved for state assistance purposes by the board subsequent to the termination of this moratorium subject to the terms and conditions of chapters 180-25 through 180-33 WAC, as hereafter revised and in effect at the time of approval.

WSR 89-13-015
EMERGENCY RULES
STATE BOARD OF EDUCATION
[Order 15-89—Filed June 9, 1989]

Be it resolved by the State Board of Education, acting at the Board Room of the Bellingham School District, 1306 Dupont Street, Bellingham, WA, that it does adopt the annexed rules relating to State assistance—Deferred payment, WAC 180-27-057.

We, the State Board of Education, find that an emergency exists and that this order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting the emergency is the state board's moratorium upon the approval of construction projects has had the effect of discouraging a number of school districts that were prepared from going forward at their own expense, thereby likely increasing the cost of the projects to the public but for this action.

These rules are therefore adopted as emergency rules to take effect upon filing with the code reviser.

This rule is promulgated pursuant to RCW 28A.47-.060, 28A.47.802 and 28A.47.830 and is intended to administratively implement that statute.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW), and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED May 19, 1989.
By Monica Schmidt
Secretary

AMENDATORY SECTION (Amending Order 11-83, filed 10/17/83)

WAC 180-27-057 STATE ASSISTANCE—DEFERRED PAYMENT. (1) In the event state moneys are not sufficient for a school district project, a school district may proceed at its own financial risk. At such time state moneys become available, reimbursement may be made for the project provided the provisions of chapter 180-29 WAC have been complied with.

(2) Notwithstanding subsection (1) of this section, and the moratorium upon approval imposed by WAC 180-25-300, a school district may elect to proceed in compliance with the procedural requirements of chapters

180-25 through 180-33 WAC with a project for which a completed request for state board approval was filed with the superintendent of public instruction during the period January 1 through March 30, 1989, at the district's expense and risk; and, the project may be approved for state assistance purposes by the board subsequent to the termination of this moratorium subject to the terms and conditions of chapters 180-25 through 180-33 WAC, as hereafter revised and in effect at the time of approval.

WSR 89-13-016
EMERGENCY RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Public Assistance)
[Order 2812—Filed June 9, 1989]

I, Leslie F. James, director of Administrative Services, do promulgate and adopt at Olympia, Washington, the annexed rules relating to disregard of income and resources, amending WAC 388-28-575.

I, Leslie F. James, find that an emergency exists and that this order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting the emergency is this rule amendment is necessary to cross-reference rules for disregarding child support incentive payments; corrects disregards to include resources; and adjusts disregard computation of student financial assistance in accordance with court order number C86-1568WD and Action Transmittal Number 88-20.

These rules are therefore adopted as emergency rules to take effect upon filing with the code reviser.

This rule is promulgated under the general rule-making authority of the Department of Social and Health Services as authorized in RCW 74.08.090.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED June 9, 1989.

By Leslie F. James, Director
Administrative Services

AMENDATORY SECTION (Amending Order 2718, filed 10/27/88)

WAC 388-28-575 DISREGARD OF INCOME AND RESOURCES. (1) For aid to families with dependent children (AFDC), the department shall disregard as income and as a resource the following payments:

(a) The portion of grants, loans, or federal work study to an undergraduate student insured by the Secretary of Education, U.S. Department of Education or under the Bureau of Indian Affairs, designated by the school for:

(i) Tuition;

(ii) Fees for equipment, materials, or supplies;

(iii) Books;

(iv) Transportation; and

(v) Miscellaneous personal expenses as determined by the institution.

(b) Per capita judgment funds under Public Law (P.L.) 92-254 to members of the:

(i) Blackfoot Tribe of the Blackfoot Indian Reservation, Montana; and

(ii) Gros Ventre Tribe of the Fort Belknap Reservation, Montana.

(c) Indian claim settlement per capita funds or funds held in trust under P.L. 93-134 or P.L. 94-114;

(d) The income of a Supplemental Security Income recipient;

(e) Two thousand dollars per individual per calendar year received under the Alaska Native Claims Settlement Act or under P.L. 98-64;

(f) AFDC benefits resulting from a court order modifying a department policy;

(g) Veterans' Administration educational assistance for the student's educational expenses and child care necessary for school attendance;

(h) Housing and Urban Development (HUD) community development block grant funds that preclude use for current living costs;

(i) The ((~~monthly~~)) child support incentive payments from the office of support enforcement under WAC 388-14-270; and

(j) A previous underpayment of assistance under WAC 388-33-195.

(2) For AFDC and general assistance (GA), the department shall disregard as income((~~, for AFDC and GA~~)) and as a resource the following payments:

(a) Payment under Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(b) The food coupon allotment under Food Stamp Act of 1977;

(c) Compensation to volunteers in ACTION programs established by Titles I, II, and III of P.L. 93-113;

(d) Benefits under women, infants and children program (WIC);

(e) Food service program for children under the National School Lunch Act; and

(f) Energy assistance payments.

WSR 89-13-017
RULES COORDINATOR
DEPARTMENT OF LICENSING
[Filed June 12, 1989]

I have designated Leslie Baldwin, Management Analyst, as the Rules Coordinator for the Department of Licensing and its associated boards and committees with rule-making authority.

In accordance with RCW 34.05.310, please publish the mailing address for our rules coordinator in the state Register:

Leslie Baldwin
Office of Budget and Planning
421 Black Lake Boulevard
Olympia, WA 98504
(206) 586-1323
321-1323 scan

Mary Faulk
Director

WSR 89-13-018
NOTICE OF PUBLIC MEETINGS
DEPARTMENT OF ECOLOGY
[Memorandum—June 12, 1989]

Municipal Wastewater Treatment Construction Grants

Federal FY 1990 Construction Grants Project Priority List

The Washington Department of Ecology is seeking public comment on the proposed FY 1990 federal project priority list for municipal wastewater treatment construction grants. The project priority list identifies projects scheduled to receive federal grant assistance is federal fiscal year 1990 beginning October 1, 1989.

A hearing will be held on Friday, August 4, 1989, at 10:00 a.m. to receive testimony regarding the draft list. The hearing will be located at the EFSEC Hearing Room, Rowesix Building Complex, 4224 Sixth Avenue S.E., Building #1, Lacey, WA.

The proposed FY 1990 project priority list will be available July 5, 1989, from Erin Guthrie, Department of Ecology, Mailstop PV-11, Olympia, Washington 98504, or by telephone (206) 459-6068.

The department encourages all interested parties to provide testimony relative to the merits of the proposed projects. Written comments will be accepted until August 11, 1989. Persons unable to attend the hearing may mail comments to: Erin Guthrie, Department of Ecology, Mailstop PV-11, Olympia, Washington 98504.

WSR 89-13-019
PROPOSED RULES
DEPARTMENT OF COMMUNITY DEVELOPMENT
(Fire Protection)
[Filed June 12, 1989]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Department of Community Development intends to adopt, amend, or repeal rules concerning:

Amd	WAC 212-17-140	Fireworks wholesaler—Records and reports.
Amd	WAC 212-17-195	Retailers of fireworks—Sales locations;

that the agency will at 9:00 a.m., Tuesday, July 25, 1989, in the Department of Community Development, 9th and Columbia Building, Olympia, Washington 98504, conduct a public hearing on the proposed rules.

The adoption, amendment, or repeal of the rules will take place immediately following the hearing.

The authority under which these rules are proposed is chapter 70.77 RCW, State fireworks law.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before July 24, 1989.

Dated: June 12, 1989
By: Chuck Clarke
Director

STATEMENT OF PURPOSE

The Joint Administrative Rules Review Committee has requested legislative review of rule amendments previously adopted. As a result, the amendments included in this filing in effect will discontinue earlier amendatory rules until the legislature has an opportunity to complete its review.

This rule is adopted pursuant to chapter 70.77 RCW.

This rule implements the State fireworks law, chapter 70.77 RCW.

The agency person responsible for the administration and enforcement of this rule is Sandra L. Benbrook, Acting Director of Fire Protection, Department of Community Development, 9th and Columbia Building, Mailstop GH-51, Olympia, Washington 98504-4151, phone (206) 586-3442.

The Fire Protection Services Division of the Department of Community Development is proposing this rule.

This rule is not the result of any federal law or court decision.

Adoption of this rule does not have an adverse impact on small business.

AMENDATORY SECTION (Amending Order FPS 88-01, filed 3/31/88)

WAC 212-17-140 FIREWORKS WHOLESALER—RECORDS AND REPORTS. ((~~(1)~~)) The licensee shall maintain and make available to the director of fire protection full and complete records including imports, purchases, sales, and consumption of fireworks items by kind and class.

((~~(2) The licensee shall file a report annually of all fireworks transactions during the calendar year by class and kind, including imports, purchases, sales and consumption. Reports shall be on forms as provided by the director of fire protection and must be filed with the director of fire protection at the time application is made for renewal of the wholesalers license or before. Supporting records to verify the totals included in the report shall be maintained and made available for review by the director of fire protection.~~

~~(3) Additional reports, as may be determined necessary by the director of fire protection for the proper administration of the state fireworks law, shall be submitted as requested in a timely manner.~~

~~(4) Information provided pursuant to this chapter shall be considered proprietary and therefore not subject to disclosure, only insofar as such exemption is provided by chapter 42.17 RCW.~~))

AMENDATORY SECTION (Amending Order FPS 88-01, filed 3/31/88)

WAC 212-17-195 RETAILERS OF FIREWORKS—SALES LOCATIONS. (1) Fireworks sold at retail shall be sold only:

(a) In roadside stands; or

(b) Buildings used for no other purpose.

(2) ((~~Roadside stands shall meet all applicable fire codes for temporary structures and shall be separated from public ways, property lines, and permanent structures as required by local officials.~~

~~(3) Buildings shall be permanent structures of not over five hundred square feet in area, used exclusively for retail firework sales. "Building," for this purpose, does not include subdivided areas within a building or structure. Buildings used for retail firework sales shall be separated from other buildings in which flammable or combustible materials or fireworks are stored, or in which people regularly congregate, by a minimum distance of fifty feet.~~

~~(4) Fireworks offered for retail sale in a roadside stand or building must be protected from direct contact and handling by the public at all times. Self-serve or marketing where retail customers are allowed to move among stocks of fireworks or serve themselves from fireworks stocks or displays is strictly prohibited. A sales clerk must be on duty to serve the customer at the time of purchase.~~

~~(5)~~)) Each retail fireworks location shall have not less than two water-type extinguishers of not less than two and one-half gallon capacity or alternate equipment deemed equivalent by the local fire authority.

(((~~(6)~~))) (3) During the hours that a fireworks stand or location is not open for business, it shall be closed and locked unless all fireworks have been removed.

WSR 89-13-020
EMERGENCY RULES
DEPARTMENT OF COMMUNITY DEVELOPMENT
(Fire Protection)
[Order 89-02—Filed June 12, 1989]

I, Chuck Clarke, director of the Department of Community Development, do promulgate and adopt at the 9th and Columbia Building, Mailstop GH-51, Olympia, Washington 98504-4151, the annexed rules relating to:

Amd WAC 212-17-140 Fireworks wholesaler—Records and reports.
Amd WAC 212-17-195 Retailers of fireworks—Sales locations.

I, Chuck Clarke, find that an emergency exists and that this order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting the emergency is the Joint Administrative Rules Review Committee has requested revision of existing rules while a review is conducted by the House Commerce and Labor Committee and the Senate Economic Development and Labor Committee. Since the fireworks season is imminent, these rule amendments must take effect immediately.

These rules are therefore adopted as emergency rules to take effect upon filing with the code reviser.

This rule is promulgated pursuant to chapter 70.77 RCW, State fireworks law and is intended to administratively implement that statute.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED June 12, 1989.

By Chuck Clarke
Director

AMENDATORY SECTION (Amending Order FPS 88-01, filed 3/31/88)

WAC 212-17-140 FIREWORKS WHOLESALER—RECORDS AND REPORTS. (((~~(1)~~))) The licensee shall maintain and make available to the director of fire protection full and complete records including imports, purchases, sales, and consumption of fireworks items by kind and class.

(((~~(2) The licensee shall file a report annually of all fireworks transactions during the calendar year by class and kind, including imports, purchases, sales and consumption. Reports shall be on forms as provided by the director of fire protection and must be filed with the director of fire protection at the time application is made for renewal of the wholesalers license or before. Supporting records to verify the totals included in the report shall be maintained and made available for review by the director of fire protection.~~

~~(3) Additional reports, as may be determined necessary by the director of fire protection for the proper administration of the state fireworks law, shall be submitted as requested in a timely manner.~~

~~(4) Information provided pursuant to this chapter shall be considered proprietary and therefore not subject to disclosure, only insofar as such exemption is provided by chapter 42.17 RCW.~~))

AMENDATORY SECTION (Amending Order FPS 88-01, filed 3/31/88)

WAC 212-17-195 RETAILERS OF FIREWORKS—SALES LOCATIONS. (1) Fireworks sold at retail shall be sold only:

(a) In roadside stands; or

(b) Buildings used for no other purpose.

(2) ((~~Roadside stands shall meet all applicable fire codes for temporary structures and shall be separated from public ways, property lines, and permanent structures as required by local officials.~~

~~(3) Buildings shall be permanent structures of not over five hundred square feet in area, used exclusively for retail firework sales. "Building," for this purpose, does not include subdivided areas within a building or structure. Buildings used for retail firework sales shall be separated from other buildings in which flammable or combustible materials or fireworks are stored, or in which people regularly congregate, by a minimum distance of fifty feet.~~

~~(4) Fireworks offered for retail sale in a roadside stand or building must be protected from direct contact and handling by the public at all times. Self-serve or marketing where retail customers are allowed to move among stocks of fireworks or serve themselves from fireworks stocks or displays is strictly prohibited. A sales clerk must be on duty to serve the customer at the time of purchase.~~

~~(5)~~))) Each retail fireworks location shall have not less than two water-type extinguishers of not less than two and one-half gallon capacity or alternate equipment deemed equivalent by the local fire authority.

((~~(6)~~)) (3) During the hours that a fireworks stand or location is not open for business, it shall be closed and locked unless all fireworks have been removed.

WSR 89-13-021
EMERGENCY RULES
DEPARTMENT OF FISHERIES
[Order 89-45—Filed June 12, 1989]

I, Joseph R. Blum, director of the Department of Fisheries, do promulgate and adopt at Olympia, Washington, the annexed rules relating to personal use rules.

I, Joseph R. Blum, find that an emergency exists and that this order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting the emergency is harvestable surplus of clams and oysters on these beaches have been taken. There is inadequate time to promulgate permanent regulations.

These rules are therefore adopted as emergency rules to take effect upon filing with the code reviser.

This rule is promulgated pursuant to RCW 75.08.080 and is intended to administratively implement that statute.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED June 9, 1989.

By Joseph R. Blum
Director

NEW SECTION

WAC 220-56-35000F HARDSHELL CLAMS—AREAS AND SEASONS. Notwithstanding the provisions of WAC 220-56-350, effective 12:01 a.m. June 15, 1989 until further notice, it is unlawful to take, dig for and possess hardshell clams in the following areas:

(1) All stated-owned tidelands at Fort Flagler State Park - Closed effective July 1, 1989.

(2) All state-owned tidelands at Bywater Bay - Closed effective June 15, 1989.

(3) All state-owned tidelands at Point Whitney - Closed effective June 15, 1989.

(4) All state-owned tidelands at Eagle Creek - Closed effective June 15, 1989.

(5) Oak Bay County Park - All county-owned tidelands on the west side of Oak Bay, Indian Island - Closed effective June 15, 1989.

(6) All state-owned tidelands at Browns Point Toandos Peninsula (DNR Beach 57B - from a point 1.5 miles north of Browns Point to a point approximately 1.0 miles south of Browns Point - Closed effective June 15, 1989.

NEW SECTION

WAC 220-56-38000C OYSTERS—AREAS AND SEASONS. Notwithstanding the provisions of WAC 220-56-380, effective June 15, 1989 until further notice it is unlawful to take oysters from the following areas:

(1) Kitsap Memorial State Park - All state-owned tidelands at Kitsap Memorial State Park.

(2) Bywater Bay - All state-owned tidelands at Bywater Bay.

WSR 89-13-022
EMERGENCY RULES
DEPARTMENT OF FISHERIES
[Order 89-46—Filed June 12, 1989]

I, Joseph R. Blum, director of the Department of Fisheries, do promulgate and adopt at Olympia, Washington, the annexed rules relating to commercial fishing regulations.

I, Joseph R. Blum, find that an emergency exists and that this order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting the emergency is the harvestable quota of chinook salmon available for troll fishermen was not taken in the fishery ending June 9, 1989, and remains available for harvest. The fishery is closed north of the Queets River to reduce impacts on upper Columbia River spring chinook. Coho salmon are in need of protection. This regulation is adopted at the recommendation of the Pacific Fisheries Management Council. There is inadequate time to promulgate permanent regulations, because the fishery must, by prior agreement end June 15, 1989.

These rules are therefore adopted as emergency rules to take effect upon filing with the code reviser.

This rule is promulgated pursuant to RCW 75.08.080 and is intended to administratively implement that statute.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED June 12, 1989.

By Joseph R. Blum
Director

NEW SECTION

WAC 220-24-02000F LAWFUL ACTS—TROLL FISHERY. Notwithstanding the provisions of WAC 220-20-010, WAC 220-20-020 and WAC 220-20-030, effective immediately it is unlawful to fish for or possess salmon taken for commercial purposes with troll gear in the waters west of the Bonilla-Tatoosh Line, the Pacific Ocean, or waters west of a line drawn true north-south through Buoy 10 at the mouth of the Columbia River except as provided for in this section:

(1) Effective 12:01 a.m. June 13, 1989 it is lawful to fish for and possess all salmon species except coho salmon taken from those waters south of a line projected true west from the mouth of the Queets River, except for those waters of a conservation zone at the mouth of the Columbia River bounded on the north by a line projected true west from North Head along 46°18'00" north latitude to the Fisheries Conservation Zone westerly boundary, thence south to 46°11'06" north latitude, thence east to 46°11'06" north latitude, 124°11'00" west longitude (the Columbia River Buoy), thence northwesterly along the Red Buoy Line to the tip of the south jetty, from which conservation zone no salmon may be taken.

(2) The above open area will close 11:59 p.m. June 15, 1989.

(3) Lawful terminal gear is restricted to single point, single shank barbless hooks.

(4) No chinook salmon less than 28 inches in total length or 21.5 inches head-off may be retained.

(5) It is unlawful to fish for or possess salmon taken for commercial purposes with any gear other than troll gear in the open fishery area.

(6) It is unlawful to transport through Coastal Salmon Management and Catch Reporting Areas 1, 2, 3, or 4 or land in the State of Washington any salmon taken for commercial purposes contrary to the provisions of Chapter 220-33 WAC or 220-47 WAC relative to seasons and species provided for in this section.

(7) Any salmon taken for commercial purposes from the above described waters must be landed prior to 11:59 p.m. June 17, 1989.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. June 13, 1989:

WAC 220-24-02000E LAWFUL ACTS—TROLL FISHERY. (89-43)

WSR 89-13-023
ADOPTED RULES
CRIMINAL JUSTICE TRAINING COMMISSION
[Order 12C—Filed June 13, 1989]

Be it resolved by the Washington State Criminal Justice Training Commission, acting at Seattle, Washington, that it does adopt the annexed rules relating to physical requirements for admission to basic law enforcement academies, amending WAC 139-05-230.

This action is taken pursuant to Notice No. WSR 89-07-048 filed with the code reviser on March 14, 1989. These rules shall take effect thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2).

This rule is promulgated under the general rule-making authority of the Washington State Criminal Justice Training Commission as authorized in RCW 43.101.080(2).

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW), and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED June 8, 1989.

By James C. Scott
Executive Director

AMENDATORY SECTION (Amending Order 1-B, filed 9/10/86)

WAC 139-05-230 PHYSICAL REQUIREMENTS FOR ADMISSION TO BASIC LAW ENFORCEMENT ACADEMIES. Each successful applicant for admission to a basic law enforcement academy sponsored or conducted by the Washington State Criminal Justice Training Commission shall possess good health and physical capability to actively and fully participate in the physical activities required for basic certification. In addition to defensive tactics, such activities shall include a physical training program geared to final attainment of the instructional objectives of physical performance((~~, provided that any applicant whose beginning date of continuous law enforcement employment precedes January 1, 1978, may be allowed to audit, in whole or in part, basic law enforcement training. In no such instance shall a basic certificate be issued~~)).

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

WSR 89-13-024
ADOPTED RULES
CRIMINAL JUSTICE TRAINING COMMISSION
[Order 14D—Filed June 13, 1989]

Be it resolved by the Washington State Criminal Justice Training Commission, acting at Seattle, Washington, that it does adopt the annexed rules relating to requirement of basic law enforcement training, amending WAC 139-05-200.

This action is taken pursuant to Notice No. WSR 89-07-049 filed with the code reviser on March 14, 1989. These rules shall take effect thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2).

This rule is promulgated under the general rule-making authority of the Washington State Criminal Justice Training Commission as authorized in RCW 43.101.080(2).

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW), and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED June 8, 1989.

By James C. Scott
Executive Director

AMENDATORY SECTION (Amending Order 14-D, filed 9/18/87)

WAC 139-05-200 REQUIREMENT OF BASIC LAW ENFORCEMENT TRAINING. (1) All full-time commissioned law enforcement employees of a city, county, or political subdivision of the State of Washington, except officers of the Washington State Patrol, unless otherwise exempted by the Washington State Criminal Justice Training Commission, shall as a condition of continued employment successfully complete a 440-hour basic law enforcement academy sponsored or conducted by the Commission, or obtain a certificate of equivalent basic training from the Commission. This requirement of basic law enforcement training shall be met within the initial fifteen-month period of law enforcement employment, unless otherwise extended by the Commission. Provided, that aforementioned personnel hired on or after January 1, 1990, shall commence basic training during the first six months of employment unless otherwise extended by the Commission.

(2) Law enforcement personnel exempted from the requirement of subsection (1) of this section shall include:

(a) individuals holding the office of sheriff of any county on September 1, 1979;

(b) auxiliary and reserve personnel; and

(c) commissioned personnel

(i) who have been granted an administrative exemption by the commission, provided that the initial grant and continuing effect of such exemption shall be governed by the following:

(A) no police chief or sheriff of any agency with ten or fewer full-time patrol officers shall be eligible to receive such exemption;

(B) any request for such exemption shall be submitted to the commission on approved form and, in any instance wherein the requestor is a police chief, such request shall be co-signed by requestor's appointing authority;

(C) any individual receiving such exemption may not engage in patrol or other general enforcement activity on a usual or regular basis but shall limit such involvement to that required for supervision, agency management, or manpower replacement on an emergency or exigent basis;

(D) any approved administrative exemption shall remain in effect for the duration of the exemptee's term of service within the position upon which such exemption is based or until the nature of exemptee's primary duties and responsibilities change from administrative to general enforcement; and

(E) any approved administrative exemption may be revoked by the commission at any time and upon its finding that the conditions of such exemption are not being met or the basis for such exemption no longer exists;

(ii) whose initial date of ((~~continuing;~~)) full-time, regular and commissioned law enforcement employment within the State of Washington precedes January 1, 1978((~~, and such employment is without break or interruption in excess of ninety days~~)); or

(iii) who have been certified in accordance with the requirement of subsection (1) of this section, and thereafter have engaged in regular and commissioned law enforcement employment without break or interruption in excess of twenty-four months' duration.

(3) Each law enforcement agency of the State of Washington, or any political subdivision thereof, except the Washington State Patrol, shall immediately notify the Commission by approved form of each instance wherein a commissioned officer begins continuing and regular employment with that agency on or after January 1, 1978. Such notification shall be maintained by the commission and shall be utilized by the commission for the subsequent scheduling, notification and enrollment required for compliance with the basic law enforcement training requirement.

(4) Failure to comply with the above requirement of basic law enforcement training shall result in notification of noncompliance, by the Commission, on approved form, to:

(a) the individual in noncompliance;

(b) the head of his/her agency;

(c) the Civil Service commission having jurisdiction of such agency;

(d) the judges and clerks of the municipal, district, and superior courts in which said agency is located;

(e) the State Auditor's Office; and

(f) any other agency or individual, as determined by the commission.

Reviser's note: RCW 34.04.058 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

WSR 89-13-025
EMERGENCY RULES
DEPARTMENT OF FISHERIES
[Order 89-47—Filed June 13, 1989]

I, Joseph R. Blum, director of the Department of Fisheries, do promulgate and adopt at Olympia, Washington, the annexed rules relating to personal use rules.

I, Joseph R. Blum, find that an emergency exists and that this order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting the emergency is harvestable surplus of clams and oysters on these beaches have been taken. There is inadequate time to promulgate permanent regulations.

These rules are therefore adopted as emergency rules to take effect upon filing with the code reviser.

This rule is promulgated pursuant to RCW 75.08.080 and is intended to administratively implement that statute.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED June 13, 1989.

By R. Kahler Martinson
for Joseph R. Blum
Director

NEW SECTION

WAC 220-56-35000G HARDSHELL CLAMS—AREAS AND SEASONS. Notwithstanding the provisions of WAC 220-56-350,

(1) Effective 12:01 a.m. June 15, 1989 until further notice, it is unlawful to take, dig for or possess hardshell clams taken from the following areas:

(a) All state-owned tidelands at Bywater Bay.

(b) All state-owned tidelands at Point Whitney.

(c) All state-owned tidelands at Eagle Creek.

(d) Oak Bay County Park - All county-owned tidelands on the west side of Oak Bay.

(e) All state-owned tidelands at Browns Point, Toandos Peninsula (DNR Beach 57B - from a point 1.5 miles north of Browns Point to a point approximately 1.0 miles south of Browns Point)

(2) After 11:59 p.m. June 30, 1989 until further notice it is unlawful take, dig for or possess hardshell clams taken from all stated-owned tidelands at Fort Flagler State Park.

NEW SECTION

WAC 220-56-38000D OYSTERS—AREAS AND SEASONS. Notwithstanding the provisions of WAC 220-56-380, after 11:59 p.m. June 15, 1989 until further notice it is unlawful to take or possess oysters taken from the following areas:

(1) Kitsap Memorial State Park - All state-owned tidelands at Kitsap Memorial State Park.

(2) Bywater Bay - All state-owned tidelands at Bywater Bay.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 220-56-35000F HARDSHELL CLAMS—AREAS AND SEASONS. (89-45)

WAC 220-56-38000C OYSTERS—AREAS AND SEASONS. (89-45)

WSR 89-13-026
NOTICE OF PUBLIC MEETINGS
TACOMA COMMUNITY COLLEGE
[Memorandum—June 9, 1989]

Please be advised that our board of trustees has changed the date of their regular August meeting from August 10 to August 1, 1989.

WSR 89-13-027
REVIEW OF RULES
DEPARTMENT OF TRANSPORTATION
[Filed June 14, 1989]

Notice is hereby given in accordance with the provisions of RCW 34.04.230, that the Department of Transportation intends to review the following rules:

Ch. 468-38 WAC	Vehicle size and weight restricted highways—Equipment (operations and maintenance).
Ch. 468-46 WAC	Transit vehicle stop zones (operations and maintenance).
Ch. 468-78 WAC	Transportation buildings—Works of art (highways).

The agency will at 10:00 a.m., Monday, September 11, 1989, in the Transportation Building, Room 1D2, Olympia, Washington 98504, conduct a public hearing on the rules.

The Department of Transportation has outlined a schedule for reviewing all of its Washington Administrative Code chapters once every four years in order that all of its administrative rules meet the intent of any law establishing those rules, and to make sure those rules are current and necessary.

Dated: June 13, 1989
By: Ed W. Ferguson
Deputy Secretary

WSR 89-13-028
PROPOSED RULES
UTILITIES AND TRANSPORTATION COMMISSION
[Filed June 14, 1989]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the [Utilities and Transportation Commission] intends to adopt, amend, or repeal rules relating to methods for obtaining data in contested cases, WAC 480-08-208, Docket No. U-89-2748-R;

that the agency will at 9:00 a.m., Wednesday, June 21, 1989, in the Commission's Hearing Room, Second Floor, 1300 South Evergreen Park Drive S.W., Olympia, Washington, conduct a public hearing on the proposed rules.

The adoption, amendment, or repeal of the rules will take place immediately following the hearing.

The authority under which these rules are proposed is RCW 80.01.040, 80.04.020, 80.04.070, 80.04.090, 80-.04.100, corresponding sections of chapter 81.04 RCW, RCW 34.04.020 and 34.04.105.

The specific statute these rules are intended to implement is Titles 80 and 81 RCW.

This notice is connected to and continues the matter in Notice Nos. WSR 89-08-109 and 89-11-085 filed with the code reviser's office on April 5, 1989, and May 24, 1989.

Dated: June 14, 1989
By: Paul Curl
Acting Secretary

WSR 89-13-029
ADOPTED RULES
DEPARTMENT OF WILDLIFE
(Wildlife Commission)
[Order 399—Filed June 14, 1989]

Be it resolved by the Washington Wildlife Commission, acting at Spokane, Washington, that it does adopt the annexed rules relating to 1989–90 General hunting seasons and rules, adopting WAC 232-28-218.

This action is taken pursuant to Notice No. WSR 89-08-108 filed with the code reviser on April 5, 1989. These rules shall take effect thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2).

This rule is promulgated pursuant to RCW 77.12.040 and is intended to administratively implement that statute.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW), and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED May 12, 1989.

By Curt Smitch
for Dr. James M. Walton
Chairman, Wildlife Commission

NEW SECTION

WAC 232-28-218 1989 HUNTING SEASONS AND RULES.

Reviser's note: The text and accompanying pamphlet comprising the 1989 Hunting seasons and rules adopted by the Department of Wildlife have been omitted from publication in the Register under the authority of RCW 34.04.050(3) as being unduly cumbersome to publish. Copies of the rules may be obtained from the main office of the Department of Wildlife, 600 Capitol Way North, Olympia, Washington 98501-1091, and are available in pamphlet form from the department, its six regional offices, and at numerous drug and sporting goods stores throughout the state.

WSR 89-13-030
PROPOSED RULES
DEPARTMENT OF GENERAL ADMINISTRATION
(Office of Commodity Redistribution)
[Filed June 14, 1989]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Department of General Administration, State Office of Commodity Redistribution, intends to adopt, amend, or repeal rules concerning institute new WAC 236-48-1901 to implement amended RCW 43.19.1919;

that the agency will at 10:00 a.m., Tuesday, July 25, 1989, in the Auditorium, First, General Administration Building, Olympia, conduct a public hearing on the proposed rules.

The adoption, amendment, or repeal of the rules will take place immediately following the hearing.

The authority under which these rules are proposed is RCW 43.19.190(11) and 43.19.010.

The specific statute these rules are intended to implement is RCW 43.19.1919.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before July 24, 1989.

Dated: June 14, 1989
By: John Nicholson
Deputy Director

STATEMENT OF PURPOSE

Title and Number of Rule Section(s) or Chapter(s): WAC 236-48-1901 Surplus property—Exceptions to disposal priorities.

Description of Purpose: Legislation, passed in 1989, amended RCW 43.19.1919 to facilitate the most cost effective disposal of state surplus items by allowing the director of general administration the authority to dispose of property without first offering to other state agencies.

Statutory Authority: RCW 43.19.190(11) and 43.19.010.

Specific Statute Rule is Intended to Implement: RCW 43.19.1919.

Summary of Rule: Excess and/or surplus property may be disposed of without offering to other state agencies if the director of general administration determines that it is in the best interest of the state.

Reasons Supporting the Proposed Action: Some items declared surplus by the state of Washington, because of their minimal value, could now be disposed of through donation or dispersal on site as a cost avoidance measure. This would eliminate the overhead and transportation costs that are currently associated with offering all surplus items on a priority scale to state agencies, governmental entities, and private nonprofits.

Agency Personnel Responsible for Drafting, Implementation and Enforcement of the Rule: Michael Levenson, Assistant Director, Department of General Administration, State Office of Commodity Redistribution; and Neil House, State Surplus Property Manager, Department of General Administration, State Office of Commodity Redistribution, State Surplus Property.

Agency Comments or Recommendations, if any, Regarding Statutory Language, Implementation, Enforcement and Fiscal Matters Pertaining to the Rule: None.

Whether Rule is Necessary as a Result of Federal Law or Federal or State Court Action: Not applicable.

Small Business Economic Impact Statement: Not applicable.

NEW SECTION

WAC 236-48-1901 SURPLUS PROPERTY - EXCEPTIONS TO DISPOSAL PRIORITIES Excess and/or surplus property may be disposed of without offering to other state agencies if the director of general administration determines that it is in the best interest of the state. In this event, the following guidelines will apply:

(1) Items will be transferred or sold for reasonable cost if practical.

(2) Items for which a reasonable cost cannot be obtained will be donated to a nonprofit organization (which is registered under state law and exempt from federal income tax liability) with an ongoing equipment rehabilitation program.

(3) Recipients of donated items, if not designated by the director of general administration, will be determined by state surplus property.

(4) Successful donees will be notified by state surplus property and removal will be the responsibility of the donee.

(5) Items that can be documented to have a higher overhead cost than can be realized from their sale, can, at the discretion of the director of general administration, be scrapped or dumped if there is not an acceptable donee organization available.

(6) All surplus actions, including those described in the regulation, will require submittal of the appropriate surplus document form to general administration.

WSR 89-13-031
RULES OF COURT
STATE SUPREME COURT
[June 12, 1989]

IN THE MATTER OF THE AMENDMENT TO RLD 3.1 NO. 25700-A-432

The Washington State Bar Association having approved the proposed amendment to RLD 3.1 and the Court having determined that the amendment will aid in the prompt and orderly administration of justice and having further determined that an emergency exists which necessitates an early adoption;

Now, therefore, it is hereby

ORDERED:

(a) That the amendment as attached hereto is adopted.

(b) That pursuant to the emergency provisions of GR 9(i), the amendment will be published expeditiously in the Washington Reports and will become effective upon publication.

DATED at Olympia, Washington this 12th day of June, 1989.

	Keith M. Callow
Robert F. Utter	Fred H. Dore
Robert F. Brachtenbach	Vernon R. Pearson
James M. Dolliver	Andersen, J.
B. Durham	Smith, J.

TITLE 3. SUSPENSION BEFORE FINAL DISPOSITION

RULE 3.1 SUSPENSION FOR CONVICTION OF A CRIME

(a) Court Clerk to Advise Association of Conviction. The clerk of any court of this state in which a lawyer is convicted of a crime shall advise the Association of the conviction, and shall provide the Association upon request with certified copies of any order or other document evidencing the conviction.

(b) Conviction Defined. "Conviction" for the purposes of this rule shall be considered to have occurred 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.

(bc) Determination of "Serious Crime". [Text Unchanged]

(cd) Petition. [Text Unchanged]

(de) Immediate Interim Suspension. [Text Unchanged]

(ef) Duration of Suspension. [Text Unchanged]

(fg) Termination of Suspension. [Text Unchanged]

(gh) Notice of Dismissal to Supreme Court. [Text Unchanged]

(hi) Definition of "Serious Crime." [Text Unchanged]

RLD 3.1

At its April 18, 1989 Rules Committee meeting the Committee voted unanimously to recommend to the May 11, 1989 en banc conference that the proposed amendment to RLD 3.1 recommended by the Washington State Bar Association be adopted under the emergency provisions of GR 9. The proposal simply clarifies the definition of "conviction" so that the WSBA knows when it is appropriate to move for interim suspension when an attorney has been convicted of a felony.

Reviser's note: The brackets and enclosed material in the text of the above material occurred in the copy filed by the Supreme Court and appear herein pursuant to the requirements of RCW 34.08.040.

WSR 89-13-032
RULES OF COURT
STATE SUPREME COURT
[June 12, 1989]

IN THE MATTER OF THE ADOPTION OF GR 1, NEW GR 13, NEW GR 14, RLD 4.4(a), RLD 4.5(c), RLD 4.6(c), RLD 4.10, NEW RLD 4.10A, ER 1101(d), RAP 2.2(d), CR 2A, CR 4(b), CR 4.1, CR 10(d), CR 26(c), CR 26(h), CR 30(b), CR 33(a), CR 34(b), CR 36(a), CR 47(b), CR 54(b), CR 59(b), CR 65(c), MAR 1.2, MAR 1.3(b), MAR 3.2, MAR 5.3, MAR 7.1(a), MAR 7.2, MAR 7.3, SPR 90.04W, SPR 91.04W, SPR 93.04W, SPR 98.08W, SPR 98.12W, SPR 98.16W, SPR 98.20W, CrR 1.5, CrR 6.5, JAR Title, JAR 2, JCR 10(c), JCR 38(e), JCR 85, CrRLJ 1.5, JTIR 2.1(b), JTIR 2.2(b), JTIR 2.3, JTIR 2.4, JTIR 2.6, JTIR 4.1, JTIR 6.2, AND NEW JTIR 6.6 25700-A-433 ORDER

The Washington State Bar Association having recommended the adoption of GR 1, New GR 13, New GR 14, RLD 4.4(a), RLD 4.5(c), RLD 4.6(c), RLD 4.10, New RLD 4.10A, ER 1101(d), RAP 2.2(d), RAP 2.2(d), CR 2A, CR 4(b), CR 4.1, CR 10(d), CR 26(c), CR 26(h), CR 30(b), CR 33(a), CR 34(b), CR 36(a), CR 47(b), CR 54(b), CR 59(b), CR 65(c), MAR 1.2, MAR 1.3(b), MAR 3.2, MAR 5.3, MAR 7.1(a), MAR 7.2, MAR 7.3, SPR 90.04W, SPR 91.04W, SPR 93.04W, SPR 98.08W, SPR 98.12W, SPR 98.16W, SPR 98.20W, CrR 1.5, CrR 6.5, JAR Title, JAR 2, JCR 10(c), JCR 38(e), JCR 85, CrRlJ 1.5; and the Rules Committee having recommended JTIR 2.1(b), JTIR 2.2(b), JTIR 2.3, JTIR 2.4, JTIR 2.6, JTIR 4.1, JTIR 6.2, New JTIR 6.6, and the Court having considered the proposed Rules, Amendments and comments

submitted thereto, and having determined that the proposed Rules and Amendments will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

(a) That the Rules and Amendments as attached hereto are adopted;

(b) That the Rules and Amendments will be published in the special rules edition of the Washington Reports in July, 1989, and will become effective September 1, 1989, except for GR 14, CR 10(d), JCR 10(c), CrR 1.5 and CrRLJ 1.5. which have a delayed implementation date of September 1, 1990,

DATED at Olympia, Washington this 12th day of June, 1989.

	Keith M. Callow
Fred H. Dore	Robert F. Utter
Robert F. Brachtenbach	Vernon R. Pearson
James M. Dolliver	James A. Andersen
B. Durham	Charles Z. Smith

Reviser's note: The material contained in this filing will appear in the 89-14 issue of the Register as it was received after the applicable closing date for the issue for agency-typed material exceeding the volume limitations of WAC 1-12-035 or 1-13-035, as appropriate.

Reviser's note: The typographical error in the above material appeared in the original copy of the Supreme Court and appears herein pursuant to the requirements of RCW 34.08.040.

WSR 89-13-033
NOTICE OF PUBLIC MEETINGS
EVERETT COMMUNITY COLLEGE
[Memorandum—June 12, 1989]

A change in the regular meeting schedule for the Everett Community College board of trustees is as follows:

Time and Date: The second and third Wednesdays of each month at 12:30 p.m.

Place: Everett Community College or elsewhere.

WSR 89-13-034
PROPOSED RULES
DEPARTMENT OF LABOR AND INDUSTRIES
[Filed June 15, 1989]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Department of Labor and Industries intends to adopt, amend, or repeal rules concerning:

Amd	WAC 296-104-050	Administration—Examination for inspector.
Amd	WAC 296-104-260	Inspection of systems—Clearance at top of boilers.
Rep	WAC 296-104-315	New installations—Blow off tanks.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on June 22, 1989.

The authority under which these rules are proposed is chapter 70.79 RCW.

This notice is connected to and continues the matter in Notice No. WSR 89-08-075 filed with the code reviser's office on April 5, 1989.

Dated: June 15, 1989
By: Taylor Dennen
for Joseph A. Dear
Director

WSR 89-13-035
RULES COORDINATOR
DEPARTMENT OF TRANSPORTATION
[Filed June 15, 1989]

The Washington State Department of Transportation has designated a new rules coordinator. All future information should be directed to Mr. Bill Richeson, Forms Manager, Administration Services, Department of Transportation, Transportation Building, Mailstop KF-01, Olympia, WA 98504, phone 753-0316.

Ed W. Ferguson
Deputy Secretary

WSR 89-13-036
ADOPTED RULES
OFFICE OF ADMINISTRATIVE HEARINGS
[Order 6—Filed June 15, 1989]

I, David R. LaRose, director of the Office of Administrative Hearings, do promulgate and adopt at Olympia, Washington, the annexed rules relating to:

Amd	WAC 10-04-020	Amending agency description and office locations.
Amd	WAC 10-04-060	Amending public records copying fee.
Amd	ch. 10-08 WAC	New, amendatory and repealer sections replacing the uniform rules for the conduct of contested cases with the model rules of procedure.

This action is taken pursuant to Notice No. WSR 89-10-035 filed with the code reviser on April 28, 1989. These rules shall take effect thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2).

This rule is promulgated pursuant to RCW 42.17.250 and 34.05.220(1)(b) for chapter 10-04 WAC; and RCW 34.05.250 for chapter 10.08 WAC and is intended to administratively implement that statute.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED June 15, 1989.
By D. R. LaRose
Chief Administrator
Law Judge

AMENDATORY SECTION (Amending Order 4, filed 10/2/85 [10/31/85])

WAC 10-04-020 FUNCTION—ORGANIZATION—OFFICES. The office of administrative hearings was created by chapter 34.12 RCW for the impartial administration of administrative hearings for state agencies. The office is under the direction of the chief administrative lawajudge and is organized in two divisions.

Administrative lawajudges assigned to the two divisions preside over hearings in ((contested cases)) adjudicative proceedings and issue ((proposals for decisions)) initial or final orders, including findings of fact and conclusions of law. Division one is responsible for hearings held before the department of social and health services, the utilities and transportation commission, the liquor control board, the department of licensing, the superintendent of public instruction, and any other state agency ((as defined in RCW 34.12.020(4))) requiring administrative law judge services except the employment security department. Division two is responsible for hearings held before the employment security department.

The administrative office is located at Building No. 1, 4224-6th Avenue S.E., Lacey, Washington, 98504-8915. The office hours are 8:00 a.m. to noon and 1:00 p.m. to 5:00 p.m., Monday through Friday except legal holidays. Administrative lawajudges are housed in the following field offices:

Social & Health Subdivision
1212 Jefferson SE, Suite 200
Olympia WA 98504-7821

Social & Health Subdivision
1414 Dexter Avenue North
Seattle WA 98109

Social & Health Subdivision
2nd Floor, ES Building
South 130 Arthur
Spokane WA 99202

Social & Health Subdivision
((2925 Rockefeller))
2722 Colby, Suite 103
Everett WA 98201

Yakima Subdivision
1110 West Lincoln Avenue
Yakima WA 98902

Utilities & Transportation Subdivision
1212 Jefferson SE, Suite 200
Olympia WA 98504-7821

Liquor Control Subdivision
1212 Jefferson SE, Suite 200
Olympia WA 98504-7821

Employment Security Subdivision
Room 606 Securities Building
1904 Third Avenue
Seattle WA 98101

Employment Security Subdivision
((Capital 5000 Building))
921 Lakeridge Way, Suite C
Olympia WA 98504

Employment Security Subdivision
2nd Floor, ES Building
P.O. Box TAF-C-14
Spokane WA 99220

Vancouver Subdivision
111 West 39th Street, Suite A
Vancouver WA 98660

All written communications by parties pertaining to a particular case shall be filed with the field office, if any, assigned to the case, and otherwise with the deputy chief administrative law judge at the administrative office.

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

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

Reviser's note: RCW 34.04.058 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending Order 3, filed 11/1/82)

WAC 10-04-060 COPYING FEES. No fee shall be charged for the inspection of public records. The office shall charge a fee of ten cents per page of copy for providing copies of public records and for the use of the office's copy equipment, subject to a minimum charge per order of $1.00, plus postage at actual cost. This charge is the amount necessary to reimburse the office for its actual costs incident to such copying and mailing or transmission by telefacsimile.

MODEL RULES OF PROCEDURE

NEW SECTION

WAC 10-08-001 DECLARATION OF PURPOSE. Chapter 10-08 WAC contains the model rules of procedure which RCW 34.05.250 requires the chief administrative law judge to adopt for use by as many agencies as possible. The model rules deal with general functions and duties performed in common by the various agencies. The model rules supplement Administrative Procedure Act provisions which contain grants of rulemaking authority to agencies. It is not the purpose of the model rules to duplicate all procedural provisions of the Administrative Procedure Act. Except to the extent an agency is excluded from chapter 34.05 RCW or parts of chapter 34.05 RCW, each agency must adopt as much of the model rules as is reasonable under its circumstances. Any agency adopting a rule of procedure that differs from these model rules must include in the

order of adoption a finding stating the reasons for variance.

NEW SECTION

WAC 10-08-035 ADJUDICATIVE PROCEEDINGS—APPLICATION. An application for an adjudicative proceeding may be on a form provided by the agency for that purpose or in other writing signed by the applicant or the applicant's representative. The application for an adjudicative proceeding should specify the issue to be adjudicated in the proceeding.

AMENDATORY SECTION (Amending Order 4, filed 10/31/85)

WAC 10-08-040 ADJUDICATIVE PROCEEDINGS—NOTICE OF HEARING. (1) In any ((~~contested case~~)) adjudicative proceeding all parties shall be served with a notice of hearing within the time required by law governing the respective agency or proceeding, and, in the absence of a ((~~statutory~~)) requirement under other law, not less than ((~~twenty~~)) seven days before the date set for the hearing. The notice shall include the information specified in RCW ((~~34.04.090(1)~~)) 34.05.434 and if the hearing is to be conducted by teleconference call the notice shall so state.

(2) The notice shall state that if a limited English-speaking or hearing impaired party or witness needs an interpreter a qualified interpreter will be appointed and that there will be no cost to the party or witness. The notice shall include a form for a party to indicate whether ((~~he or she~~)) the party needs an interpreter and to identify the primary language or hearing impaired status of the party. ((~~The notice shall also include such other information as may be necessary to apprise the parties of the scope and purpose of the hearing.~~))

((~~(2)~~)) (3) Defects in notice may not be waived unless:

(a) The presiding officer determines that the waiver has been made knowingly, voluntarily and intelligently;

(b) The party's representative, if any, consents; and

(c) If a party is an impaired person, the waiver is requested through the use of a qualified interpreter.

((~~(3) When a limited-English-speaking person is a party in an administrative proceeding all notices concerning the hearing, including hearing notices, notices of continuance, and notices of dismissal, shall either be in the primary language of the party or shall include a notice in the primary language of the party which describes the significance of the notice and how the party may receive assistance in understanding and responding to, if necessary, the notice.~~))

Reviser's note: RCW 34.04.058 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

NEW SECTION

WAC 10-08-045 ADJUDICATIVE PROCEEDINGS—NOTICE TO LIMITED-ENGLISH-SPEAKING PARTIES. When an agency is notified or otherwise made aware that a limited-English-speaking person is a party in an adjudicative proceeding, all notices concerning the hearing, including notices of hearing, continuance, and dismissal, shall either be in the primary language of the party or shall include a notice in the primary language of the party which describes the significance of the notice and how the party may receive assistance in understanding and responding to, if necessary, the notice.

AMENDATORY SECTION (Amending Order 3, filed 11/1/82)

WAC 10-08-050 ADJUDICATIVE PROCEEDINGS—ASSIGNMENT OF ADMINISTRATIVE LAW JUDGE—MOTION OF PREJUDICE. (1) Whenever a state agency as defined in RCW 34.12.020(4) conducts a hearing which is not presided over by officials of the agency who are to render the final decision, the agency shall ((~~either~~)) use one of the following methods for requesting assignment of an administrative law judge:

((~~(1) File with the office of administrative hearings a copy of the hearing file and notice of hearing together with a request for assignment of an administrative law judge to preside over the hearing;~~)) (a) Not less than twenty days prior to the date of the hearing, notify the chief administrative law judge or his or her designee of the date, time, and place of the hearing and request assignment of an administrative law judge to preside over the hearing, or

((~~(2)~~)) (b) File with the office of administrative hearings a copy of the hearing file, which filing shall be deemed to be a request for assignment of an administrative law judge to issue the notice of hearing and preside over the hearing, or

(c) Schedule its hearings to be held at times and places reserved and provided to the agency for that purpose by the office of administrative hearings.

((~~(3)~~)) (2) Motions of prejudice with supporting affidavits under RCW 34.12.050 must be filed at least three days prior to the hearing or any earlier stage of the adjudicative proceeding at which the administrative law judge may be required to issue a discretionary ruling. If the notice of hearing does not state the name of the presiding administrative law judge, the chief administrative law judge shall make such assignment at least five days prior to the hearing and shall disclose the assignment to any party or representative making inquiry. Subsequent motions of prejudice filed by the same party in the same proceeding shall be ruled upon by the chief administrative law judge or his or her designee.

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

AMENDATORY SECTION (Amending Order 3, filed 11/1/82)

WAC 10-08-090 ADJUDICATIVE PROCEEDINGS—CONTINUANCES. (1) Postponements, continuances, extensions of time, and adjournments may be ordered by the presiding officer on his or her own motion or may be granted on timely request of any party, with

notice to all other parties, showing good and sufficient cause therefor.

(2) A request for a continuance made prior to the hearing date may be oral or written and shall state that the party seeking the continuance has notified all other parties of the request and that either all other parties agree to the continuance or that all parties do not agree to the continuance. If all parties do not agree to the continuance, the presiding officer shall promptly schedule a prehearing conference to receive argument and to rule on the request.

AMENDATORY SECTION (Amending Order 3, filed 11/1/82)

WAC 10-08-110 ADJUDICATIVE PROCEEDINGS—FILING AND SERVICE OF PAPERS. (1) All notices, pleadings, and other papers filed with the presiding officer shall be served upon all counsel and representatives of record and upon unrepresented parties ((~~not represented by counsel~~)) or upon their agents designated by them or by law.

(2) Service shall be made personally or, unless otherwise provided by law, by first-class, registered, or certified mail; ((~~or~~)) by telegraph((~~:~~)); by electronic telefacsimile transmission and same-day mailing of copies; or by commercial parcel delivery company.

(3) Service by mail shall be regarded as completed upon deposit in the United States mail properly stamped and addressed((~~, and~~)). Service by telegraph shall be regarded as completed when deposited with a telegraph company properly addressed and with charges prepaid. Service by electronic telefacsimile transmission shall be regarded as completed upon production by the telefacsimile device of confirmation of transmission. Service by commercial parcel delivery shall be regarded as completed upon delivery to the parcel delivery company with charges prepaid.

(4) Papers required to be filed with the agency ((~~or with presiding officer~~)) shall be deemed filed upon actual receipt during office hours at any office of the agency. Papers required to be filed with ((~~or of~~)) the presiding officer shall be deemed filed upon actual receipt during office hours at the office of the presiding officer.

(5) Where proof of service is required by statute or rule, filing the papers with the presiding officer, together with ((~~either an acknowledgment of service or the following certificate~~)) one of the following, shall constitute proof of service:

(a) An acknowledgement of service.

(b) A certificate that the person signing the certificate did on the date of the certificate serve the papers upon all parties of record in the proceeding by delivering a copy thereof in person to (names.)

(c) A certificate that the person signing the certificate did on the date of the certificate serve the papers upon all parties of record in the proceeding by

(i) Mailing a copy thereof, properly addressed with postage prepaid, to each party to the proceeding or his or her attorney or authorized agent; or

(ii) Telegraphing a copy thereof, properly addressed with charges prepaid, to each party to the proceeding or his or her attorney or authorized agent; or

(iii) Transmitting a copy thereof by electronic telefacsimile device, and on the same day mailing a copy, to each party to the proceeding or his or her attorney or authorized agent; or

(iv) Depositing a copy thereof, properly addressed with charges prepaid, with a commercial parcel delivery company.

((~~"I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by delivering a copy thereof in person to (names) or by mailing a copy thereof, properly addressed with postage prepaid, to each party to the proceeding or his or her attorney or authorized agent.~~

~~"Dated at ..... this ... day of ....., 198....~~

~~(signature)~~"))

Reviser's note: RCW 34.04.058 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending Order 3, filed 11/1/82)

WAC 10-08-120 ADJUDICATIVE PROCEEDINGS—SUBPOENAS. (1) Subpoenas shall be issued and enforced, and witness fees paid, as provided in RCW ((~~34.04.105~~)) 34.05.446.

(2) Every subpoena shall identify the party causing issuance of the subpoena and shall state the name of the agency and the title of the proceeding and shall command the person to whom it is directed to attend and give testimony or produce designated books, documents, or things under his or her control at the time and place set for the hearing.

(3) A subpoena may be served by any suitable person over 18 years of age, by exhibiting and reading it to the witness, or by giving him or her a copy thereof, or by leaving such copy at the place of his or her abode. When service is made by any other person than an officer authorized to serve process, proof of service shall be made by affidavit.

(4) The presiding officer, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (a) quash or modify the subpoena if it is unreasonable and oppressive or (b) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

((~~(5) No subpoena shall be issued or given effect to require the attendance and testimony of, or the production of evidence by, any member of the commission or any member of the agency staff in any proceeding before the public employment relations commission.~~))

AMENDATORY SECTION (Amending Order 3, filed 11/1/82)

WAC 10-08-130 ADJUDICATIVE PROCEEDINGS—PREHEARING CONFERENCE. (1) The

presiding officer upon his or her own motion or upon request of a party may direct the parties or their representatives to engage in a prehearing conference or conferences to consider:

(a) Simplification of issues;

(b) The necessity or desirability of amendments to the pleadings;

(c) The possibility of obtaining stipulations, admissions of fact and admissions of the genuineness of documents which will avoid unnecessary proof;

(d) Limitations on the number and consolidation of the examination of witnesses;

(e) Procedural matters;

(f) Distribution of written testimony and exhibits to the parties prior to the hearing;

(g) Such other matters as may aid in the disposition or settlement of the proceeding.

(2) Prehearing conferences may be held by telephone conference call or at a time and place specified by the presiding officer.

(3) Following the prehearing conference, the presiding officer shall issue an order reciting the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties concerning all of the matters considered. If no objection to such notice is filed within ten days after the date such notice is mailed, it shall control the subsequent course of the proceeding unless modified for good cause by subsequent order.

(4) In any proceeding the presiding officer may, in his or her discretion, conduct a conference prior to the taking of testimony, or may recess the hearing for such conference, for the purpose of carrying out the purpose of this rule. The presiding officer shall state on the record the results of such conference.

(5) Nothing in this rule shall be construed to limit the right of any agency ((~~to order a prehearing conference or other settlement procedure prior to issuance of a notice of hearing~~)) to attempt informal settlement of an adjudicative proceeding at any time.

Reviser's note: RCW 34.04.058 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending Order 3, filed 11/1/82)

WAC 10-08-140 ADJUDICATIVE PROCEEDINGS—EVIDENCE. (1) All rulings upon objections to the admissibility of evidence shall be made in accordance with the provisions of RCW ((~~34.04.100~~)) 34.05.452.

(2) Where practicable, the presiding officer may order:

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

(b) That documentary evidence not submitted in advance as required in (a) of this subsection be not received in evidence in the absence of a clear showing that the offering party had good cause for his or her failure to produce the evidence sooner, unless it is submitted for impeachment purposes;

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

(3) When portions only of a document are to be relied upon, the offering party shall identify the pertinent excerpts and state the purpose for which such materials will be offered. Only the excerpts, in the form of copies, shall be received in the record. However, the whole of the original documents, except any portions containing confidential material protected by law, shall be made available for examination and for use by all parties.

(4) No former employee of the agency shall appear, except with the permission of the agency, as an expert witness on behalf of other parties in a proceeding in which he or she previously took an active part in the investigation as a representative of the agency.

(5) The refusal of a witness to answer any question which has been ruled to be proper shall, in the discretion of the presiding officer, be ground for striking all testimony previously given by such witness on related matter.

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

Reviser's note: RCW 34.04.058 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

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

AMENDATORY SECTION (Amending Order 4, filed 10/31/85)

WAC 10-08-150 ADJUDICATIVE PROCEEDINGS—INTERPRETERS. (1) An "impaired person" is any person involved in ((~~a contested case hearing~~)) an adjudicative proceeding who is a hearing impaired person or a limited-English-speaking person.

(2) A "hearing impaired person" is a person who, because of a hearing impairment or speech defects, cannot readily understand or communicate in spoken language; and includes persons who are deaf, deaf and blind, or hard of hearing.

(3) A "limited-English-speaking person" is a person who because of a non-English-speaking cultural background cannot readily speak or understand the English language.

(4) A "qualified interpreter" is one who is readily able to interpret spoken and translate written English to and

for impaired persons and to interpret or translate statements of impaired persons into spoken English and who meets the requirements of WAC 10-08-150(9): Provided, That for hearing impaired persons a qualified interpreter must be certified by the registry of interpreters for the deaf with a specialist certificate-legal, master's comprehensive skills certificate or comprehensive skills certificate.

(5) An "intermediary interpreter" is a hearing impaired interpreter who is certified by the registry of interpreters for the deaf with a reverse skills certificate, who meets the requirements of WAC 10-08-150(9), and who is able to assist in providing an accurate interpretation between spoken and sign language or between variants of sign language by acting as an intermediary between a hearing impaired person and a qualified interpreter for the hearing impaired.

(6) When an impaired person is a party to any ((contested case hearing)) adjudicative proceeding or witness therein, the presiding officer shall, in the absence of a written waiver signed by the impaired person, appoint a qualified interpreter to assist the impaired person throughout the proceedings. The right to a qualified interpreter may not be waived except when:

(a) The impaired person requests a waiver through the use of a qualified interpreter;

(b) The representative, if any, of the impaired person consents; and

(c) The presiding officer determines that the waiver has been made knowingly, voluntarily, and intelligently.

(7) Waiver of a qualified interpreter shall not preclude the impaired person from claiming his or her right to a qualified interpreter at a later time during the proceeding.

(8) Relatives of any participant in a proceeding and employees of the agency involved in a proceeding shall not be appointed as interpreters in the proceeding. This subsection shall not prohibit the office of administrative hearings from hiring an employee whose sole function is to interpret at administrative hearings.

(9) The presiding officer shall make a preliminary determination that an interpreter is able in the particular proceeding to interpret accurately all communication to and from the impaired person. This determination shall be based upon the testimony or stated needs of the impaired person, the interpreter's education, certifications, and experience in interpreting for contested cases or adjudicative proceedings, the interpreter's understanding of the basic vocabulary and procedure involved in the proceeding, and the interpreter's impartiality. The parties or their representative may question the interpreter as to his or her qualifications and impartiality.

(10) If at any time during the proceeding, in the opinion on the impaired person, the presiding officer or a qualified observer, the interpreter does not provide accurate and effective communication with the impaired person, the presiding officer shall appoint another qualified interpreter.

(11) If the communication mode or language of a hearing impaired person is not readily interpretable, the interpreter or hearing impaired person shall notify the presiding officer who shall appoint an pay an intermediary interpreter to assist the qualified interpreter.

(12) Mode of interpretation.

(a) Interpreters for limited-English-speaking persons shall use simultaneous mode of interpretation where the presiding officer and interpreter agree that simultaneous interpretation will advance fairness and efficiency; otherwise, the consecutive mode of foreign language interpretation shall be used.

(b) Interpreters for hearing impaired persons shall use the simultaneous mode of interpretation unless an intermediary interpreter is needed. If an intermediary interpreter is needed, interpreters shall use the mode that the qualified interpreter considers to provide the most accurate and effective communication with the hearing impaired person.

(c) When an impaired person is a party to a proceeding, the interpreter shall translate all statements made by other hearing participants. The presiding officer shall ensure that sufficient extra time is provided to permit translation and the presiding officer shall ensure that the interpreter translates the entire proceeding to the party to the extent that the party has the same opportunity to understand all statements made during the proceedings as a non-impaired party listening to uninterpreted statements would have.

(13) A qualified interpreter shall not, without the written consent of the parties to the communication, be examined as to any communication the interpreter interprets under circumstances where the communication is privileged by law. A qualified interpreter shall not, without the written consent of the parties to the communication, be examined as to any information the interpreter obtains while interpreting pertaining to any proceeding then pending.

(14) The presiding officer shall explain to the impaired party that a written decision or order will be issued in English, and that the party may contact the interpreter for a translation of the decision at no cost to the party. If the party has a right to review of the order or decision, the presiding officer shall orally inform ((him or her)) the party during the hearing of the right and of the time limits to request review.

(15) At the hearing the interpreter for a limited English-speaking party shall provide to the presiding officer the interpreter's telephone number written in the primary language of the impaired party. A copy of such telephone number shall be attached to the decision or order mailed to the impaired party. A copy of the decision or order shall also be mailed to the interpreter for use in translation.

(16) In any proceeding involving a hearing impaired person, the presiding officer may, with the consent of the agency involved in the hearing, order that the testimony of the hearing impaired person and the interpretation of the proceeding by the qualified interpreter be visually recorded for use as the official transcript of the proceeding. Where simultaneous translation is used for interpreting statements of limited-English-speaking persons, the foreign language statements shall be recorded simultaneously with the English language statements by means of a separate tape recorder.

(17) A qualified interpreter appointed under this section is entitled to a reasonable fee for services, including waiting time and reimbursement for actual necessary travel expenses. The agency involved in the hearing shall pay such interpreter fee and expenses. The fee for services for interpreters for hearing impaired persons shall be in accordance with standards established by the department of social and health services, office of deaf services.

Reviser's note: RCW 34.04.058 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

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

AMENDATORY SECTION (Amending Order 4, filed 10/31/85)

WAC 10-08-160 ADJUDICATIVE PROCEEDINGS—TESTIMONY UNDER OATH OR AFFIRMATION. (1) Every person called as a witness in a hearing shall swear or affirm that the testimony he or she is about to give in the hearing shall be the truth according to the provisions of RCW 5.28.020 through 5.28.060.

(2) Every interpreter shall, before beginning to interpret, take an oath that a true interpretation will be made to the person being examined of all the proceedings in a language or in a manner which the person understands, and that the interpreter will repeat the statements of the person being examined to the agency conducting the proceedings, in the English language, to the best of the interpreter's skill and judgment.

AMENDATORY SECTION (Amending Order 3, filed 11/1/82)

WAC 10-08-170 ADJUDICATIVE PROCEEDINGS—REPORTING—RECORDING. All hearings shall be recorded by manual, electronic, or other type of recording device.

AMENDATORY SECTION (Amending Order 5, filed 6/15/87)

WAC 10-08-180 ADJUDICATIVE PROCEEDINGS—TELECONFERENCE HEARINGS. (1) The presiding officer, with the concurrence of the agency, may conduct all or part of the hearing by telephone, television, or other electronic means, if each participant in the hearing has an opportunity to participate in, to hear, and, if technically feasible, to see the entire proceeding while it is taking place, provided the ((~~following conditions are met:~~

~~(a) A hearing held for the department of social and health services in the aid to families with dependent children program Title IV-A and adult categories under Titles I, X, XIV or XVI of the Social Security Act or in the food stamp disqualification program under 7 CFR 273.16 may be scheduled as a teleconference hearing only if the notice of hearing informs the applicant/recipient is not required to show good cause for choosing an in-person hearing.~~

~~(b) In proceedings other than those described in subsection (a) the~~)) presiding officer shall grant the motion of any party showing good cause for having the hearing conducted in person at a rescheduled time.

(2) Documentary evidence shall be submitted in advance as provided in WAC 10-08-140(2).

Reviser's note: RCW 34.04.058 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending Order 3, filed 11/1/82)

WAC 10-08-190 ADJUDICATIVE PROCEEDINGS ((~~ATTENDANCE AT HEARINGS~~))—CAMERAS—RECORDING DEVICES. ((~~(1) All hearings shall be open for observation by the public except as limited by the presiding officer to preserve confidentiality protected by law or for reasons such as space limitation.~~)) Photographic and recording equipment shall be permitted at hearings; however, the presiding officer may impose such conditions upon their use as he or she deems necessary to prevent disruption of the hearing.

((~~(2) On motion of a party or on the presiding officer's own motion, witnesses may be excluded from any hearing except when testifying.~~))

AMENDATORY SECTION (Amending Order 3, filed 11/1/82)

WAC 10-08-200 ADJUDICATIVE PROCEEDINGS—PRESIDING OFFICER. The presiding officer shall have authority to:

(1) Determine the order of presentation of evidence;

(2) Administer oaths and affirmations;

(3) Issue subpoenas;

(4) Rule on procedural matters, objections, and motions;

(5) Rule on offers of proof and receive relevant evidence;

(6) Interrogate witnesses called by the parties in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter;

(7) Call additional witnesses and request additional exhibits deemed necessary to complete the record and receive such evidence subject to full opportunity for cross-examination and rebuttal by all parties;

(8) Take any appropriate action necessary to maintain order during the hearing;

(9) Permit or require oral argument or briefs and determine the time limits for submission thereof;

(10) Take any other action necessary and authorized by any applicable statute or rule;

(11) Waive any requirement of these rules unless a party shows that it would be prejudiced by such a waiver.

AMENDATORY SECTION (Amending Order 3, filed 11/1/82)

WAC 10-08-210 ADJUDICATIVE PROCEEDINGS ((DECISION))—INITIAL OR FINAL ORDER. Every decision and order ((~~issued by a presiding officer~~)), whether ((~~proposed;~~)) initial((;)) or final, shall:

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

(2) Designate all parties and representatives participating in the proceeding;

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

(4) Contain appropriate numbered findings of fact ((~~based exclusively on the record~~)) meeting the requirements in RCW 34.05.461;

(5) Contain appropriate numbered conclusions of law, including citations of statutes and rules relied upon;

(6) Contain an initial or final order((~~, decision, or recommendation, as appropriate,~~)) disposing of all contested issues;

(7) ((~~If applicable, c~~)) Contain a statement describing the ((~~parties' rights to agency review of the order or decision~~)) available post-hearing remedies.

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

NEW SECTION

WAC 10-08-211 ADJUDICATIVE PROCEEDINGS—PETITION FOR REVIEW AND REPLIES. (1) Any party to an adjudicative proceeding may file a petition for review of an initial order.

(2) The petition for review shall be filed with the agency head within twenty days of the date of service of the initial order unless a different place and time limit for filing the petition are specified in the initial order in its statement describing available procedures for administrative relief. Copies of the petition shall be served upon all other parties or their representatives at the time the petition is filed.

(3) The petition for review shall specify the portions of the initial order to which exception is taken and shall refer to the evidence of record which is relied upon to support the petition.

(4) Any party may file a reply to a petition for review. The reply shall be filed with the office where the petition for review was filed within ten days of the date of service of the petition and copies of the reply shall be served upon all other parties or their representatives at the time the reply is filed.

NEW SECTION

WAC 10-08-215 ADJUDICATIVE PROCEEDINGS—RECONSIDERATION. A petition for reconsideration of a final order under RCW 34.05.470 shall be filed with the office of the person or persons who entered the order.

NEW SECTION

WAC 10-08-230 INFORMAL SETTLEMENTS. RCW 34.05.060 authorizes agencies to establish by rule specific procedures for attempting and executing informal settlement of matters. The following procedures are available for informal dispute resolution that may make more elaborate proceedings under the Administrative Procedure Act unnecessary.

(1)(a) All agencies and persons are strongly encouraged to explore early, informal resolution to disputes whenever possible. Any person whose interest in a matter before an agency may be resolved by settlement shall communicate his or her request or complaint to the agency, setting forth all pertinent facts and particulars and the desired remedy. If the agency requires additional information to resolve the matter informally, it shall promptly provide to the person who is seeking relief an opportunity to supply such information. Settlement negotiations shall be informal and without prejudice to rights of a participant in the negotiations; Provided, however, that any time limit applicable to filing an application for an adjudicative proceeding shall not be extended because settlement attempts are pending.

(b) In the event an early, informal resolution is reached, the agency is responsible for providing a written description of the resolution to the person(s) involved.

(2)(a) If settlement of an adjudicative proceeding may be accomplished by informal negotiation with the agency or other parties involved, negotiations shall be commenced at the earliest possible stage of the proceeding. Settlement shall be concluded by:

(i) Stipulation of parties or

(ii) Withdrawal by the applicant of his or her application for an adjudicative proceeding or

(iii) Withdrawal by the agency of the agency action which is the subject matter of the adjudicative proceeding.

(b) A stipulation shall be in writing and signed by each party to the stipulation or his or her representative or shall be recited on the record at the hearing. When an adjudicative proceeding has been settled by stipulation, the agency head, the agency head's designee, or the presiding officer shall enter an order in conformity with the terms of the stipulation.

(c) When an adjudicative proceeding has been wholly or partially settled by withdrawal, the presiding officer shall enter an order dismissing the adjudicative proceeding, or an order dismissing the affected party's interest in the proceeding if other parties have not withdrawn.

NEW SECTION

WAC 10-08-250 DECLARATORY ORDERS—FORM, CONTENT AND FILING. A petition for a declaratory order shall generally adhere to the following form:

(1) At the top of the page shall appear the wording "Before the (name of agency)." On the left side of the page below the foregoing the following captions shall be set out: "In the matter of the petition of (name of petitioning party) for a declaratory order." Opposite the foregoing caption shall appear the word "petition."

(2) The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the name and address of the petitioning party. The second paragraph shall state all rules or statutes that may be brought into issue by the petition. Succeeding paragraphs shall set out the state of facts relied upon in form similar to that applicable to complaints in civil actions before the superior courts of this state. The concluding paragraphs shall contain the relief sought by the petitioner. The petition shall be subscribed and verified in the manner prescribed for verification of complaints in the superior courts of this state.

(3) The original and two legible copies of the petition shall be filed with the agency.

NEW SECTION

WAC 10-08-251 DECLARATORY ORDERS—PROCEDURAL RIGHTS OF PERSONS IN RELATION TO PETITION. If a petition for a declaratory order is set for specified proceedings under RCW 34.05-.240 (5)(b), the agency shall give not less than seven days advance written notice of the proceedings to the petitioner and all persons described in RCW 34.05.240(3). The notice shall contain the time, date, place, and nature of the proceedings and shall describe how interested persons may participate in the proceeding.

NEW SECTION

WAC 10-08-252 DECLARATORY ORDERS—DISPOSITION OF PETITION. A declaratory order entered by an agency or a decision by the agency to decline to enter a declaratory order shall be in writing and shall be served upon the petitioner and all other persons described in RCW 34.05.240(3).

NEW SECTION

WAC 10-08-260 PETITION FOR RULEMAKING—FORM, CONTENT AND FILING. A petition for adoption, amendment, or repeal of a rule shall generally adhere to the following form:

(1) At the top of the page shall appear the wording "Before the (name of agency)." On the left side of the page below the foregoing the following caption shall be set out: "In the matter of the petition of (name of petitioning party) for rulemaking." Opposite the foregoing caption shall appear the word "petition."

(2) The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the name and address of the petitioning party and whether the petitioner seeks the adoption of a new rule or rules, or amendment or repeal of an existing rule or rules. The second paragraph, in case of a proposed new rule or amendment of an existing rule, shall set forth the desired rule in its entirety. Where the petition is for repeal of an existing rule, such shall be stated and the rule proposed to be repealed shall either be set forth in full or shall be referred to by agency rule number. The third paragraph shall set forth concisely the reasons for the proposal of the petitioner and shall contain a statement as to the interest of the petitioner in the subject matter of the rule. Additional numbered paragraphs may be used to give full explanation of petitioner's reason for the action sought.

(3) Petitions shall be dated and signed by the person or entity named in the first paragraph or by the petitioner's attorney. The original and two legible copies shall be filed with the agency.

NEW SECTION

WAC 10-08-261 PETITION FOR RULEMAKING—CONSIDERATION AND DISPOSITION. (1) Each petition for the adoption, amendment, or repeal of a rule shall be considered by the agency and the agency may, in its discretion, solicit comments or invite discussion concerning the matter prior to disposition of the petition.

(2) If the agency denies the petition, the denial shall be served upon the petitioner.

REPEALER

The following sections of the Washington Administrative Code are each repealed:

(1) WAC 10-08-010 APPLICATION OF CHAPTER 10-08 WAC
(2) WAC 10-08-020 SCOPE OF CHAPTER 10-08 WAC
(3) WAC 10-08-030 DEFINITIONS
(4) WAC 10-08-060 INTERVENTION

WSR 89-13-037
PROPOSED RULES
DEPARTMENT OF PERSONNEL
(Personnel Board)
[Filed June 15, 1989]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the State Personnel Board intends to adopt, amend, or repeal rules concerning:

Amd	WAC 356-18-050	Sick leave credit—Purpose—Accrual—Conversion.
Amd	WAC 356-18-090	Vacation leave—Accrual;

that the agency will at 10:00 a.m., Thursday, July 13, 1989, in the Board Hearings Room, Department of Personnel, 521 South Capitol Way, Olympia, WA, conduct a public hearing on the proposed rules.

The adoption, amendment, or repeal of the rules will take place immediately following the hearing.

The authority under which these rules are proposed is RCW 41.06.040.

The specific statute these rules are intended to implement is RCW 41.06.150.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before July 11, 1989.

This notice is connected to and continues the matter in Notice No. WSR 89-10-039 filed with the code reviser's office on April 28, 1989.

Dated: June 12, 1989
By: Robert Boysen
Acting Director

WSR 89-13-038
PROPOSED RULES
DEPARTMENT OF PERSONNEL
(Personnel Board)
[Filed June 15, 1989]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the State Personnel Board intends to adopt, amend, or repeal rules concerning miscellaneous leave, amending WAC 356-18-120;

that the agency will at 10:00 a.m., Thursday, September 14, 1989, in the Board Hearings Room, Department of Personnel, 521 South Capitol Way, Olympia, WA, conduct a public hearing on the proposed rules.

The adoption, amendment, or repeal of the rules will take place immediately following the hearing.

The authority under which these rules are proposed is RCW 41.06.040.

The specific statute these rules are intended to implement is RCW 41.06.150.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before September 12, 1989.

This notice is connected to and continues the matter in Notice No. WSR 89-11-030 filed with the code reviser's office on May 12, 1989.

Dated: June 9, 1989
By: Robert Boysen
Acting Director

WSR 89-13-039
PROPOSED RULES
DEPARTMENT OF PERSONNEL
(Personnel Board)
[Filed June 15, 1989]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the State Personnel Board intends to adopt, amend, or repeal rules concerning:

Amd	WAC 356-18-220	Leave without pay—Effect on anniversary date and periodic increment date.
Amd	WAC 356-05-390	Seniority;

that the agency will at 10:00 a.m., Thursday, July 13, 1989, in the Board Hearings Room, Department of Personnel, 521 South Capitol Way, Olympia, WA, conduct a public hearing on the proposed rules.

The adoption, amendment, or repeal of the rules will take place immediately following the hearing.

The authority under which these rules are proposed is RCW 41.06.040.

The specific statute these rules are intended to implement is RCW 41.06.150.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before July 11, 1989.

This notice is connected to and continues the matter in Notice No. WSR 89-11-042 filed with the code reviser's office on May 16, 1989.

Dated: June 12, 1989
By: Robert Boysen
Acting Director

WSR 89-13-040
NOTICE OF PUBLIC MEETINGS
EDMONDS COMMUNITY COLLEGE
[Memorandum—June 15, 1989]

Tuesday, June 20, 1989
Washington State Reformatory
Dining Hall

The facilities for this meeting are free of mobility barriers and interpreters for deaf individuals an brailled or taped information for blind individuals will be provided upon request when adequate notice is given.

WSR 89-13-041
PROPOSED RULES
DEPARTMENT OF REVENUE
[Filed June 15, 1989]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Department of Revenue intends to adopt, amend, or repeal rules concerning carbonated beverage and syrup tax, new section WAC 458-20-255;

that the agency will at 9:30 a.m., Thursday, July 27, 1989, in the Evergreen Plaza Building, 2nd Floor Conference Room, 711 Capitol Way, Olympia, WA 98504, conduct a public hearing on the proposed rules.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on August 3, 1989.

The authority under which these rules are proposed is RCW 82.32.300.

The specific statute these rules are intended to implement is chapter 271, Laws of 1989, not yet codified.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before July 27, 1989.

Dated: June 15, 1989
By: Edward L. Faker
Interim Assistant Director

STATEMENT OF PURPOSE

Title: WAC 458-20-255 Carbonated beverage and syrup tax.

Description of Purpose: To implement the tax imposed by chapter 271, Laws of 1989, the carbonated beverage and syrup tax.

Statutory Authority: RCW 82.32.300.

Specific Statute Rule is Intended to Implement: Chapter 271, Laws of 1989, not yet codified.

Reasons Supporting Proposed Action: The legislative enactment of a new tax, effective July 1, 1989, requires the issuance of a rule to implement the tax. While the legislative enactment generally parallels the hazardous substance tax as it is a tax upon the possession of carbonated beverages or syrups, the uniqueness of the tax and the product requires a rule to provide taxpayers and the department with the implementation detail necessary for the effective and efficient administration of the tax.

Agency Personnel Responsible for Drafting: Stephen P. Zagelow, 415 General Administration Building, Olympia, WA 98504, phone 586-4291; Implementation: Edward L. Faker, 415 General Administration Building, Olympia, WA 98504, phone 753-5579; and Enforcement: Department of Revenue, 415 General Administration Building, Olympia, WA 98504, phone 753-5540.

NEW SECTION

WAC 458-20-255 CARBONATED BEVERAGE AND SYRUP TAX. (1) INTRODUCTION. Under the provisions of chapter 271, Laws of 1989, a carbonated beverage and syrup tax is imposed, effective July 1, 1989, upon the volume of carbonated beverages and syrups possessed in this state with specific credits and exemptions provided. This tax is an excise tax upon the privilege of possessing carbonated beverages or syrups in this state. It is imposed in addition to all other taxes of an excise or property tax nature and is not in lieu of any other such taxes.

(a) The tax provisions relate exclusively to the possession of carbonated beverages and syrups. The incidence or privilege which incurs tax liability is simply the possession of the carbonated beverages or syrup and is imposed upon any possession of carbonated beverages or syrup in this state by any person who is not expressly exempt of the tax. However, it is the intent of the law that the economic burden of the tax should fall upon the first such possession in this state. Therefor, the law provides that if the tax has not been paid upon any carbonated beverage or syrup the department may collect the tax from any person who has had possession. The amount of tax paid then constitutes a debt owed by the first person having had taxable possession to the person who pays the tax.

(2) DEFINITIONS. For purposes of this section the following terms will apply.

(a) "Tax" means the carbonated beverage or syrup tax imposed by chapter 271, Laws of 1989.

(b) "Carbonated beverage" has its ordinary meaning and includes any nonalcoholic liquid intended for human consumption which contains carbon dioxide, whether carbonation is obtained by natural or artificial means.

(i) Thus, "carbonated beverage" includes but is not limited to soft drinks, "soda pop", mineral waters, seltzers, fruit juices, or any other non-alcoholic beverages, including carbonated waters, which are produced for human consumption and which contain any amount of natural or artificial carbonation.

(ii) However, "carbonated beverage" does not include bromides or other carbonated liquids commonly sold as pharmaceuticals.

(iii) When a manufacturer or bottler produces a carbonated beverage end product, the measure of the tax shall be the carbonated beverage produced and not an ingredient in the production process.

(c) "Possession" means the control of a carbonated beverage or syrup located within this state and includes both actual and constructive possession.

(i) "Actual possession" occurs when the person with control has physical possession.

(ii) "Constructive possession" occurs when the person with control does not have physical possession.

(iii) "Control" means the power to sell or use a carbonated beverage or syrup or to authorize the sale or use by another.

(d) "Previously taxed carbonated beverage or syrup" means a carbonated beverage or syrup in respect to which a tax has been paid under this chapter. A "previously taxed carbonated beverage" includes carbonated beverages in respect to which the tax has been paid on either the carbonated beverage or on the syrup in the carbonated beverage.

(i) Example. A retailer who produces a carbonated beverage by adding water and carbonation to a syrup, upon which the tax has been paid by a prior possessor, possesses a "previously taxed carbonated beverage or syrup" and incurs no additional tax liability as the tax has been paid upon the syrup used in the production process.

(e) "Syrup" means a concentrated liquid which is added to carbonated water to produce a carbonated beverage.

(i) Thus, "syrup" includes the concentrated liquid marketed by manufacturers to which the purchaser adds water and/or carbon dioxide, or, carbonated water to produce a carbonated beverage.

(ii) Manufacturers or bottlers are taxable on the possession of syrup only when such syrup is removed from the production process for purposes of sale or other transfer without further processing by them.

(f) "State" means for the credit provisions of this section:

(i) a state of the United States other than Washington, or any political subdivision of such other state,

(ii) the District of Columbia, and

(iii) any foreign country or political subdivision thereof.

(g) Except as otherwise expressly defined in this section, the definitions of terms provided in chapters 82.04, 82.08, and 82.12 RCW apply equally for this section. Other terms not expressly defined in these chapters or this section are to be given their common and ordinary meanings.

(3) TAX IMPOSITION, RATE AND MEASURE.

(a) The tax is imposed upon the privilege of possessing carbonated beverages or syrups within this state.

(i) When a manufacturer or bottler produces a carbonated beverage end product, the measure of the tax shall be the carbonated beverage produced.

(ii) Manufacturers or bottlers are taxable on the possession of syrup only when such syrup is removed from the production process for purposes of sale or other transfer without further processing by them.

(b) The tax rate and measure for carbonated beverages is eighty-four one thousandths of a cent per ounce. The tax rate and measure for syrup is seventy five cents per gallon. Fractional amounts shall be taxed proportionally.

(4) EXEMPTIONS. The following are exempt from the tax:

(a) Any successive possession of a previously taxed carbonated beverage or syrup.

(i) In order to identify the payment of the tax, the first possessor shall separately itemize the tax on the invoice, bill of lading, or other delivery document.

(ii) Thus, a subsequent possessor of carbonated beverages or syrups sold or delivered upon an invoice, bill of lading, or other document of sale which contains a separate itemization of the tax shall be exempt from the tax.

(iii) However, a subsequent possessor of carbonated beverages or syrups sold or delivered upon an invoice, bill of lading or other document of sale which does not contain a separate itemization of the tax is conclusively presumed to be the first possessor of the carbonated beverage or syrup in this state and is liable for the tax.

(iv) This exemption for taxes previously paid is available for any person in successive possession of a taxed carbonated beverage or syrup even though the previous payment may have been satisfied by the use of credits or offsets available to the previous person in possession.

(v) Example. Company A brings a carbonated beverage or syrup into this state upon which it has paid a similar carbonated beverage or syrup tax in another state. Company A takes a credit against its Washington tax liability in the amount of the other state's tax paid. It then sells the substance to Company B, and provides Company B with an invoice containing a separate itemization of the tax. Company B's possession is tax exempt even though Company A has not directly paid Washington's tax but has used a credit against its Washington liability.

(b) Any carbonated beverage or syrup that is transferred to a point outside the state for use outside the state.

(i) The exemption for possessions of carbonated beverages or syrups for export sale or use may be taken by any possessor within the chain of distribution of such products in this state. To perfect its entitlement to this exemption the possessor of such carbonated beverage or syrup must take from its buyer or transferee of the carbonated beverage or syrup a written certification in substantially the following form:

Certificate of Tax Exempt Export Carbonated Beverages or Syrup

I hereby certify that the carbonated beverage or syrup specified herein, purchased by or transferred to the undersigned, from (seller or transferor), are for export for use or sale outside Washington state. I will become liable for and pay any carbonated beverage or syrup tax due upon all or any part of such products which are not so exported outside Washington state. This certificate is given with full knowledge of, and subject to the legally prescribed penalties for fraud and tax evasion.

Registration No. _____ (If applicable) Type of Business _____

Firm Name_____ Registered Name _____ (If different)

Authorized Signature _____

Title _____

Identity of Carbonated Beverages or Syrups. _____ (Kind and amount by volume)

Date _____

(ii) Each successive possessor of such carbonated beverages or syrups must, in turn, take a certification in this form from any other person to whom such carbonated beverages or syrups are sold or transferred in this state. Failure to take and keep such certifications as part of its permanent records will incur carbonated beverage or syrup tax liability by such sellers or transferrers of carbonated beverages or syrups.

(iii) Persons in possession of carbonated beverages or syrups who themselves export or cause the exportation of such products to persons outside this state for further sale or use must keep the proofs of actual exportation required by WAC 458-20-193, Parts A or C.

(d) Persons or activities which the state is prohibited from taxing under the United States Constitution are tax exempt.

(i) This exemption extends to the U.S. Government, its agencies and instrumentalities, and to any possession the taxation of which has been expressly reserved or preempted under the laws of the United States.

(ii) The tax will not apply with respect to any possession of any carbonated beverage or syrup purchased, extracted, produced or manufactured outside this state which is shipped or delivered into this state until the interstate transportation of such carbonated beverage or syrup has finally ended in this state. Thus, out of state sellers or producers need not pay the tax on carbonated beverages or syrups shipped directly to customers in this state. The customers must pay the tax upon their first possession unless otherwise expressly exempt.

(iii) Out of state sellers or producers will be subject to tax upon carbonated beverages or syrups shipped or delivered into storage (including public storage), or, to distribution centers, or, to other in state facilities owned, leased, or otherwise controlled by them.

(iv) However, the tax will not apply with respect to possessions of carbonated beverages or syrups which are only temporarily stored or possessed in this state in connection with through, interstate movement of the substances from points of origin to points of destination both of which are outside of this state.

(e) The possession of any carbonated beverages or syrups prior to July 1, 1989 is tax exempt. This exemption extends to current inventories and stocks of carbonated beverages or syrups on hand on July 1, 1989 when the tax first takes effect. The intent is that the carbonated beverage or syrup tax has no retroactive application.

(i) It is the intent, under the law, that this exemption will apply to the carbonated beverages or syrups throughout their succeeding chain of distribution, in the possession of any person, for the life of those carbonated beverages or syrups. That is, carbonated beverages or syrups already possessed as of June 30, 1989 will not incur tax liability in the possession of any person at any time.

(ii) Persons who already possess any carbonated beverages or syrups on June 30, 1989 must use a first-in-first-out (FIFO) accounting method for depleting such supplies, supported by their purchase, sales, or transfer records.

(iii) Because this exemption will follow the carbonated beverage or syrup into the possession of any subsequent or succeeding possessors, sellers of such exempt current inventory carbonated beverages or syrups should provide their registered buyers in this state with a separately itemized statement of the tax exemption as provided in this part 4(a) of this section.

(5) CREDIT. Credit shall be allowed against the taxes imposed in this section for any carbonated beverage or syrup tax paid to another state with respect to the same carbonated beverage or syrup. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to that carbonated beverage or syrup.

(a) "Carbonated beverage or syrup tax" means a tax:

(i) That is imposed on the act or privilege of possessing carbonated beverages or syrup and is not generally imposed on other activities or privileges; and

(ii) that is measured by the value or volume of the carbonated beverage or syrup possessed.

(b) In order for this credit to apply, the other state's tax must be significantly similar to Washington's tax in all its various respects. The taxable incident must be possessing the carbonated beverages or syrups without deductions for costs of doing business, such that the other state's tax does not constitute an income tax or added value tax.

(c) This credit may be taken for the amount of any other state's qualifying tax which has actually been paid as a result of the same carbonated beverage or syrup being previously possessed by the same person in another taxing jurisdiction before Washington State's tax is incurred.

(d) The amount of credit is limited to the amount of tax paid in this state upon possession of the same carbonated beverage or syrup in this state. Also, the credit may not be applied against any tax paid or owed in this state other than the carbonated beverage tax imposed by chapter 271, Laws of 1989.

(7) RECURRENT TAX LIABILITY. It is the intent of the law that all carbonated beverages or syrups possessed in this state should incur this tax liability only once unless they are expressly exempt. This is true of carbonated beverages or syrups used as ingredients of products as well as the manufactured end product itself. When a manufacturer is in possession of both syrup and carbonated beverage and where the syrup is an ingredient or step in the production of the carbonated beverage end product, the measure of the tax shall be the carbonated beverage produced and not the syrup which is only an ingredient in the production process.

(a) When any intermediate carbonated beverage or syrup is first produced during a manufacturing or bottling activity and is withdrawn for sale or transfer outside of the manufacturing or bottling plant, a taxable first possession occurs.

(i) Thus, manufacturers or bottlers are taxable on the possession of syrup only when such syrup is removed from the production process for purposes of sale or other transfer without further processing by them.

(b) Example. When a retailer (soda fountain, convenience store, fast food outlet, etc.) who produces carbonated beverages by combining syrup with water and carbon dioxide purchases the syrup from an out-of-state seller who is not the first possessor of the syrup in this state, the retailer incurs tax liability as the first possessor of the syrup in this state. The tax is measured by the volume of syrup first possessed.

(8) HOW AND WHEN TO PAY TAX.

(a) The tax must be reported on a special line of the combined excise tax return designated "carbonated beverage or syrup". The volume reported shall be the net volume subject to tax, i.e., the gross volume possessed less volume exempt.

(b) The tax is due for payment together with the timely filing of the return upon which it is reported, covering the tax reporting period during which the carbonated beverage or syrup is first possessed within the state. Any person who is not expressly exempt of the tax and who possesses any carbonated beverage or syrup in this state, without having proof that the tax has previously been paid on that carbonated beverage or syrup, must report and pay the tax.

(c) The taxable incident or event is the possession of the carbonated beverage or syrup. Tax is due for payment by the first possessor in this state whether or not the carbonated beverage or syrup has been sold or transferred or whether, if sold, the purchase price has been paid in part or in full.

(d) Special provision for manufacturers, bottlers, and wholesalers. Because it is not possible to know, at the time of first possession in this state, whether a carbonated beverage or syrup may be used or sold in a manner which would entitle the first possession to tax exemption, manufacturers, bottlers, and wholesalers who possess carbonated beverages or syrups may report the tax and take any available exemptions and credits at the time that such carbonated beverages or syrups are withdrawn from storage for purposes of their sale, transfer, or consumption.

(9) HOW AND WHEN TO CLAIM CREDIT. Any tax credit available to the taxpayer should be claimed and offset against tax liability reported on the same excise tax return when possible. The tax return form provides a line for reporting tax on carbonated beverages

and syrups and the credit shall be taken on the line for taking "other credits" as an offset against the tax reported. A statement showing the computation of the credit must be provided. It is not required that any other documents or other evidences of entitlement to credits be submitted with the report. Such proofs must be retained in permanent records for the purpose of verification of credits taken.

(10) CARBONATED BEVERAGES OR SYRUPS ON CONSIGNMENT. Consignees who possess carbonated beverages or syrups in this state with the power to sell such things, in their own name or on behalf of a disclosed or undisclosed consignor have "control" of the product and are liable for payment of the tax unless the tax has been paid by a prior possessor. The exemption for previously taxed carbonated beverages or syrups is available for such consignees if the consignor or the previous possessor has paid the tax and the consignee has retained the document of sale or delivery containing a separately itemized statement of the payment of the tax. Possession of consigned carbonated beverages or syrups by a consignee who has control of the product does not constitute constructive possession by the consignor.

(11) Various circumstances may arise whereby a person will possess carbonated beverages or syrups in this state, some of which have been previously taxed in this or other states and some of which may not. In such cases formulary tax reporting may be used, only after receipt of a special ruling issued by the department of revenue authorizing such formulary reporting.

(a) Example. Fungible carbonated beverages or syrups from sources both within and outside this state are commingled in common storage facilities. Formulary reporting may be appropriate based upon volume percentages reflecting the ratio of in-state production to out-of-state production or other form of acquisition.

(12) ADMINISTRATIVE PROVISIONS. The provisions of chapters 82.32 and 82.04 RCW regarding due dates, reporting periods, tax return requirements, interest and penalties, tax audits and limitations, disputes and appeals, and all such general administrative provisions apply equally to the carbonated beverage or syrup tax.

WSR 89-13-042
EMERGENCY RULES
DEPARTMENT OF REVENUE
[Order 89-7—Filed June 15, 1989]

I, Edward L. Faker, interim assistant director of the Department of Revenue, do promulgate and adopt at Olympia, Washington, the annexed rules relating to carbonated beverage and syrup tax, new section WAC 458-20-255.

I, Edward L. Faker, find that an emergency exists and that this order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting the emergency is chapter 271, Laws of 1989, which is implemented and administered under this WAC section takes effect on July 1, 1989, thus necessitating an emergency adoption of the section. A full public hearing will be conducted before adopting the permanent rule.

These rules are therefore adopted as emergency rules to take effect upon filing with the code reviser.

This rule is promulgated under the general rule-making authority of the Department of Revenue as authorized in RCW 82.32.300.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED June 15, 1989.
By Edward L. Faker
Interim Assistant Director

NEW SECTION

WAC 458-20-255 CARBONATED BEVERAGE AND SYRUP TAX. (1) INTRODUCTION. Under the provisions of chapter 271, Laws of 1989, a carbonated beverage and syrup tax is imposed, effective July 1, 1989, upon the volume of carbonated beverages and syrups possessed in this state with specific credits and exemptions provided. This tax is an excise tax upon the privilege of possessing carbonated beverages or syrups in this state. It is imposed in addition to all other taxes of an excise or property tax nature and is not in lieu of any other such taxes.

(a) The tax provisions relate exclusively to the possession of carbonated beverages and syrups. The incidence or privilege which incurs tax liability is simply the possession of the carbonated beverages or syrup and is imposed upon any possession of carbonated beverages or syrup in this state by any person who is not expressly exempt of the tax. However, it is the intent of the law that the economic burden of the tax should fall upon the first such possession in this state. Therefor, the law provides that if the tax has not been paid upon any carbonated beverage or syrup the department may collect the tax from any person who has had possession. The amount of tax paid then constitutes a debt owed by the first person having had taxable possession to the person who pays the tax.

(2) DEFINITIONS. For purposes of this section the following terms will apply.

(a) "Tax" means the carbonated beverage or syrup tax imposed by chapter 271, Laws of 1989.

(b) "Carbonated beverage" has its ordinary meaning and includes any nonalcoholic liquid intended for human consumption which contains carbon dioxide, whether carbonation is obtained by natural or artificial means.

(i) Thus, "carbonated beverage" includes but is not limited to soft drinks, "soda pop", mineral waters, seltzers, fruit juices, or any other non-alcoholic beverages, including carbonated waters, which are produced for human consumption and which contain any amount of natural or artificial carbonation.

(ii) However, "carbonated beverage" does not include bromides or other carbonated liquids commonly sold as pharmaceuticals.

(iii) When a manufacturer or bottler produces a carbonated beverage end product, the measure of the tax shall be the carbonated beverage produced and not an ingredient in the production process.

(c) "Possession" means the control of a carbonated beverage or syrup located within this state and includes both actual and constructive possession.

(i) "Actual possession" occurs when the person with control has physical possession.

(ii) "Constructive possession" occurs when the person with control does not have physical possession.

(iii) "Control" means the power to sell or use a carbonated beverage or syrup or to authorize the sale or use by another.

(d) "Previously taxed carbonated beverage or syrup" means a carbonated beverage or syrup in respect to which a tax has been paid under this chapter. A "previously taxed carbonated beverage" includes carbonated beverages in respect to which the tax has been paid on either the carbonated beverage or on the syrup in the carbonated beverage.

(i) Example. A retailer who produces a carbonated beverage by adding water and carbonation to a syrup, upon which the tax has been paid by a prior possessor, possesses a "previously taxed carbonated beverage or syrup" and incurs no additional tax liability as the tax has been paid upon the syrup used in the production process.

(e) "Syrup" means a concentrated liquid which is added to carbonated water to produce a carbonated beverage.

(i) Thus, "syrup" includes the concentrated liquid marketed by manufacturers to which the purchaser adds water and/or carbon dioxide, or, carbonated water to produce a carbonated beverage.

(ii) Manufacturers or bottlers are taxable on the possession of syrup only when such syrup is removed from the production process for purposes of sale or other transfer without further processing by them.

(f) "State" means for the credit provisions of this section:

(i) a state of the United States other than Washington, or any political subdivision of such other state,

(ii) the District of Columbia, and

(iii) any foreign country or political subdivision thereof.

(g) Except as otherwise expressly defined in this section, the definitions of terms provided in chapters 82.04, 82.08, and 82.12 RCW apply equally for this section. Other terms not expressly defined in these chapters or this section are to be given their common and ordinary meanings.

(3) TAX IMPOSITION, RATE AND MEASURE.

(a) The tax is imposed upon the privilege of possessing carbonated beverages or syrups within this state.

(i) When a manufacturer or bottler produces a carbonated beverage end product, the measure of the tax shall be the carbonated beverage produced.

(ii) Manufacturers or bottlers are taxable on the possession of syrup only when such syrup is removed from the production process for purposes of sale or other transfer without further processing by them.

(b) The tax rate and measure for carbonated beverages is eighty-four one thousandths of a cent per ounce. The tax rate and measure for syrup is seventy five cents per gallon. Fractional amounts shall be taxed proportionally.

(4) EXEMPTIONS. The following are exempt from the tax:

(a) Any successive possession of a previously taxed carbonated beverage or syrup.

(i) In order to identify the payment of the tax, the first possessor shall separately itemize the tax on the invoice, bill of lading, or other delivery document.

(ii) Thus, a subsequent possessor of carbonated beverages or syrups sold or delivered upon an invoice, bill of lading, or other document of sale which contains a separate itemization of the tax shall be exempt from the tax.

(iii) However, a subsequent possessor of carbonated beverages or syrups sold or delivered upon an invoice, bill of lading or other document of sale which does not contain a separate itemization of the tax is conclusively presumed to be the first possessor of the carbonated beverage or syrup in this state and is liable for the tax.

(iv) This exemption for taxes previously paid is available for any person in successive possession of a taxed carbonated beverage or syrup even though the previous payment may have been satisfied by the use of credits or offsets available to the previous person in possession.

(v) Example. Company A brings a carbonated beverage or syrup into this state upon which it has paid a similar carbonated beverage or syrup tax in another state. Company A takes a credit against its Washington tax liability in the amount of the other state's tax paid. It then sells the substance to Company B, and provides Company B with an invoice containing a separate itemization of the tax. Company B's possession is tax exempt even though Company A has not directly paid Washington's tax but has used a credit against its Washington liability.

(b) Any carbonated beverage or syrup that is transferred to a point outside the state for use outside the state.

(i) The exemption for possessions of carbonated beverages or syrups for export sale or use may be taken by any possessor within the chain of distribution of such products in this state. To perfect its entitlement to this exemption the possessor of such carbonated beverage or syrup must take from its buyer or transferee of the carbonated beverage or syrup a written certification in substantially the following form:

Certificate of Tax Exempt Export Carbonated Beverages or Syrup

I hereby certify that the carbonated beverage or syrup specified herein, purchased by or transferred to the undersigned, from (seller or transferor), are for export for use or sale outside Washington state. I will become liable for and pay any carbonated beverage or syrup tax due upon all or any part of such products which are not so exported outside Washington state. This certificate is given with full knowledge of, and subject to the legally prescribed penalties for fraud and tax evasion.

Registration No. _____ *(If applicable)* *Type of Business* _____

Firm Name _____ *Registered Name* _____ *(If different)*

Authorized Signature _____

Title _____

Identity of Carbonated Beverages or Syrups. _____ *(Kind and amount by volume)*

Date _____

(ii) Each successive possessor of such carbonated beverages or syrups must, in turn, take a certification in this form from any other person to whom such carbonated beverages or syrups are sold or transferred in this state.

Failure to take and keep such certifications as part of its permanent records will incur carbonated beverage or syrup tax liability by such sellers or transferrers of carbonated beverages or syrups.

(iii) Persons in possession of carbonated beverages or syrups who themselves export or cause the exportation of such products to persons outside this state for further sale or use must keep the proofs of actual exportation required by WAC 458-20-193, Parts A or C.

(d) Persons or activities which the state is prohibited from taxing under the United States Constitution are tax exempt.

(i) This exemption extends to the U.S. Government, its agencies and instrumentalities, and to any possession the taxation of which has been expressly reserved or preempted under the laws of the United States.

(ii) The tax will not apply with respect to any possession of any carbonated beverage or syrup purchased, extracted, produced or manufactured outside this state which is shipped or delivered into this state until the interstate transportation of such carbonated beverage or syrup has finally ended in this state. Thus, out of state sellers or producers need not pay the tax on carbonated beverages or syrups shipped directly to customers in this state. The customers must pay the tax upon their first possession unless otherwise expressly exempt.

(iii) Out of state sellers or producers will be subject to tax upon carbonated beverages or syrups shipped or delivered into storage (including public storage), or, to distribution centers, or, to other in state facilities owned, leased, or otherwise controlled by them.

(iv) However, the tax will not apply with respect to possessions of carbonated beverages or syrups which are only temporarily stored or possessed in this state in connection with through, interstate movement of the substances from points of origin to points of destination both of which are outside of this state.

(e) The possession of any carbonated beverages or syrups prior to July 1, 1989 is tax exempt. This exemption extends to current inventories and stocks of carbonated beverages or syrups on hand on July 1, 1989 when the tax first takes effect. The intent is that the carbonated beverage or syrup tax has no retroactive application.

(i) It is the intent, under the law, that this exemption will apply to the carbonated beverages or syrups throughout their succeeding chain of distribution, in the possession of any person, for the life of those carbonated beverages or syrups. That is, carbonated beverages or syrups already possessed as of June 30, 1989 will not incur tax liability in the possession of any person at any time.

(ii) Persons who already possess any carbonated beverages or syrups on June 30, 1989 must use a first-in-first-out (FIFO) accounting method for depleting such supplies, supported by their purchase, sales, or transfer records.

(iii) Because this exemption will follow the carbonated beverage or syrup into the possession of any subsequent or succeeding possessors, sellers of such exempt current inventory carbonated beverages or syrups should provide their registered buyers in this state with a separately itemized statement of the tax exemption as provided in this part 4(a) of this section.

(5) CREDIT. Credit shall be allowed against the taxes imposed in this section for any carbonated beverage or syrup tax paid to another state with respect to the same carbonated beverage or syrup. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to that carbonated beverage or syrup.

(a) "Carbonated beverage or syrup tax" means a tax:

(i) That is imposed on the act or privilege of possessing carbonated beverages or syrup and is not generally imposed on other activities or privileges; and

(ii) that is measured by the value or volume of the carbonated beverage or syrup possessed.

(b) In order for this credit to apply, the other state's tax must be significantly similar to Washington's tax in all its various respects. The taxable incident must be possessing the carbonated beverages or syrups without deductions for costs of doing business, such that the other state's tax does not constitute an income tax or added value tax.

(c) This credit may be taken for the amount of any other state's qualifying tax which has actually been paid as a result of the same carbonated beverage or syrup being previously possessed by the same person in another taxing jurisdiction before Washington State's tax is incurred.

(d) The amount of credit is limited to the amount of tax paid in this state upon possession of the same carbonated beverage or syrup in this state. Also, the credit may not be applied against any tax paid or owed in this state other than the carbonated beverage tax imposed by chapter 271, Laws of 1989.

(7) RECURRENT TAX LIABILITY. It is the intent of the law that all carbonated beverages or syrups possessed in this state should incur this tax liability only once unless they are expressly exempt. This is true of carbonated beverages or syrups used as ingredients of products as well as the manufactured end product itself. When a manufacturer is in possession of both syrup and carbonated beverage and where the syrup is an ingredient or step in the production of the carbonated beverage end product, the measure of the tax shall be the carbonated beverage produced and not the syrup which is only an ingredient in the production process.

(a) When any intermediate carbonated beverage or syrup is first produced during a manufacturing or bottling activity and is withdrawn for sale or transfer outside of the manufacturing or bottling plant, a taxable first possession occurs.

(i) Thus, manufacturers or bottlers are taxable on the possession of syrup only when such syrup is removed from the production process for purposes of sale or other transfer without further processing by them.

(b) Example. When a retailer (soda fountain, convenience store, fast food outlet, etc.) who produces carbonated beverages by combining syrup with water and carbon dioxide purchases the syrup from an out-of-state seller who is not the first possessor of the syrup in this state, the retailer incurs tax liability as the first possessor of the syrup in this state. The tax is measured by the volume of syrup first possessed.

(8) HOW AND WHEN TO PAY TAX.

(a) The tax must be reported on a special line of the combined excise tax return designated "carbonated beverage or syrup". The volume reported shall be the net volume subject to tax, i.e., the gross volume possessed less volume exempt.

(b) The tax is due for payment together with the timely filing of the return upon which it is reported, covering the tax reporting period during which the carbonated beverage or syrup is first possessed within the state. Any person who is not expressly exempt of the tax and who possesses any carbonated beverage or syrup in this state, without having proof that the tax has previously been paid on that carbonated beverage or syrup, must report and pay the tax.

(c) The taxable incident or event is the possession of the carbonated beverage or syrup. Tax is due for payment by the first possessor in this state whether or not the carbonated beverage or syrup has been sold or transferred or whether, if sold, the purchase price has been paid in part or in full.

(d) Special provision for manufacturers, bottlers, and wholesalers. Because it is not possible to know, at the time of first possession in this state, whether a carbonated beverage or syrup may be used or sold in a manner which would entitle the first possession to tax exemption, manufacturers, bottlers, and wholesalers who possess carbonated beverages or syrups may report the tax and take any available exemptions and credits at the time that such carbonated beverages or syrups are withdrawn from storage for purposes of their sale, transfer, or consumption.

(9) HOW AND WHEN TO CLAIM CREDIT. Any tax credit available to the taxpayer should be claimed and offset against tax liability reported on the same excise tax return when possible. The tax return form provides a line for reporting tax on carbonated beverages and syrups and the credit shall be taken on the line for taking "other credits" as an offset against the tax reported. A statement showing the computation of the credit must be provided. It is not required that any other documents or other evidences of entitlement to credits be submitted with the report. Such proofs must be retained in permanent records for the purpose of verification of credits taken.

(10) CARBONATED BEVERAGES OR SYRUPS ON CONSIGNMENT. Consignees who possess carbonated beverages or syrups in this state with the power to sell such things, in their own name or on behalf of a disclosed or undisclosed consignor have "control" of the product and are liable for payment of the tax unless the tax has been paid by a prior possessor. The exemption for previously taxed carbonated beverages or syrups is available for such consignees if the consignor or the previous possessor has paid the tax and the consignee has retained the document of sale or delivery containing a separately itemized statement of the payment of the tax. Possession of consigned carbonated beverages or syrups by a consignee who has control of the product does not constitute constructive possession by the consignor.

(11) Various circumstances may arise whereby a person will possess carbonated beverages or syrups in this state, some of which have been previously taxed in this or other states and some of which may not. In such cases formulary tax reporting may be used, only after receipt of a special ruling issued by the department of revenue authorizing such formulary reporting.

(a) Example. Fungible carbonated beverages or syrups from sources both within and outside this state are commingled in common storage facilities. Formulary reporting may be appropriate based upon volume percentages reflecting the ratio of in-state production to out-of-state production or other form of acquisition.

(12) ADMINISTRATIVE PROVISIONS. The provisions of chapters 82.32 and 82.04 RCW regarding due dates, reporting periods, tax return requirements, interest and penalties, tax audits and limitations, disputes and appeals, and all such general administrative provisions apply equally to the carbonated beverage or syrup tax.

WSR 89-13-043
PROPOSED RULES
DEPARTMENT OF REVENUE
[Filed June 15, 1989]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Department of Revenue intends to adopt, amend, or repeal rules concerning employees distinguished from persons engaging in business, amending WAC 458-20-105;

that the agency will at 9:30 a.m., Tuesday, July 25, 1989, in the Revenue Conference Room, 4th Floor, 415 General Administration Building, Olympia, WA 98504, conduct a public hearing on the proposed rules.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on August 1, 1989.

The authority under which these rules are proposed is RCW 82.32.300.

The specific statute these rules are intended to implement is RCW 82.04.360.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before July 25, 1989.

Dated: June 15, 1989
By: Edward L. Faker
Interim Assistant Director

STATEMENT OF PURPOSE

Title: WAC 458-20-105 Employees distinguished from persons engaging in business.

Description of Purpose: To clarify the standards by which a person's status as employee or independent contractor is determined; to provide consistency in rule format.

Statutory Authority: RCW 82.32.300.

Specific Statute(s) Rule is Intended to Implement: RCW 82.04.360.

Reasons Supporting Proposed Action: In certain industries and businesses, such as the insurance business, the line between employee and independent contractor is

very fine. This amendment provides clear criteria for determining a person's status, in conformance with various state and federal guidelines and decisions.

Agency Personnel Responsible for Drafting and Implementation: Edward L. Faker, 415 General Administration Building, Olympia, WA 98504, phone 753-5579; and Enforcement: Department of Revenue, 415 General Administration Building, Olympia, WA 98504, phone 753-5540.

AMENDATORY SECTION (Amending Order ET 70-3, filed 5/29/70, effective 7/1/70)

WAC 458-20-105 EMPLOYEES DISTINGUISHED FROM PERSONS ENGAGING IN BUSINESS. (1) The Revenue Act imposes taxes upon persons engaged in business but not upon persons acting solely in the capacity of employees ((~~or servants~~)).

((~~The question of whether a person is engaged in business or is acting in the capacity of an employee is not always readily determinable. The following rules may, however, be accepted as a guide but are not necessarily controlling in individual cases.~~)) (2) While no one factor definitely determines employee status, the most important consideration is the employer's right to control the employee. The right to control is not limited to controlling the result of the work to be accomplished, but includes controlling the details and means by which the work is accomplished. In cases of doubt about employee status all the pertinent facts should be submitted to the department of revenue for a specific ruling.

(3) PERSONS ENGAGING IN BUSINESS. ((~~A person engaging in business is generally one who holds himself out to the public as engaging in business either in respect to dealing in real or personal property or in respect to the rendition of services; one to whom gross income of the business inures; one upon whom liability for losses lies or who bears the expense of conducting a business; one, generally, acting in an independent capacity, whether or not subject to immediate control and supervision by a superior, or one who acts as an employer and has employees subject to his control and supervision.~~

~~Persons employed by retailers or wholesalers, and selling on their own account tangible personal property of a type sold by their employers, are deemed to be engaging in business and must apply for and obtain a certificate of registration and collect and remit the retail sales tax and pay the business and occupation tax upon sales made by them, irrespective of the amount or frequency of such sales.~~

~~EMPLOYEES AND SERVANTS. An employee or servant is an individual whose entire compensation is fixed at a certain rate per day, week or month, or at a certain percentage of the business obtained by such employee or servant, payable in all events; one who has no direct interest in the income or profits of the business other than a wage or commission; one who has no liability for the expenses of maintaining an office or place of business, for other overhead or for compensation of employees; one who has no liability for losses or indebtedness incurred in conducting the business; one whose conduct with respect to services rendered, obtaining of, or transacting business, is supervised or controlled by the employer. A corporation, joint venture, or any group of individuals acting as a unit, is not an employee or servant.~~

~~Persons who furnish equipment on a rental basis and also furnish operators therefor, are presumed to be engaging in business and not to be employees or servants. Likewise, persons who furnish materials and the labor necessary in the placing or fabricating thereof are also presumed to be engaging in business and not to be employees or servants. The burden of proof will be upon such persons to show otherwise.~~

~~The fact that a person is construed to be an employee under the provisions of the State Employment Security Act or the Federal Social Security Act, does not conclusively establish such persons as an employee within the provisions of the Revenue Act. However, where a person is not construed to be an employee under the State Employment Security Act or the Federal Social Security Act, such person will not be considered an employee under the Revenue Act.~~

~~BUILDING TRADES. Persons regularly performing odd job carpentry, painting or paperhanging, plumbing, bricklaying, electrical work, etc., for the public generally are presumed to be engaging in business. The burden of proof is upon such persons to show otherwise. Here it is immaterial whether the workman is paid by the job, by the day or by the hour. It is likewise immaterial that the workman may supply labor only, any materials used being supplied by the property owner.~~

~~Revised March 1, 1954.~~)) The term "engaging in business" means the act of transferring, selling or otherwise dealing in real or personal property, or the rendition of services, for consideration except as an employee. The following conditions will serve to indicate that a person is engaging in business.

If a person is:

(a) Holding oneself out to the public as engaging in business with respect to dealings in real or personal property, or in respect to the rendition of services;

(b) Entitled to receive the gross income of the business or any part thereof;

(c) Liable for business losses or the expense of conducting a business, even though such expenses may ultimately be reimbursed by a principal;

(d) Controlling and supervising others, and being personally liable for their payroll, as a part of engaging in business;

(e) Employing others to carry out duties and responsibilities related to the engaging in business and being personally liable for their pay;

(f) Filing a Statement of Business Income and Expenses (Schedule C) for federal income tax purposes;

(g) A party to a written contract, the intent of which establishes the person to be an independent contractor;

(h) Paid a gross amount for the work without deductions for employment taxes (such as Federal Insurance Contributions Act, Federal Unemployment Tax Act, and similar state taxes).

(4) EMPLOYEES. The following conditions indicate that a person is an employee.

If the person:

(a) Receives compensation, which is fixed at a certain rate per day, week, month or year, or at a certain percentage of business obtained, payable in all events;

(b) Is employed to perform services in the affairs of another, subject to the other's control or right to control;

(c) Has no liability for the expenses of maintaining an office or other place of business, or any other overhead expenses or for compensation of employees;

(d) Has no liability for losses or indebtedness incurred in the conduct of the business;

(e) Is generally entitled to fringe benefits normally associated with an employer-employee relationship, e.g., paid vacation, sick leave, insurance, and pension benefits;

(f) Is treated as an employee for federal tax purposes;

(g) Is paid a net amount after deductions for employment taxes, such as those identified in subsection (3)(h) of this section.

(5) OPERATORS OF RENTED OR OWNED EQUIPMENT. Persons who furnish equipment on a rental or other basis for a charge and who also furnish the equipment operators, are engaging in business and are not employees of their customers. Likewise, persons who furnish materials and the labor necessary to install or apply the materials, or produce something from the materials, are presumed to be engaging in business and not to be employees of their customers.

(6) CASUAL LABORERS. Persons regularly performing odd job carpentry, painting or paperhanging, plumbing, bricklaying, electrical work, cleaning, yard work, etc., for the public generally are presumed to be engaging in business. The burden of proof is upon such persons to show otherwise. However, refer to WAC 458-20-101 and 458-20-104 for registration and reporting requirements for such activities.

(7) A corporation, joint venture, or any group of individuals acting as a unit, is not an employee.

WSR 89-13-044
EMERGENCY RULES
OFFICE OF MINORITY AND WOMEN'S BUSINESS ENTERPRISES
[Order 89-1—Filed June 15, 1989]

I, Milly La Palm, acting director of the Office of Minority and Women's Business Enterprises, do promulgate and adopt at 406 South Water, Olympia, WA 98504, the annexed rules relating to goals for 1989-90, WAC 326-30-03902.

I, Milly La Palm, find that an emergency exists and that this order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting the emergency is the goals for 1989–90 must be adopted by June 15, 1989, and distributed to state agencies and educational institutions prior to June 30, 1989, in accord with WAC 326–30–030.

These rules are therefore adopted as emergency rules to take effect upon filing with the code reviser.

This rule is promulgated pursuant to chapter 39.19 RCW and is intended to administratively implement that statute.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED June 15, 1989.

By Milly La Palm
Acting Director

NEW SECTION

WAC 326–30–03902 GOALS FOR 1989–90. The annual overall goals for each state agency and educational institution for each of the following classes of contracts for the period July 1, 1989 through June 30, 1990, should be:

Construction/Public Works	*10% MBE 6% WBE*
Architect/Engineering	*10% MBE 6% WBE*
Purchased Goods and Services	*8% MBE 4% WBE*
Other Consultants	*10% MBE 4% WBE*

These MWBE participation goals are based on the state agency's or educational institution's total contracts subject to this chapter within each of the above noted classes of contracts, less excluded contracts.

WSR 89-13-045
EMERGENCY RULES
OFFICE OF MINORITY AND WOMEN'S BUSINESS ENTERPRISES
[Order 89-2—Filed June 15, 1989]

I, Milly La Palm, acting director of the Office of Minority and Women's Business Enterprises, do promulgate and adopt at 406 South Water, Olympia, WA 98504, the annexed rules relating to procedure for setting overall annual goals, WAC 326–30–030.

I, Milly La Palm, find that an emergency exists and that this order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting the emergency is this amendment is being filed in conjunction with the 1989–90 goals. The new section [material] reflects a refinement of the goal setting process in response to evolving federal law.

These rules are therefore adopted as emergency rules to take effect upon filing with the code reviser.

This rule is promulgated pursuant to chapter 39.19 RCW and is intended to administratively implement that statute.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED June 15, 1989.

By Milly La Palm
Acting Director

AMENDATORY SECTION (Amending Order 83–7, filed 1/5/84)

WAC 326–30–030 PROCEDURE FOR SETTING OVERALL ANNUAL GOALS. The director of the office of minority and women's business enterprises will establish overall annual goals for participation in state contracts by qualified MBEs and WBEs for all state agencies and educational institutions. The annual period shall be the state fiscal year. The goals will be a percentage of the reporting base, all contracts awarded each year for public works, personal services, and for procurement of goods and services by state agencies and educational institutions that are not specifically excluded or generally excluded from the reporting base.

(1) Time for establishment of goals. The overall annual goals will be adopted each year by June 15.

(2) Distribution. The overall annual goals will be distributed to the head of each agency and educational institution on or before June 30 each year.

(3) Process used to establish goals. The director will review the overall annual goals each year and establish goals for the upcoming year. ((~~Factors to be considered in establishing the new goals shall include: The number of certified minority and women's businesses, the success in attaining goals over the last year, the population of women and minorities in the state,~~)) In establishing the new goals, the director shall consider the following categories of information, to the extent that such data is reasonably obtainable: (1) The number of certified minority and women's businesses available to perform work in each class of contract; (2) the success in attaining goals over the last year; (3) information regarding the percentage of available MBEs and WBEs as compared to the percentage of dollars awarded to MBEs and WBEs, per class of contract; (4) information indicating discrimination against MBEs and WBEs in each class of contract; (5) and such other relevant information as may be available.

WSR 89-13-046
EMERGENCY RULES
OFFICE OF MINORITY AND WOMEN'S BUSINESS ENTERPRISES
[Order 89-3—Filed June 15, 1989]

I, Milly La Palm, acting director of the Office of Minority and Women's Business Enterprises, do promulgate and adopt at 406 South Water, Olympia, WA 98504, the annexed rules relating to:

Amd WAC 326-02-030 Definitions.
New WAC 326-20-081 Intertwinement.

I, Milly La Palm, find that an emergency exists and that this order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting the emergency is WAC 326-02-030(29) is being amended and a new section WAC 326-20-081, is being added to clarify the "control" criteria used to establish certification eligibility. These changes are necessary to determine the eligibility of firms currently applying for certification in which control of the firm is an issue.

These rules are therefore adopted as emergency rules to take effect upon filing with the code reviser.

This rule is promulgated pursuant to chapter 39.19 RCW and is intended to administratively implement that statute.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED June 15, 1989.

By Milly La Palm
Acting Director

AMENDATORY SECTION (Amending Order 88-5, filed 5/31/88)

WAC 326-02-030 DEFINITIONS. Words and terms used in these rules shall have the same meaning as each has under chapter 120, Laws of 1983, unless otherwise specifically provided in these rules, or the context in which they are used clearly indicates that they be given some other meaning.

(1) "Advisory committee" means the advisory committee on minority and women's business enterprises.

(2) "Class of contract basis" means an entire group of contracts having a common characteristic. Examples include, but are not limited to, personal service contracts, public works contracts, leases, purchasing contracts, and contracts for specific types of goods and/or services.

(3) "Combination minority and women's business enterprise" means a business organized for profit, performing a commercially useful function, that is fifty percent owned and controlled by one or more minority men or MBEs certified by this office and fifty percent owned and controlled by one or more nonminority women or WBEs certified by this office. The owners must be United States citizens or lawful permanent residents.

(4) "Commercially useful function" means the performance of real and actual services in the discharge of any contractual endeavor.

(a) For purposes of certification, factors which may be considered in determining whether a business is or will be performing a commercially useful function include, but are not limited to, the following:

(i) Whether the business is or will be responsible for executing a distinct element of work in the performance of a contract; and

(ii) Whether principals or employees of the business actually perform, manage, and supervise the work for which the business is or will be responsible; and

(iii) Whether the business could be considered a "conduit," "front," or "pass-through" as defined in this section; and

(iv) Whether the minority and/or women owner(s) has the skill and expertise to perform the work for which the business is being, or has been certified.

(b) The manner in which a supplier does business will be examined by the office for purposes of certification and may be considered by state agencies and educational institutions in awarding a contract. Factors in addition to those in (a) of this subsection which indicate that a supplier is performing a commercially useful function include, but are not limited to, the following:

(i) It either assumes the actual and contractual responsibility for furnishing goods or materials and executes material changes in the configuration of those goods or materials; or

(ii) Is the manufacturer of those goods or materials; or

(iii) Before submitting the certification application, it has secured a contract or distributor agreement with a manufacturer to act as an authorized representative, and can pass on product warranties to the purchaser; and

(iv) Performs a distinct element of work in a manner that is consistent with common industry practice. Factors which may indicate that a firm is not performing a commercially useful function include, but are not limited to, the following:

(A) A minimum amount of inventory is not maintained;

(B) Billing and shipping arrangements are performed by nonowners or staff of nonowners;

(C) A significant amount of deliveries are shipped directly from the producer or manufacturer to the end user;

(D) The supplier does not take ownership of the product.

(5) "Contract" means a mutually binding legal relationship, including a lease, or any modification thereof, obligating the seller to furnish goods or services, including construction, and the buyer to pay for them.

(6) "Contract by contract basis" means a single contract within a specific class of contracts.

(7) "Contractor" means a party who enters into a contract to provide a state agency or educational institution with goods or services, including construction, or a subcontractor or sublessee of such a party.

(8) "Director" means the director of the office of minority and women's business enterprises.

(9) "Educational institutions" means the state universities, the regional universities, The Evergreen State College, and the community colleges.

(10) "Goals" means annual overall agency goals, expressed as a percentage of dollar volume for participation by minority and women-owned businesses, and shall not be construed as a minimum goal for any particular contract or for any particular geographical area. Goals shall be met on a contract by contract or class of contract basis. In meeting their goals on either a contract by contract or a class of contract basis state agencies and educational institutions should facilitate the entry of minority and women's business enterprises into types of businesses in which MBE's and WBE's are underrepresented.

(11) "Goods and/or services" means all goods and services, including professional services.

(12) "Joint venture" means a single enterprise partnership of two or more persons or businesses created to carry out a single business enterprise for profit for which purpose they combine their capital, efforts, skills, knowledge or property and in which they exercise control and share in profits and losses in proportion to their contribution to the enterprise.

(13) "Minority" means a person who is a citizen or lawful permanent resident of the United States and who is:

(a) Black: Having origins in any of the black racial groups of Africa;

(b) Hispanic: Of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(c) Asian American: Having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands; or

(d) American Indian or Alaskan Native: Having origins in any of the original peoples of North America.

Persons who are visibly identifiable as a minority need not provide documentation of their racial heritage but may be required to submit a photograph. Persons who are not visibly identifiable as a minority must provide documentation of their racial heritage which will be determined on a case-by-case basis. The final determination will be in the sole discretion of the office.

(14) "Minority business enterprise," "minority-owned business enterprise," or "MBE" means a business organized for profit, performing a commercially useful function, which is legitimately owned and controlled by one or more minority individuals or minority business enterprises certified by this office. The minority owners must be United States citizens or lawful permanent residents.

(15) "MWBE" means a minority-owned business enterprise, a women-owned business enterprise, and/or a combination minority and women's business enterprise certified by the office of minority and women's business enterprises of the state of Washington.

(16) "Office" means the office of minority and women's business enterprises of the state of Washington.

(17) "Procurement" means the purchase, lease, or rental of any goods or services.

(18) "Public works" means all work, including construction, highway and ferry construction, alteration((~~[s]~~)), repair, or improvement other than ordinary maintenance, which a state agency or educational institution is authorized or required by law to undertake.

(19) "State agency" includes the state of Washington and all agencies, departments, offices, divisions, boards, commissions, and correctional and other types of institutions. "State agency" does not include the judicial or legislative branches of government except to the extent that procurement or public works for these branches is performed by a state agency.

(20) "Women's business enterprise," "women-owned business enterprise," or "WBE" means a business organized for profit, performing a commercially useful function, which is legitimately owned and controlled by one or more women or women's business enterprises certified by this office. The women owners must be United States citizens or lawful permanent residents.

(21) "Common industry practices" mean those usages, customs, or practices which are ordinary, normal, or prevalent among businesses, trades, or industries of similar types engaged in similar work in similar situations in the community.

(22) "Conduit" means a WBE, MBE, or combination MWBE which agrees to be named as a subcontractor on a contract in which such WBE, MBE, or combination MWBE does not perform the work but, rather, the work is performed by the prime contractor, prime consultant, material supplier, purchasing contractor, or any other non-MWBE business.

(23) "Front" means a business which purports to be: (a) A WBE but is in fact owned or controlled by a man or men; (b) a MBE but is owned or controlled by a nonminority person or persons; or (c) a combination MWBE but is owned or controlled by a man or men or by a nonminority person or persons to a greater extent than is allowed by WAC 326-02-030(3).

(24) "Pass-through" means a business which buys goods from a non-WBE, non-MBE, or noncombination MWBE and simply resells those goods to the state, state contractors or other persons doing business with the state for the purpose of allowing those goods to be counted towards fulfillment of WBE or MBE goals.

(25) "Manufacturer" means a business which owns, operates, or maintains a factory or establishment that produces or creates goods from raw materials or substantially alters goods before reselling them.

(26) "Supplier" means a business which provides or furnishes goods or materials, performs a commercially useful function, and is not considered a conduit, front, or pass-through.

(27) "Switch business" means a business which was previously owned and controlled by a man, men or nonminorities, which has made technical changes to its business structure so that it is now purportedly owned and controlled by a woman or women or by a minority person or persons, but continues to operate in substantially the same manner as it did prior to the written revisions of the business structure.

(28) "Corporate-sponsored dealership" means a bona fide minority or women's business which meets the following standards in lieu of the fifty-one percent ownership criteria set out in subsections (14), (15), and (20) of

this section, and meets the following standards in lieu of the factors used to evaluate control in WAC 326-20-080.

(a) The minority or women owner(s) have entered into a written agreement, contract, or arrangement with a national or regional corporation and has been granted a license to offer, sell or distribute goods or services at wholesale or retail, leasing, or otherwise use the name, service mark, trademark, or related characteristics of the sponsoring corporation.

(b) The capital investment for the dealership or business is jointly contributed by the minority or women owner(s) and the sponsoring corporation.

(i) The original investment contributed by the minority or women owner(s) may be less than fifty-one percent, but must constitute at least twenty-five percent of the capitalization investment (total required equity capital) in the dealership corporation.

(ii) A specified time limit of not more than ten years must be established, binding between the minority or women owner(s) and the sponsoring corporation, within which the buy-out of the corporate sponsor's interest is complete.

(c) If the sponsoring corporation retains majority voting rights and control of the board of directors, then the minority or women owner(s) must annually apply at least fifty percent of the net profit and bonuses toward the buy-out of the corporate sponsors' interest within the buy-out time limit established with the corporation.

(d) The minority or women owner(s) must show active participation in the decision-making process on the board of directors of the dealership.

(e) The minority or women owner(s) must have operational control, and as such have day-to-day management control of the dealership, with responsibility for sales, service volume, and profits.

(f) The sponsoring corporation must have specifically developed a national or regional corporate sponsored dealership program to address the present-day issue of lack of opportunities for minorities or women in the dealership industry, which includes such features as: Capitalization assistance from the sponsoring corporation, on-going business operations training, technical assistance to the dealership owner, and a corporate sponsored minority and women's business program.

(g) The minority or women owner(s) must demonstrate that the relationship between the corporate sponsor and the minority or women's business was not formed for the primary purpose of achieving certification under chapter 39.19 RCW, or any similar provision of any ordinance, regulation, rule, or law.

(h) The minority or women owner(s) have prior business or management experience relating to the business being entered into as an owner.

(i) The minority or women owner(s) must be president of any corporation formed by the business.

(29) "Legitimately owned and controlled" for the purposes of determining whether a business is a minority business enterprise, a women's business enterprise, or a combination thereof, shall mean that women, minorities or a combination thereof shall possess:

((~~(1)~~)) (a) Ownership of at least fifty-one percent interest in the business, unless the minority and/or women's business qualifies as a corporate sponsored dealership under the provisions of WAC 326-02-030(28). The ownership shall be real and continuing, and shall go beyond the pro forma ownership of the business reflected in the ownership documents. The minority and/or women owner(s) shall enjoy the customary incidents of ownership and shall share in the risks and profits commensurate with their ownership interests, as demonstrated by an examination of the substance and the form of the arrangements; and

((~~(2)~~)) (b) Control over management, interest in capital, interest in profit or loss and contributions to capital, equipment and expertise on which the claim of minority and/or women-owned status under this chapter is based. The business must be independent and the minority and/or women owner(s) must possess and exercise the legal power to direct the management and policies of the business and to make the day-to-day as well as major decisions on matters of management, policy, finances, and overall operations. If the owners of the business who are not minorities and/or women are disproportionately responsible for the operation of the business, then the business is not controlled by minorities and/or women. The minority and/or women owner(s) must control and manage the day to day operations of the business. The requirements of this shall not apply, if the minority/women's business qualifies as a corporate sponsored dealership under the provisions of WAC 326-02-030(28).

NEW SECTION

WAC 326-20-081 INTERTWINEMENT. To be eligible for certification, a firm must be independent. Significant intertwinement with a noncertified firm may be grounds for denial or decertification of a firm. The Office will determine whether a firm is significantly intertwined with a noncertified firm by looking at factors which include, but are not limited to, the following: (1) shared ownership, (2) common directors or partners, (3) shared equipment, facilities, resources, or employees, (4) beneficial financial arrangements which indicate less than arms length transactions with a noncertified firm, (5) overdependency on a noncertified firm to obtain and perform work, (6) such an identity of interest exists between the firm seeking certification and a noncertified firm that an affiliation may be presumed, (7) the degree to which financial, equipment, leasing, business and other relationships with noncertified firms vary from normal industry practice.

WSR 89-13-047
PROPOSED RULES
DEPARTMENT OF AGRICULTURE
[Filed June 16, 1989]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Department of Agriculture intends to adopt, amend, or repeal rules concerning standards for apples marketed within Washington, chapter 16-403 WAC.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on June 28, 1989.

The authority under which these rules are proposed is chapter 15.17 RCW.

This notice is connected to and continues the matter in Notice No. WSR 89-09-011 filed with the code reviser's office on April 10, 1989.

Dated: June 16, 1989
By: J. Allen Stine
Assistant Director

WSR 89-13-048
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed June 16, 1989]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Department of Licensing intends to adopt, amend, or repeal rules concerning new section WAC 308-25-170;

that the agency will at 9:00 a.m., Thursday, July 27, 1989, in the Highways-Licenses Building, 12th and Franklin, Executive Conference Room, 4th Floor, Olympia, WA, conduct a public hearing on the proposed rules.

The adoption, amendment, or repeal of the rules will take place immediately following the hearing.

The authority under which these rules are proposed is RCW 18.29.076 and 18.130.050(12).

The specific statute these rules are intended to implement is RCW 18.29.050.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before July 27, 1989.

Dated: June 13, 1989
By: James R. Brusselback
Assistant Attorney General

STATEMENT OF PURPOSE

Name of Agency: Washington Department of Licensing.

Statutory Authority: RCW 18.29.076 and 18.130.050(12).

Summary of the Rules: To provide standards of dental hygiene conduct or practice.

Purpose and Reason Proposed: To identify minimum responsibilities of the registered dental hygienist in Washington in health care settings and as provided in the Dental Hygiene Practice Act and the Uniform Disciplinary Act. To provide consumers with information about quality care.

Responsible Departmental Personnel: In addition to the board, the following individuals have knowledge of and responsibility for drafting, implementing, enforcing and repealing these rules: John Swannack, Assistant Director, Professional Licensing Services, 1300 Quince Street Building, P.O. Box 9012, Olympia, Washington 98504, phone (206) 753-2241 or 234-2241 scan, and Carol Lewis, Assistant Program Manager, Professional Licensing Services, 1300 Quince Street Building, P.O. Box 9012, Olympia, Washington 98504, phone (206) 586-1867.

Proponents: The state of Washington Department of Licensing.

Small Business Economic Impact Statement: Not required for this statement since the proposed section has no economic impact beyond the statute.

NEW SECTION

WAC 308-25-170 STANDARDS OF DENTAL HYGIENE CONDUCT OR PRACTICE. The purpose of defining standards of dental hygiene conduct or practice is to identify minimum responsibilities of the registered dental hygienist licensed in Washington in health care settings and as provided in the Dental Hygiene Practice Act, chapter 18.29 RCW, and the Uniform Disciplinary Act, chapter 18-.130 RCW. The standards provide consumers with information about quality care and provides the director guidelines to evaluate safe and effective care. Upon entering the practice of dental hygiene, each individual assumes the responsibility, public trust, and a corresponding obligation to adhere to the standards of dental hygiene practice.

(1) Dental hygiene provision of care.

The dental hygienist shall:

(a) Accurately and systematically collect, permanently record, and update data on the general and oral health status of the client.

(b) Communicate collected data to the appropriate health care professional.

(c) Take into consideration the dental hygiene assessment, the client treatment goals, appropriate sequencing of procedures, and currently accepted scientific knowledge in developing a dental hygiene plan.

(i) The dental hygiene plan shall include preventative and therapeutic care to promote and maintain the clients' oral health.

(ii) Where appropriate, the dental hygiene plan shall be compatible with the treatment plan of other licensed health care professionals.

(d) Communicate the dental hygiene plan to the client and/or legal guardian.

The client and/or legal guardian or where appropriate other health care professionals are to be informed of the progress and results of dental hygiene care and clients' self-care.

(e) Continually re-evaluate client progress related to the attainment of their oral health goals. Implement additional dental hygiene treatment and client self-care as appropriate.

(2) Professional responsibilities.

The licensed dental hygienist shall have knowledge of the statutes and regulations governing dental hygiene practice and shall function within the legal scope of dental hygiene practice.

WSR 89-13-049
PROPOSED RULES
DEPARTMENT OF LICENSING
(Board of Registration for Architects)
[Filed June 16, 1989]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Washington State Board of Registration for Architects intends to adopt, amend, or repeal rules concerning:

Amd	WAC 308-12-025	Application for examination.
Amd	WAC 308-12-031	Registration examination.
Amd	WAC 308-12-050	Registration by reciprocity;

that the agency will at 9:30 a.m., Friday, July 28, 1989, in the Gull's Nest Meeting Room, Red Lion Inn at the Quay, 100 Columbia Street, Vancouver, WA 98660, conduct a public hearing on the proposed rules.

The adoption, amendment, or repeal of the rules will take place immediately following the hearing.

The authority under which these rules are proposed is RCW 18.08.340.

The specific statute these rules are intended to implement is RCW 18.08.350, 18.08.360 and 18.08.400.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before July 21, 1989.

Dated: June 8, 1989
By: Sydney W. Beckett
Executive Secretary

STATEMENT OF PURPOSE

Name of Agency: State of Washington Board of Registration for Architects.

Purpose and Summary of Rules: WAC 308-12-025 Application for examination is amended to add the information and guidance concerning the change from one annual national examination to four national examinations per year; WAC 308-12-031 Registration examination is amended to rescind the requirement for initial applicants for registration to begin the examination process with all nine divisions of the national examination in the month of June; and WAC 308-12-050 Registration by reciprocity is amended to change the requirement for reciprocity applicants to write a comparative analysis of the Washington architect law and rules against the respective base state of licensure to a requirement of writing only a summary analysis of the Washington architect law and rules.

Statutory Authority: Board regulatory authority is RCW 18.08.340; WAC 308-12-025 and 308-12-0931 implement RCW 18.08.350 and 18.08.360; and WAC 308-12-050 implements RCW 18.08.400.

Reasons Proposed: WAC 308-12-025 is proposed for amendment by the state of Washington Board of Registration for Architects to conform to the national examination process and afford new applicants for registration the opportunity to begin the examination process at anytime during the year upon establishing eligibility. The amendment provides information and procedures for submitting examination applications, sets forth the application cut-off dates for the four examinations, and provides information for reexamination application procedures; WAC 308-12-032 is proposed for amendment by the state of Washington Board of Registration for Architects to rescind the requirement for initial applicants for registration to begin the examination process with the annual June examination and the requirement to take all nine divisions of the national examination on the first examination. The rescission of this requirement allows initial applicants the opportunity to begin the examination process at anytime upon establishing registration eligibility; and WAC 308-12-050 is proposed for amendment by the state of Washington Board of Registration for Architects to change the requirement for out-of-state applicants for registration by means of reciprocity from another licensing jurisdiction from writing a comparative analysis of the Washington architect law and rules with that of the respective base state of licensure to a requirement to write only a summary analysis of the Washington architect law and rules. This change from a comparative analysis to a summary analysis aligns the application requirements for registration based upon reciprocity to that of the requirements for initial registration based upon examination.

Responsible Personnel: Personnel who have knowledge of and responsibility for drafting, implementing and enforcing these rules are the members of the architect board who include: Edward L. Cushman, Vaughn L. Lein, Larry N. Erickson, Roger L. Rue, George H. Nachtsheim, Norman J. Johnston and Linda L. McMonagle. In addition to the above listed members of the architect board, the following personnel of the Department of Licensing have responsibility for implementing and enforcing these rules: James D. Hanson, Program Administrator, Division of Professional Licensing Services, Department of Licensing, P.O. Box 9012, Olympia, Washington 98504, phone (206) 753-6967 and 234-6967 scan.

Proponents: The Washington State Board of Registration for Architects.

Small Business Economic Impact Statement: No required for the three amendments and has not been filed since these rules do not impact the operation or conduct of small business as that term is defined by RCW 43.31.920.

AMENDATORY SECTION (Amending Order PL 560, filed 10/17/85)

WAC 308-12-025 APPLICATION FOR EXAMINATION. (1) The application for examination must be submitted on forms ((~~provided~~)) approved by the board, accompanied by academic and/or practical experience verification ((~~in accordance with filing instructions to be considered ninety days prior to the next scheduled examination.~~

~~(2) Applications must be accompanied by an examination fee and an application fee as outlined in WAC 308-12-312.~~

~~(3) Notice of acceptance of application will be mailed to all applicants approximately six weeks in advance of the examination along with detailed information as to time, place and extent of examination.~~

~~(4) No application fee will be refunded because of withdrawal from the examination.~~)) to document eligibility under the provisions of RCW 18.08.350. Applications for admission to a scheduled examination must be submitted or postmarked not later than the following dates:

Examination Months/Divisions	Cut-off Dates
June - All Divisions	April 1
October - A, B(Written), D/F, E, G, H, I	September 10
December - B(Graphic), C	October 1
February - A, B(Written), D/F, E, G, H, I	December 10

(2) On subsequent attempts examinees may retake any divisions offered not passed on previous attempts. Applications for examination or re-examination must be accompanied by the application fee for examination or re-examination and the appropriate examination fee as established by the director and published in chapter 308-12 WAC, architect fees. For re-examination applicants, examination fees are listed by separate division.

(3) For the June and December examinations, notices of acceptance (examination admission letters) will be mailed to eligible applicants

approximately six weeks prior to the examination, along with detailed information as to times, place, and scheduled examination divisions.

(4) For the February and October computer-administered examinations, instruction packets will be mailed to eligible applicants approximately two weeks prior to the testing agency admission deadline.

(5) Application fees for examination and re-examination are administrative charges and will not be refunded. The examination fees (costs of each test) may be refunded if notice of cancellation is received by the department prior to ordering of examinations from the national testing service.

AMENDATORY SECTION (Amending Order PM 767, filed 8/22/88)

WAC 308-12-031 REGISTRATION EXAMINATION. The form of the examination required of applicants shall consist of a written and an oral examination. Where RCW 18.08.360 refers to the "entire examination," it means the written examination together with the oral examination. The written examination shall be administered at times and locations the board determines appropriate.

The board adopts the architectural registration examination and grading procedures prepared by the National Council of Architectural Registration Boards as the written portion of the examination. The written examination includes computerized versions.

(1) The director shall publish an information guide concerning examination content, locations, and schedules.

(2) To pass the written examination, an applicant must achieve a passing grade on each division.

(3) ((~~All nine divisions of the architects registration examination must be taken on the first attempt. On subsequent attempts, examinees may retake any divisions not passed on previous attempts.~~

~~(4)~~)) The oral examination is given upon the applicant's completion of the written examination.

The purpose of the oral examination is to test in those areas of knowledge and skill not covered in the written examination.

The oral part of the examination shall include a review of the applicant's practical experience, an understanding of the law and the responsibility to safeguard life, health, and property and to promote the public welfare.

The oral examination may be conducted by the full board or by an architect member of the board. The board may waive the full board examination if the examining board member deems the applicant prepared for registration. If such waiver is not granted or if the examining board member fails the applicant, the applicant must then appear for a full board oral examination.

The board may waive the entire oral examination based upon certification by the National Council of Architectural Registration Boards of successful completion of the intern development program. Applicants may submit the "Green Cover" IDP certificate in lieu of the exhibit checklist which is required for the oral examination. This waiver of oral examination does not affect the requirement to summarize the law and rules pertaining to architecture.

If an applicant does not receive a recommendation for registration, the board will advise the applicant of the areas of deficiency and schedule another oral examination.

The examinee will be required to retake the entire examination if all portions of the written and oral examination are not successfully completed as per RCW 18.08.360. The five-year period shall begin to run effective with the date on which the examinee first takes the examination. If the examinee does not successfully pass all portions of the written and oral examination, within five years from the date he or she first took the examination, he or she shall lose credit for all portions of the examination previously passed, and a new five-year period shall begin on the date on which the examinee begins to retake the examination.

AMENDATORY SECTION (Amending Order PM 720, filed 4/20/88)

WAC 308-12-050 REGISTRATION BY RECIPROCITY. Pursuant to RCW 18.08.400, the board will recommend to the director that the director grant a certificate of registration to a currently registered architect in another state or territory of the United States, the District of Columbia, or another country provided:

(1) That such applicant presents evidence that the applicant has satisfactorily completed a written examination equivalent to the examination required of Washington state registrants. Documentation of NCARB certification may be accepted by the board as satisfactory evidence that the applicant's qualifications and experience are equivalent to the qualifications and experience required of a person registered under RCW 18.08.350.

(2) That the applicant provides a ((~~written comparative~~)) typed summary analysis of ((~~Washington state law and the law of the applicant's base state, territory or country~~)) chapter 18.08 RCW and chapter 308-12 WAC. The summary must include an analysis of each section of chapter 18.08 RCW and chapter 308-12 WAC in sufficient detail to demonstrate a thorough understanding of the law and rules as determined by the board.

(3) That the board will require an oral ((~~examination~~)) interview of any candidate for registration by reciprocity, except that the oral ((~~examination~~)) interview may be waived in cases where documentary or other evidence shows sufficient information for the board to reach judgment.

(4) That the architect's base state license is not delinquent or inactive. The current base state license cannot be under suspension, disciplinary restrictions, or in process of disciplinary review. Reciprocity applicants are held to the same qualifications as initial applicants for registration.

WSR 89-13-050
PROPOSED RULES
LIQUOR CONTROL BOARD
[Filed June 19, 1989]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Washington State Liquor Control Board intends to adopt, amend, or repeal rules concerning Educational activities—No outside entertainment, WAC 314-12-175;

that the agency will at 9:30 a.m., Wednesday, June 28, 1989, in the Office of the Liquor Control Board, 5th Floor, Capital Plaza Building, 1025 East Union Avenue, Olympia, WA 98504-2531, conduct a public hearing on the proposed rules.

The adoption, amendment, or repeal of the rules will take place immediately following the hearing.

The authority under which these rules are proposed is RCW 66.08.030.

The specific statute these rules are intended to implement is RCW 66.28.010 and 66.28.150.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before June 28, 1989.

This notice is connected to and continues the matter in Notice No. WSR 89-11-033 filed with the code reviser's office on May 12, 1989.

Dated: June 19, 1989
By: Paula O'Connor
Chairman

WSR 89-13-051
PROPOSED RULES
DEPARTMENT OF LICENSING
(Board of Osteopathic Medicine and Surgery)
[Filed June 19, 1989]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Board of Osteopathic Medicine and Surgery intends to adopt, amend, or repeal rules concerning new sections WAC 308-138A-

070, 308-138A-080 and 308-138A-090; and amending WAC 308-138A-020;

that the agency will at 9:00 a.m., Friday, August 4, 1989, in the Airport Executel, 20717 Pacific Highway South, Seattle, WA 98188, conduct a public hearing on the proposed rules.

The adoption, amendment, or repeal of the rules will take place immediately following the hearing.

The authority under which these rules are proposed is RCW 18.57.005(2).

The specific statute these rules are intended to implement is RCW 18.57A.020.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before August 4, 1989.

Dated: June 16, 1989
By: James R. Silva
Assistant Attorney General

STATEMENT OF PURPOSE

Title and Number of Rule Section(s) and Chapter(s): WAC 308-138A-020 Osteopathic physicians' assistant; 308-138A-070 Osteopathic physicians' assistants registration; 308-138A-080 Osteopathic physicians' assistants utilization; and 308-138A-090 Osteopathic physicians' assistants reregistration.

Statutory Authority and Specific Statute that the Rule(s) are Intended to Implement: WAC 308-138A-020, 308-138A-070, 308-138A-080 and 308-138A-090 are proposed under authority of RCW 18.57.005(2) and 18.57A.020 and are intended to implement RCW 18.57A.020.

Summary of Rule(s) and Reasons Supporting the Rule(s): WAC 308-138A-020 provides for a process of reapproval, and deletes portions of WAC 308-138A-020 covered by new WAC 308-138A-080; WAC 308-138A-070 sets forth the procedure, by which an osteopathic physician's assistant applies to the board, and authorizes the board to place restrictions on the assistant's tasks; WAC 308-138A-080 sets forth the limitations of utilization for osteopathic physician's assistants; and WAC 308-138A-090 sets forth the procedure for the registration of osteopathic physician's assistants.

Agency Personnel Responsible for Drafting, Implementation and Enforcement of the Rule: Arlene Robertson, Program Manager, Professional Licensing Services, P.O. Box 9012, 1300 Quince Street, Olympia, WA 98502, 321-8438 scan, 586-8438 comm.

Name of Person or Organization that is Proposing These Rules: Washington State Board of Osteopathic Medicine and Surgery.

Agency Comments Regarding Proposed Rule(s): None.

These rules are not necessary to comply with a federal law or state court decision.

Small Business Economic Impact Statement: Not required for these rules. The board has reviewed the impact that these rules would have on osteopathic physicians and osteopathic physicians' assistants. The board finds that a statement is not required. Osteopathic physicians and osteopathic physicians' assistants are classified in SIC Code 803 offices of Osteopathic physicians. These rules do not have an economic impact on the industry.

AMENDATORY SECTION (Amending Order 745, filed 7/6/88)

WAC 308-138A-020 OSTEOPATHIC PHYSICIANS' ASSISTANTS PROGRAM APPROVAL. (1) Program approval required. No osteopathic physician shall be entitled to register an osteopathic physicians' assistant who has not successfully completed a program of training approved by the Board in accordance with these rules.

(2) Program approval procedures. In order for a program for training osteopathic physicians' assistants to be considered for approval by the board it must meet the minimal criteria for such programs established by the committee on allied health education and Accreditation Association of the American Medical Association as of 1985. The director of the program shall submit to the board a description of the course of training offered, including subjects taught and methods of teaching, entrance requirements, clinical experience provided, etc. The director shall also advise the board concerning the basic medical skills which are attained in such course, and the method by which the proficiency of the students in those skills was tested or ascertained. The board may require such additional information from program sponsors as it desires.

(3) Approved programs. The board shall approve programs in terms of skills attained by its graduates. A registry of approved programs shall be maintained by the board at the division of professional licensing in Olympia, Washington, which shall be available upon request to interested persons.

(4) Reapproval. Programs maintaining standards as defined in the "essentials" of the council of medical education of the American Medical Association will continue to be approved by the board without further review. Each approved program not maintaining the standards as defined in the "essentials" of the council of medical education of the American Medical Association will be reexamined at intervals, not to exceed three years. Approval will be continued or withdrawn following each reexamination.

(5) Additional skills. No osteopathic physician's assistant shall be registered to perform skills not contained in the program approved by the board unless the osteopathic physician's assistant submits with his or her application a certificate by the program director or other acceptable evidence showing that he or she was trained in the additional skill for which authorization is requested, and the board is satisfied that the applicant has the additional skill and has been properly and adequately tested thereon.

~~(((5) Applications. All applications shall be made to the board on forms supplied by the board. All applications shall be submitted at least thirty days prior to the meeting of the board in which consideration is desired. Applications shall be made jointly by the physician and assistant.~~

~~(6) Authorization by board, powers. In granting authorizations for the utilization of the osteopathic physician's assistant, the board may limit the authority for utilizing an osteopathic physician's assistant to a specific task or tasks, or may grant specific approval in conformity with the program approved and on file with the board.~~

~~(7) Limitations, number. No osteopathic physician shall supervise more than one osteopathic physician's assistant.~~

~~(8) Limitations—Geographic limitations. No osteopathic physician's assistant shall ordinarily be utilized in a place other than the supervising osteopathic physician's regular place for meeting patients, unless personally accompanied by the supervising osteopathic physician. The "regular place for meeting patients" shall be defined to include the physician's office, the institution(s) in which his or her patients are hospitalized or confined, or the homes of patients for whom a physician-patient relationship has already been established.~~

~~(9) Limitations—Remote practice. Special permission may be granted to utilize an osteopathic physician assistant in a place remote from the physician's regular place for meeting patients if:~~

~~(a) There is a demonstrated need for such utilization;~~

~~(b) Adequate provision for immediate communication between the physician and his physician assistant exists;~~

~~(c) A mechanism has been developed to provide for the establishment of a direct patient-physician relationship between the supervising osteopathic physician and patients who may be seen initially by the osteopathic physician assistant;~~

~~(d) The responsible physician spends at least one-half day per week in the remote office.~~

~~(10) Limitations, hospital functions. An osteopathic physician assistant working in or for a hospital, clinic or other health organization shall be registered in the same manner as any other osteopathic physician assistant and his/her functions shall be limited to those specifically approved by the board. His/her responsibilities, if any, to other physicians must be defined in the application for registration.~~

~~(11) Limitations, trainees. An individual enrolled in a training program for physician assistants may function only in direct association with his/her preceptorship physician or a delegated alternate physician in the immediate clinical setting or, as in the case of specialized training in a specific area, an alternate preceptor approved by the program. They may not function in a remote location or in the absence of the preceptor.~~

~~(12) Supervising osteopathic physician, responsibility. It shall be the responsibility of the supervising osteopathic physician to see to it that:~~

~~(a) Any osteopathic physician's assistant employed by him or her at all times when meeting or treating patient(s) wears a placard or other identifying plate in a prominent place upon his or her person identifying him or her as a physician's assistant;~~

~~(b) No osteopathic physician's assistant in his employ represents himself or herself in any manner which would tend to mislead anyone that he or she is a physician;~~

~~(c) That the osteopathic physician's assistant in his or her employ performs only those tasks which he or she is authorized to perform under the authorization granted by the board;~~

~~(d) All EKG's and x-rays and all abnormal laboratory tests shall be reviewed by the physician within twenty-four hours;~~

~~(e) The charts of all patients seen by the physician's assistant shall be reviewed and countersigned by the supervising physician within one week;~~

~~(f) All telephone advice given by the supervising physician through the physician's assistant shall be documented, reviewed, and countersigned by the physician within one week.~~

~~(13) Alternate physician, supervisor—Approved by board. In the temporary absence of the supervising osteopathic physician, the osteopathic physician assistant may carry out those tasks for which he is registered, if the supervisory and review mechanisms are provided by a delegated alternate osteopathic physician supervisor. If an alternate osteopathic physician is not available in the community, the board may authorize a physician licensed under chapter 18.71 RCW to act as the alternate physician supervisor.~~

~~(14) Reregistration. The annual reregistration fee shall be paid by the first day of July of each year by the supervising osteopathic physician. Any failure to reregister and pay the annual registration fee shall render the registration invalid but registration may be reinstated by payment of a penalty fee together with all delinquent annual registration fees.~~))

NEW SECTION

WAC 308-138A-070 OSTEOPATHIC PHYSICIANS' ASSISTANTS REGISTRATION. (1) Applications. All applications shall be made to the board on forms supplied by the board. All applications shall be submitted at least thirty days prior to the meeting of the board in which consideration is desired. Applications shall be made jointly by the physician and assistant.

(2) Authorization by board, powers. In granting authorizations for the utilization of the osteopathic physician's assistant, the board may limit the authority for utilizing an osteopathic physician's assistant to a specific task or tasks, or may grant specific approval in conformity with the program approved and on file with the board.

NEW SECTION

WAC 308-138A-080 OSTEOPATHIC PHYSICIANS' ASSISTANTS UTILIZATION. (1) Limitations, number. No osteopathic physician shall supervise more than one osteopathic physician's assistant without specific authorization by the board. The board shall consider the individual qualifications and experience of the physician and physician assistant, community need, and review mechanisms available in making their determination.

(2) Limitations—Geographic limitations. No osteopathic physician's assistant shall ordinarily be utilized in a place other than the supervising osteopathic physician's regular place for meeting patients, unless personally accompanied by the supervising osteopathic physician. The "regular place for meeting patients" shall be defined to include the physician's office, the institution(s) in which his or her patients are hospitalized or confined, or the homes of patients for whom a physician-patient relationship has already been established.

(3) Limitations—Remote practice. Special permission may be granted to utilize an osteopathic physician assistant in a place remote from the physician's regular place for meeting patients if:

(a) There is a demonstrated need for such utilization;

(b) Adequate provision for immediate communication between the physician and his physician assistant exists;

(c) A mechanism has been developed to provide for the establishment of a direct patient-physician relationship between the supervising osteopathic physician and patients who may be seen initially by the osteopathic physician assistant;

(d) The responsible physician spends at least one-half day per week in the remote office.

(4) Limitations, hospital functions. An osteopathic physician assistant working in or for a hospital, clinic or other health organization shall be registered in the same manner as any other osteopathic physician assistant and his/her functions shall be limited to those specifically approved by the board. His/her responsibilities, if any, to other physicians must be defined in the application for registration.

(5) Limitations, trainees. An individual enrolled in a training program for physician assistants may function only in direct association with his/her preceptorship physician or a delegated alternate physician in the immediate clinical setting or, as in the case of specialized training in a specific area, an alternate preceptor approved by the program. They may not function in a remote location or in the absence of the preceptor.

(6) Supervising osteopathic physician, responsibility. It shall be the responsibility of the supervising osteopathic physician to see to it that:

(a) Any osteopathic physician's assistant employed by him or her at all times when meeting or treating patient(s) wears a placard or other identifying plate in a prominent place upon his or her person identifying him or her as a physician's assistant;

(b) No osteopathic physician's assistant in his employ represents himself or herself in any manner which would tend to mislead anyone that he or she is a physician;

(c) That the osteopathic physician's assistant in his or her employ performs only those tasks which he or she is authorized to perform under the authorization granted by the board;

(d) All EKG's and x-rays and all abnormal laboratory tests shall be reviewed by the physician within twenty-four hours;

(e) The charts of all patients seen by the physician's assistant shall be reviewed and countersigned by the supervising physician within one week;

(f) All telephone advice given by the supervising physician through the physician's assistant shall be documented, reviewed, and countersigned by the physician within one week.

(7) Alternate physician, supervisor—Approved by board. In the temporary absence of the supervising osteopathic physician, the osteopathic physician assistant may carry out those tasks for which he is registered, if the supervisory and review mechanisms are provided by a delegated alternate osteopathic physician supervisor. If an alternate osteopathic physician is not available in the community, the board may authorize a physician licensed under chapter 18.71 RCW to act as the alternate physician supervisor.

NEW SECTION

WAC 308-138A-090 OSTEOPATHIC PHYSICIANS' ASSISTANTS REREGISTRATION. Reregistration. The annual reregistration fee shall be paid by the first day of July of each year by the supervising osteopathic physician. Any failure to reregister and pay the annual registration fee shall render the registration invalid but registration may be reinstated by payment of a penalty fee together with all delinquent annual registration fees.

WSR 89-13-052
ADOPTED RULES
DEPARTMENT OF LICENSING
(Board of Dental Examiners)
[Order PM 834—Filed June 19, 1989]

Be it resolved by the Board of Dental Examiners, acting at the University of Washington, Health Sciences

Building, School of Dentistry, Room D209, Seattle, WA 98195, that it does adopt the annexed rules relating to:

Amd WAC 308-40-105 Examination review procedures.
New WAC 308-40-106 Written review procedures.

This action is taken pursuant to Notice No. WSR 89-10-072 filed with the code reviser on May 3, 1989. These rules shall take effect thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2).

This rule is promulgated under the general rule-making authority of the Washington State Board of Dental Examiners as authorized in RCW 18.32.040 and 18.32.120.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW), and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED June 14, 1989.

By Steven P. Marinkovich, D.D.S.
Chairman

AMENDATORY SECTION (Amending Order PM 740, filed 6/22/88)

WAC 308-40-105 PRACTICAL EXAMINATION REVIEW PROCEDURES. (~~((1) Each individual who takes the examination for licensure as a dentist and does not pass the examination will be provided, upon written request, information indicating the areas of the examination in which his or her performance was deficient.~~

~~(2) Any unsuccessful applicant, after being advised by the board of the areas of deficiency in the examination, may request review by the board of his or her examination results. This request must be in writing and must be received by the board within thirty days of notification of the examination results. The request must state the reason or reasons why the applicant feels the results of the examination should be changed. The board will consider the following to be adequate reasons for consideration for review and possible modification of examination results:~~

~~(a) A showing of a significant procedural error in the examination process;~~

~~(b) Evidence of bias, prejudice or discrimination in the examination process;~~

~~(c) Other significant errors which result in substantial disadvantage to the applicant.~~

~~(3) Any applicant who is not satisfied with the result of the examination review may appeal the board's decision and may request a formal hearing to be held before the board pursuant to the Administrative Procedure Act. Such hearing must be requested within twenty days of receipt of the result of the board's review of the examination results.~~)) (1) Any candidate who takes the practical examination for licensure as a dentist and does not pass may request informal review by the examining board of his or her examination results. This request must be in writing and must be received by the department within twenty days of the postmark of notification of the examination results. The examining board will not set aside its prior determination unless the candidate shows, by a preponderance of evidence, significant error in examination procedure, or bias, prejudice, or discrimination in the examination process.

(2) The procedure for filing an informal review is as follows:

(a) Contact the department of licensing office in Olympia to request that copies of the score sheets on the failed practical portion of the examination be provided.

(b) The candidate will be provided a form to complete in defense of examination performance. Such form must be returned to the department within fifteen days.

(c) The candidate must specifically identify the challenged portion(s) of the examination and must state the specific reason or reasons why the candidate feels the results of the examination should be changed.

(d) The candidate will be identified only by candidate number for the purpose of this review. Letters of reference, requests for special consideration, or reexamination of the patient will not be considered by the examining board.

(e) The examining board will schedule a closed session meeting to review the examination, score sheets, and form completed by the candidate for the purpose of informal review.

(f) The candidate will be notified in writing of the results.

(3) Any candidate who is not satisfied with the result of the informal examination review may submit a written request for a formal hearing to be held before the examining board, pursuant to the Administrative Procedure Act. Such written request for hearing must be received by the department of licensing within twenty days of the postmark of the notification of the results of the board's informal review of the examination results. The written request must specifically identify the challenged portion(s) of the examination and must state the specific reason(s) why the candidate feels the results of the examination should be changed. The examining board will not set aside its prior determination unless the candidate shows, by a preponderance of evidence, significant error in examination procedure, or bias, prejudice, or discrimination in the examination process.

(4) Before the hearing is scheduled the parties shall attempt by informal means to resolve the following:

(a) The simplification of issues;

(b) Amendments to the candidate's notice identifying the challenged portion(s) of the examination and the statement of the specific reason(s) why the candidate feels the results of the examination should be changed;

(c) The possibility of obtaining stipulations, admission of facts, and documents;

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

(e) A schedule for completion of all discovery; and

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

If the parties are unable to resolve any of these issues informally, either party shall request a prehearing conference to be held before an administrative law judge or a board member, as decided by the board.

(5) In the event there is a prehearing conference, the administrative law judge or board member shall enter an order which sets forth the actions taken at the conference, the amendments allowed to the pleading, and the agreements made by the parties of their qualified representatives as to any of the matters considered, including the settlement or simplification of issues. The prehearing order limits the issues for hearing to those not disposed of by admissions or agreements. Such order shall control the subsequent course of the proceeding unless modified for good cause by subsequent prehearing order.

(6) Candidates will receive at least twenty days notice of the time and place of the formal hearing. The hearing will be restricted to the specific portion(s) of the examination the candidate has identified as the basis for his or her challenge of the examination results unless amended by a prehearing order. The board will not consider reexamination of the patient. The issues raised by the candidate at the formal hearing shall be limited to those issues raised by the candidate for consideration at the informal review unless amended by a prehearing order.

NEW SECTION

WAC 308-40-106 WRITTEN EXAMINATION REVIEW PROCEDURES. (1) Any candidate who takes the written examination phase of the dental examination and does not pass may request informal review by the examining board of his or her examination results. This request must be in writing and must be received by the department within twenty (20) days of the postmark of notification of the examination results. The examining board will not set aside its prior determination unless the candidate shows, by a preponderance of evidence, significant error in examination content or procedure, or bias, prejudice, or discrimination in the examination process.

(2) The procedure for filing an informal review is as follows:

(a) The Department of Licensing office will schedule in Olympia an appointment to appear personally to review the score sheets on the failed written portion of the examination.

(b) The candidate will be provided a form to complete in the Department of Licensing office in Olympia in defense of examination performance.

(c) The candidate must specifically identify the challenged portion(s) of the examination and must state the specific reason or reasons why the candidate feels the results of the examination should be changed.

(d) The candidate will be identified only by candidate number for the purpose of this review. Letters of reference or requests for special consideration will not be read or considered by the examining board.

(e) The candidate may not bring in notes, texts, or other individuals except for an attorney, for use while completing the informal review form.

(f) The candidate will not be allowed to take any notes or materials from the office upon leaving.

(g) The examining board will schedule a closed session meeting to review the examination, score sheets and form completed by the candidate for the purpose of informal review.

(h) The candidate will be notified in writing of the results.

(3) Any candidate who is not satisfied with the result of the informal examination review may submit a written request for a formal hearing to be held before the examining board, pursuant to the administrative procedure act. Such written request for hearing must be received by the Department of Licensing within twenty (20) days of the postmark of the notification of the results of the board's informal review of the examination results. The written request must specifically identify the challenged portion(s) of the examination and must state the specific reason(s) why the candidate feels the results of the examination should be changed. The examining board will not set aside its prior determination unless the candidate shows, by a preponderance of evidence, significant error in examination content or procedure, or bias, prejudice, or discrimination in the examination process.

(4) Before the hearing is scheduled the parties shall attempt by informal means to resolve the following:

(a) The simplification of issues;

(b) Amendments to the candidate's notice identifying the challenged portion(s) of the examination and the statement of the specific reason(s) why the candidate feels the results of the examination should be changed;

(c) The possibility of obtaining stipulations, admission of facts and documents;

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

(e) A schedule for completion of all discovery; and,

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

If the parties are unable to resolve any of these issues informally, either party shall request a prehearing conference to be held before an administrative law judge or a board member, as decided by the board.

(5) In the event there is a prehearing conference, the administrative law judge or board member shall enter an order which sets forth the actions taken at the conference, the amendments allowed to the pleading and the agreements made by the parties of their qualified representatives as to any of the matters considered, including the settlement or simplification of issues. The prehearing order limits the issues for hearing to those not disposed of by admissions or agreements. Such order shall control the subsequent course of the proceeding unless modified for good cause by subsequent prehearing order.

(6) Candidates will receive at least twenty (20) days notice of the time and place of the formal hearing. The hearing will be restricted to the specific portion(s) of the examination the candidate has identified as the basis for his or her challenge of the examination results unless amended by a prehearing order. The issues raised by the candidate at the formal hearing shall be limited to those issues raised by the candidate for consideration at the informal review unless amended by a prehearing order.

WSR 89-13-053
NOTICE OF PUBLIC MEETINGS
DEPARTMENT OF NATURAL RESOURCES
(Land and Water Conservation)
[Memorandum—June 16, 1989]

WOODARD BAY NATURAL RESOURCES CONSERVATION AREA ADVISORY COMMITTEE MEETINGS

DATES: July 6, 1989
August 3, 1989
September 7, 1989
October 5, 1989
November 2, 1989
December 7, 1989

TIME: 6:00 p.m.

LOCATION: The Olympia Center
222 North Columbia
Olympia, WA

PURPOSE: The Woodard Bay Advisory Committee is working on a management plan recommendation for the Woodard Bay Natural Resources Conservation Area. All meetings are open to the public.

Direct comments and questions to the Department of Natural Resources, Land and Water Conservation, Mailstop EG-11, Olympia, WA 98504.

WSR 89-13-054
NOTICE OF PUBLIC MEETINGS
DEPARTMENT OF NATURAL RESOURCES
(Board of Natural Resources)
[Memorandum—June 16, 1989]

NOTICE OF CHANGE OF REGULARLY SCHEDULED MEETING

The Board of Natural Resources meeting regularly scheduled for Tuesday, July 4, 1989, has been rescheduled to be held Wednesday, July 5, 1989, at 9:00 a.m. in House Hearing Room A, House Office Building, Olympia, Washington.

WSR 89-13-055
EXECUTIVE ORDER
OFFICE OF THE GOVERNOR
[EO 89-04]

ESTABLISHING THE GOVERNOR'S TASK FORCE ON COMMUNITY PROTECTION

Within the past year, several strikingly brutal crimes have occurred in Washington State. The safety of people in our communities is being jeopardized by a number of individuals who engage in predatory, violent behavior, often accompanied by sexual assault.

A prompt and thorough review of the criminal justice system and the civil involuntary mental commitment process is necessary to explore additional methods of confining these individuals and protecting the public.

NOW, THEREFORE, I, Booth Gardner, Governor of the State of Washington, by virtue of the power vested in me, do hereby establish the Governor's Task Force on Community Protection, as follows:

A. The Task Force shall be composed on not more than 25 members, to be appointed by the Governor. The Governor shall appoint the Chair and membership, except the four legislators designated. The membership shall include persons with expertise on this issue and the operation of the criminal justice system and/or the mental health civil involuntary commitment procedures, plus citizen members.

B. Four Legislators, two selected by the Senate and two selected by the House, shall serve as Task Force members.

C. The Task Force shall have the following responsibilities:

1. Review the current criminal justice system and the mental health civil involuntary commitment process to measure their effectiveness in confining persons who are not safe to be at large in the community.
2. Assess the relationship between these criminal and mental health systems to identify the shortcomings.
3. Research the feasibility of creating a specialized, secure facility for certain categories of people who represent the most risk to society.
4. Consider research and approaches to enhancing our ability to accurately predict future behavior of individuals who have committed or who have threatened to commit violent criminal acts and establish legal criteria for confining them.

D. The Task Force shall submit a report containing recommendations for legislation, combining its review with the study of the need for a forensic hospital for mentally ill offenders mandated by Engrossed Substitute House Bill 1051, Chapter 420, Laws of 1989.

E. The Task Force shall complete its responsibilities prior to December 1, 1989, and will automatically be disbanded on that date.

F. This Executive Order is effective immediately.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the state of Washington to be affixed at Olympia this 15th day of June, A.D., nineteen hundred and eighty-nine.

Booth Gardner

Governor of Washington

BY THE GOVERNOR:

Ralph Munro

Secretary of State

WSR 89-13-056
COLUMBIA RIVER GORGE COMMISSION
[Filed June 19, 1989]

Reviser's note: The following material has **not** been adopted under the Administrative Procedure Act, chapter 34.04 RCW, but has been filed in the office of the code reviser and is published in the Register exactly as filed.

I hereby certify that the copy shown below is a true, full and correct copy of permanent rule(s) adopted on June 13, 1989, by the Columbia River Gorge Commission to become effective upon filing.

The within matter having come before the Columbia River Gorge Commission after all procedures having been in the required form and conducted in accordance with applicable statutes and rules and being fully advised in the premises.

Notice of Intended Action in Code Revisers Register: Yes.

Now therefore, it is hereby ordered that the following action be taken: Adopted 350-20-002; and amended: 340-20-002(2), 350-20-004(c), 350-20-009(5) and 350-20-019 as administrative rules of the Columbia River Gorge Commission.

Dated this 16th day of June, 1989.

By: Richard Benner
Title: Executive Director

Statutory Authority: Chapter 499, Laws of 1987.

For Further Information Contact: Richard P. Benner, Executive Director, (509) 493-3323.

RULES FOR AMENDMENT AND ADOPTION

350-20-002. Definitions.

For the purposes of this division, the following definitions shall apply, unless context requires otherwise:

. . .

(2) "Commission" means the Columbia River Gorge Commission as authorized by ORS 390.500 to 390.515, Chapter 14, Oregon Laws 1987 and RCW 43.97.015 to 43.97.035, Chapter 499, Washington Laws 1987.

350-20-004. Review Standards and Guidelines.

(c) The guidelines for existing uses shall be revised as follows: "When a structure is destroyed or partially destroyed, it will be considered an existing use when replace in kind and in the same location within one year. The exterior color and reflectivity of replacement structures must be consistent with the scenic guidelines in Chapter III. Replacement of a structure or use that differs in size or location from the original shall be subject to a consistency determination. Replacement of a mobile home in a special management area with a modular or site-built home, to be use in the same manner and for the same purposes, shall be considered the continuation of an existing use except that it shall be subject to review for consistency with the guidelines on scenic resources in section B(1).

Reviser's note: The typographical error in the above material appeared in the original copy of the Columbia River Gorge Commission and appears herein pursuant to the requirements of RCW 34.08.040.

350-20-009. Notice of Development Review.

. . .

(5) For all development, notice shall be published in a newspaper of general circulation [within the county in which an action is proposed] nearest to the site of the proposed action.

Reviser's note: The brackets and enclosed material in the text of the above material occurred in the copy filed by the Columbia River Gorge Commission and appear herein pursuant to the requirements of RCW 34.08.040.

350-20-019. Resubmission of Disapproved Application.

If a proposed action is disapproved by the Director, and the Commission does not approve the development on appeal, no new application for the same or substantially similar action shall be filed for at least twelve (12) months from final Commission action on the application.

WSR 89-13-057
PROPOSED RULES
GAMBLING COMMISSION
[Filed June 20, 1989]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Washington State Gambling Commission intends to adopt, amend, or repeal rules concerning the amending of WAC 230-12-020, 230-20-246, 230-20-699 and 230-30-070;

that the agency will at 10:00 a.m., Friday, August 11, 1989, in the Campbells Lodge, Chelen, Washington, conduct a public hearing on the proposed rules.

The adoption, amendment, or repeal of the rules will take place immediately following the hearing.

The authority under which these rules are proposed is RCW 9.46.070 (11) and (14).

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before August 11, 1989.

Dated: June 20, 1989
By: Frank L. Miller
Deputy Director

STATEMENT OF PURPOSE

Title: WAC 230-12-020 Gambling receipts deposit required by all bona fide charitable and nonprofit organizations—Exemptions; 230-20-246 Manner of conducting bingo; 230-20-699 Special amusement game license; and 230-30-070 Control of prizes.

Description of Purpose: WAC 230-12-020, 230-20-246 and 230-30-070, allows limited participation during a test period to determine feasibility of utilizing an alternative prize control system; and WAC 230-20-699, continuance of test period through December 31, 1989.

Statutory Authority: RCW 9.46.070 (11) and (14).

Summary of Proposed Rules and Reasons Supporting Action: WAC 230-12-020 creates an additional audit trail for licensees participating in a limited test for a new record keeping program; WAC 230-20-246 implements a test to determine the feasibility of utilizing an alternative receipting system for bingo prizes. The test is limited to 100 licensees; WAC 230-20-699 sets out a test for special amusement games. This amendment would authorize the test through the end of 1989; and WAC 230-30-070 implements a test to determine the feasibility of utilizing an alternative system of prize recording for punchboards and pull tabs. The test is limited to 100 licensee.

Agency Personnel Responsible for Drafting, Implementing, and Enforcing the Rules: Ronald O. Bailey, Director and Frank L. Miller, Deputy Director, 4511 Woodview Drive, S.E., Lacey, WA 98504-8121, 585-7640 scan, 438-7640 comm.

Proponents and Opponents: Gambling Commission staff proposes these rule amendments.

Agency Comments: The agency believes the proposed amendments are self-explanatory and need no further comment.

These amendments were not made necessary as a result of federal law or federal or state court action.

Small Business Economic Impact Statement: This agency has determined there may be an economic impact upon a certain number of licensees administered by this agency by the adoption of these amendments.

AMENDATORY SECTION (Amending Order 190, filed 4/18/89, effective 7/1/89)

WAC 230-12-020 GAMBLING RECEIPTS DEPOSIT REQUIRED BY ALL BONA FIDE CHARITABLE AND NONPROFIT ORGANIZATIONS—EXEMPTIONS. (1) Every licensed bona fide charitable or nonprofit organization shall keep a separate gambling receipts' account in a recognized Washington state depository authorized to receive funds, which shall be kept separate and apart and actually segregated from the licensee's general funds: Provided, That if such activities are conducted on the United States' portion of the Point Roberts Peninsula, Washington, the deposit may be made in a British Columbia branch of a Canadian bank. Licensees are not limited to a single gambling receipts account as long as a minimum of one separate account is maintained. The following conditions of deposit will be met:

(a) No expenditures other than for prizes shall be made from the receipts of any licensed gambling activity until such receipts have first been deposited in the gambling receipts account: Provided, That bingo receipts may be withheld from deposits for jar, pig, or other similar special game prizes if:

(i) The total of all such prize funds does not accumulate to exceed $200.00;

(ii) The amount withheld each session is entered in the bingo daily record; and

(iii) A reconciliation of the special game fund is made of the bingo daily record;

(b) All net gambling receipts from the operation of bingo which are being held pending disbursement shall be deposited in the licensee's gambling receipts account not later than the second banking day following receipt thereof;

(c) All net gambling receipts from the operation of card rooms, punchboards, pull tabs, raffles (Class E and above), and amusement games (Class D and above) shall be deposited in the licensees gambling receipts account at least once each week Provided, that licensees participating in the test of alternative records for winners, allowed in WAC 230-30-070, shall be required to deposit intact, no later than three banking days after removal from play, the net gambling receipts of each punchboard and pull tab series. The Washington state identification number assigned to the punchboard or pull tab series and the amount of net gambling receipts shall be recorded on the deposit receipt. Deposit receipts shall be available for inspection by commission representatives; and

(d) All deposits from bingo net gambling receipts, made to the gambling receipts account, shall be made separately from all other deposits, and the validated deposit receipt shall be kept as a part of the daily records as required by WAC 230-08-080.

(2) Bona fide charitable or nonprofit organizations that conduct only one or more of the following activities and do not possess any other licenses issued by the gambling commission are exempt from this rule:

(a) Raffles under the provisions of RCW 9.46.0315;

(b) Bingo, raffles, or amusement games under the provisions of RCW 9.46.0321;

(c) Class A, B, or C bingo game;

(d) Class A, B, C, or D raffle; or

(e) Class A, B or C amusement game.

(3) Bona fide charitable or nonprofit organizations who conduct only fund raising events or membership raffles and have no other gambling licenses are exempt from having a separate gambling receipts account, but must meet the following conditions of deposit:

(a) No expenditures other than for prizes shall be made until such receipts have first been deposited in the licensee's bank account;

(b) All net gambling receipts shall be deposited within two banking days following receipt thereof; and

(c) The validated deposit receipt shall be kept with the licensee's gambling records.

AMENDATORY SECTION (Amending Order 157, filed 4/11/86)

WAC 230-20-246 MANNER OF CONDUCTING BINGO. The conducting of a bingo game shall include, but is not limited to the following rules:

(1) All sales of bingo cards shall take place upon the premises during or immediately preceding the session for which the card is being sold;

(2) Bingo cards shall normally be sold and paid for prior to the start of a specified game or specified number of games. Cards may be sold after the start of a game or number of games if the late sale does not allow any player an advantage over any other player;

(3) No operator shall reserve, or allow to be reserved, any bingo card for use by players except braille cards or other cards for use by legally blind or disabled players;

(4) Legally blind players may use their personal braille cards when a licensee does not provide such cards. The licensee shall have the right to inspect, and to reject, any personal braille card. A legally blind or disabled person may use a braille card or reserved hard card in place of a purchased throwaway;

(5) If a licensee has duplicate cards in play, he shall conspicuously post that fact or notify all players;

(6) No two or more sets of disposable cards can be used at the same time if they have identical series numbers;

(7) Immediately following the drawing of each ball in a bingo game, the caller shall display the letter and number on the ball to the participants;

(8) The letter and number on the ball shall be called out prior to the drawing of any other ball;

(9) After the letter and number is called, the corresponding letter and number on the licensee's flashboard, if any, shall be lit for participant viewing;

(10) No bingo game shall be conducted to include a prize determined other than by the matching of letters and numbers on a bingo card with letters and numbers called by the licensee, in competition among all players in a bingo game

(11) A winner is determined when a specified pattern of called numbers appears on a card;

(12) Immediately upon a bingo player declaring a winning combination of letters and numbers, the winning card shall be verified by a game employee and at least one neutral player;

(13) Upon a bingo player declaring a winning bingo, the next ball out of the machine shall be removed from the machine prior to shutting the machine off and shall be the next ball to be called in the event the declared winning bingo is not valid;

(14) After a winning bingo is validated, the prize shall be awarded((:)) in the following manner:

(a) A record of the prize awarded shall be made by completing a prize receipt as required by WAC 230-08-080 and WAC 230-20-100. The winner's identity shall be verified and the proper name recorded upon the receipt: Provided, that from October 1, 1989, until December 31, 1990, the commission shall conduct a test of an alternative method of maintaining a record of bingo game winners for not more than 100 licensees all of which receive written permission from the director. During this test all winners of cash prizes, greater than twenty dollars, shall be made by payment of a check. The check shall act as a record of the prize awarded. Participants in the test shall use the following control procedures:

(i) Checks must be drawn on the licensee's gambling bank account;

(ii) Checks used must be of a type that provides a duplicate copy. The copies become a part of the daily bingo records and must be maintained as such;

(iii) All original checks must be returned by the bank to the licensee. Original checks shall be available for inspection upon demand by the commission;

(iv) Checks will be made payable only to the winner;

(v) Checks drawn on the licensee's gambling account shall not be cashed or otherwise redeemed by the licensee or concession on the premise;

(vi) Prize winners of twenty dollars or less may be paid in cash and the licensee will record the winners name and amount won for each specific game on the bingo daily record;

(vii) When merchandise prizes are awarded, a description of the prize together with the name of the winner will be included with the bingo daily record; and

(viii) A copy of the game and prizes available schedule shall be included as a part of the bingo daily record.

(b) All prizes shall be awarded by the end of the related session.

(c) All merchandise offered as prizes to bingo players shall have been paid in full, without lien or interest of others, prior to the merchandise being offered as a prize: Provided, That the licensee may enter into a contract to immediately purchase the merchandise when it is awarded as a prize, with the contract revocable if prize winners are allowed to exercise an option to receive a cash prize or the prize is no longer offered.

(15) No operator shall engage in any act, practice, or course of operation as would operate as a fraud to affect the outcome of any bingo game.

Reviser's note: RCW 34.04.058 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending Order 186, filed 2/13/89)

WAC 230-20-699 SPECIAL AMUSEMENT GAME LICENSE - TEST AT LIMITED LOCATIONS. (1) Beginning June 1, 1988, the commission will conduct a ((~~twelve month~~)) test to determine the feasibility of allowing the operation of electronic crane and other self-dispensing amusement games at selected locations. For the purposes of this test, operators allowed to participate will be divided into three groups:

(a) Those applicants that possess a valid license from the Washington State Liquor Board and prohibit minors on their premises; and

(b) Those locations that are frequented by minors to participate in activities other than the playing of amusement devices, limited to movie theaters, bowling alleys, and miniature golf course facilities; and

(c) Those applicants who operate adult-supervised family amusement centers in enclosed shopping centers which prohibit minors from entry during school hours, maintain full-time personnel whose responsibilities include maintaining security and daily machine maintenance, and which close at the same time as surrounding businesses within enclosed shopping centers.

(2) This test shall be conducted using the following rules and limitations:

(a) Each participant shall be required to obtain a class B through E "special location amusement game" license as set forth in WAC 230-04-201. For the purposes of this test, the operator of the business where the coin operated amusement game(s) is located and operated shall be licensed. If the amusement game(s) is owned by someone other than the premises operator, that person(s) shall also obtain a license;

(b) Licenses issued under this test will not be subject to the limitations as specified in WAC 230-20-380 and WAC 230-12-230;

(c) The maximum fee to play shall be $1.00 per game at the locations specified in (1)(a) above, and 25 cents at the locations specified in (1)(b) and (c) above;

(d) The operator(s) cost for each merchandise prize offered shall be equal to or greater than the amount wagered per game;

(e) Prior to being put out for play, all games must be submitted to the Commission staff for testing and for ultimate approval by the Commission. Provided: The Director may approve electronic cranes for use in this test that meet the standards set forth in WAC 230-20-605 (2)(b);

(f) All games must be equipped with non-resetable "coin-in meters" to measure the gross revenue of each game;

(g) All games must have affixed a certification and identification stamp issued by the Commission. Each stamp shall cost $30. Any such game located in an area authorized under 1(a), (b), or (c) which does not have this stamp attached, or licensed under this rule, shall be prima facie evidence of an unauthorized game being used and shall subject said game to immediate seizure and forfeiture under RCW 9.46.230;

(h) Such games shall not be subject to the prohibition on revenue sharing set forth in WAC 230-12-220; and

(i) All operators shall complete and submit a "special coin operated amusement game test" report, in a format provided by the Commission, on a monthly basis. This report shall be submitted no later than 15 days following the end of each month:

(3) This test shall ((~~expire on May 30, 1989, or at a earlier date if the Commission determines that it is in the public interest;~~)) be continued through December 31, 1899. Provided, That for the purposes of this ((~~test, effective November 21, 1988~~)) continuance, the Commission shall not accept any ((~~further~~)) new location applications but shall accept renewal applications. At the end of th((~~e test~~)) is period the Commission shall evaluate the test results and determine whether the limited locations contained in WAC 230-20-380 should be expanded for self-dispensing amusement games.

Reviser's note: RCW 34.04.058 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending Order 171, filed 8/18/87)

WAC 230-30-070 CONTROL OF PRIZES. ((~~(1)~~)) All prizes from the operation of punchboards and pull tabs shall be awarded in cash or in merchandise.

(1) Prizes shall be cash or merchandise only. Prizes may not involve the opportunity of taking an additional chance or chances on another punchboard or of obtaining another pull tab or pull tabs. Where the prize involves the opportunity to punch again on the same punchboard, a prize must be awarded for each such punch which is not less than the highest amount of money, or worth not less than the most valuable merchandise prize, which might otherwise have been won by the punch for which the opportunity to take the second punch was awarded. Each such board must clearly indicate on its face the terms and conditions under which the opportunity to obtain the second, or step-up punch, may be obtained and the prizes which may be won by the step-up punch.

(2) Display of prizes:

(a) All prizes shall be displayed in the immediate vicinity of the punchboard or pull tab device and such prizes shall be in full view of any person prior to that person purchasing the opportunity to play.

(b) When the prize is cash it shall be displayed as follows:

(i) If the punchboard or pull tab series contains the opportunity to win both cash and merchandise prizes, the money itself shall not be displayed, but a coupon designating the cash available to be won shall be substituted; and

(ii) If the only prizes which may be won are cash prizes, they shall be clearly and fully described or represented by a coupon displayed upon the prize flare attached to the face or displayed in the immediate vicinity of the pull tab dispensing device.

(c) The licensee shall display prizes so arranged that a customer can easily determine which prizes are available from any particular punchboard or pull tab series or device operated or located upon the premises.

((~~(3)~~)) (d) Upon ((~~a~~)) determination of a winner of a merchandise prize, the licensee shall immediately remove that prize from any display and present it to the winner.

(e) ((~~Immediately u~~)) Upon determin((~~ing~~)) ation of a ((~~the~~)) winner of any cash prize of five dollars or more, or of any merchandise prize with a retail value of five dollars or more, but prior to award of the prize, the licensee shall conspicuously delete all references to that prize being available to players from any flare, punchboard or pull tab dispensing device upon which such reference may appear, and from any other list, sign, or notice which may be posted, in such a manner that all future customers will know the prize is no longer available. The prize shall then be paid or delivered to the winner forthwith.

(3) Payment of prizes.

The licensee must pay or award to the customer or player playing the punchboard or pull tab series all such prizes that have not been deleted from the flare of the punchboard or pull tab series when the punchboard or pull tab series is completely played out.

(4) Cash in lieu of merchandise prizes.

No licensee shall offer to pay cash in lieu of merchandise prizes which may be won.

(5) Record of winners:

(a) When any person wins a cash prize of over twenty dollars or wins a merchandise prize with a retail value of more than twenty dollars from the play of any punchboard or pull tab series, the licensee or licensee's representative shall make a record of the win. The record of the win shall be made in a standard format prescribed by the commission and shall disclose at minimum the following information:

((~~(a)~~)) (i) The Washington state identification stamp number of the punchboard or pull tab series from which the prize was won;

((~~(b)~~)) (ii) The series number of the pull tab series or punchboard from which the prize was won;

((~~(c)~~)) (iii) The name of the punchboard or pull tab series;

((~~(d)~~)) (iv) The date the pull tab series or punchboard was placed out for play;

((~~(e)~~)) (v) The date the pull tab series or punchboard was removed from play;

((~~(f)~~)) (vi) The month, day and year of the win;

((~~(g)~~)) (vii) If the prize is cash, the amount of the prize won;

((~~(h)~~)) (viii) If the prize is merchandise, a description of the prize won and its retail value;

((~~(i)~~)) (ix) The printed full name of the winner;

((~~(j)~~)) (x) The current address of the winner which will include the street address, the city and the state.

(b) It shall be the responsibility of the licensee to determine the identity of the winner and the licensee shall require such proof of identification as is necessary to properly establish the winner's identity. The licensee shall require the winner to sign his name in ink on the winning pull tab being presented for payment. The licensee shall not pay out any prize unless and until the winner has fully and accurately furnished to the licensee all information required by this rule to be maintained in the licensee record of the win.

(c) From October 1, 1989, until December 31, 1990, the commission shall conduct a test of an alternative method of maintaining a record of winners. This test shall not include more than 100 licensees, all of which receive written permission from the director. Charitable or nonprofit licensees participating in this test shall be prohibited from intermingling of funds allowed by WAC 230-08-010(6) and must deposit funds separately and intact as set out in WAC 230-12-020. All participants shall adhere to alternative requirements for retention of winning tabs or punches required by subsection (6) of this rule and WAC 230-30-072. In addition, all participants shall use only pull tabs that utilize a secondary verification code to prohibit counterfeiting on tabs that award prizes greater then $20.00. Such codes shall be approved by the Director prior to use within this state. Banded pull tabs and punchboards are exempt from the secondary verification code requirements. During the period of the test when a person wins a cash prize of over twenty dollars or a merchandise prize with a retail value of more than twenty dollars, the following alternative winners record procedures shall apply:

(i) The winners shall be required to print and sign their name, in ink, upon the side of the winning punch or tab opposite the winning symbol(s);

(ii) The licensee or their representative shall then record the date and initial the winning punch or tab.

(6) Retention of records. Every licensee shall keep the record of all prizes awarded in excess of twenty dollars, containing all of the information required in subsection (5) above, and all winning pull tabs or punchboard punches for a period of at least four months following the last day of the month in which it was removed from play and shall display the same to any representative of the commission or law enforcement officials upon demand.

(7) Defacing winning punches or tabs. The licensee shall, within twenty-four hours after a winning pull tab or punch of five dollars or more has been presented for payment, mark or perforate the winning ((~~pull tab or punch~~)) symbols in such a manner that the pull tab or punch cannot be presented again for payment.

((~~(7)~~)) (8) Value of merchandise prizes. For ((~~the~~)) purposes of this rule, the retail value of a merchandise prize shall be the amount actually paid therefor by the licensed operator plus 50 percent of that actual cost.

((~~(8)~~)) (9) Spindle((~~-type p~~)), banded, or "jar" type pull tabs played in a manner which awards merchandise prizes only. Pull tab series which award only merchandise prizes valued at no more than five dollars, are hereby permitted to employ schemes whereby certain predesignated pull tabs are free or the player is otherwise reimbursed the actual cost of said pull tabs. Flares for spindle-type pull tabs operated in this manner shall designate the total number of pull tabs in the series and the total number of pull tabs designated as free or reimbursable. Free or reimbursable pull tabs in these types of pull tab series shall not constitute a prize or prizes nor shall monies collected and later reimbursed constitute revenue for the purposes of determining gross receipts.

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

WSR 89-13-058
PROPOSED RULES
GAMBLING COMMISSION
[Filed June 20, 1989]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Washington State Gambling Commission intends to adopt, amend, or repeal rules concerning the amending of WAC 230-20-246;

that the agency will at 10:00 a.m., Friday, August 11, 1989, in the Campbells Lodge, Chelan, Washington, conduct a public hearing on the proposed rules.

The adoption, amendment, or repeal of the rules will take place immediately following the hearing.

The authority under which these rules are proposed is RCW 9.46.070 (11) and (14).

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before August 11, 1989.

Dated: June 20, 1989
By: Frank L. Miller
Deputy Director

STATEMENT OF PURPOSE

Title: WAC 230-20-246 Manner of conducting bingo.

Description of Purpose: Authorizes other activities in conjunction with bingo with prizes tied into prize payout requirements.

Statutory Authority: RCW 9.46.070 (11) and (14).

Summary of Proposed Rules and Reasons Supporting Action: WAC 230-20-246 would allow bonus prizes, door prizes, and promotions. This will help organizations attract new players.

Agency Personnel Responsible for Drafting, Implementing, and Enforcing the Rules: Ronald O. Bailey, Director and Frank L. Miller, Deputy Director, 4511 Woodview Drive S.E., Lacey, WA 98504-8121, 585-7640 scan, 438-7640 comm.

Proponents and Opponents: Gambling Commission staff proposes this rule amendment.

Agency Comments: The agency believes the proposed amendment is self-explanatory and needs no further comment.

This amendment was not made necessary as a result of federal law or federal or state court action.

Small Business Economic Impact Statement: This agency has determined there may be an economic impact upon a certain number of licensees administered by this agency by the adoption of this amendment.

AMENDATORY SECTION (Amending Order 157, filed 4/11/86)

WAC 230-20-246 MANNER OF CONDUCTING BINGO. The conducting of a bingo game shall include, but is not limited to the following rules:

(1) All sales of bingo cards shall take place upon the premises during or immediately preceding the session for which the card is being sold;

(2) Bingo cards shall normally be sold and paid for prior to the start of a specified game or specified number of games. Cards may be sold after the start of a game or number of games if the late sale does not allow any player an advantage over any other player;

(3) No operator shall reserve, or allow to be reserved, any bingo card for use by players except braille cards or other cards for use by legally blind or disabled players;

(4) Legally blind players may use their personal braille cards when a licensee does not provide such cards. The licensee shall have the right to inspect, and to reject, any personal braille card. A legally blind or disabled person may use a braille card or reserved hard card in place of a purchased throwaway;

(5) If a licensee has duplicate cards in play, he shall conspicuously post that fact or notify all players;

(6) No two or more sets of disposable cards can be used at the same time if they have identical series numbers;

(7) Immediately following the drawing of each ball in a bingo game, the caller shall display the letter and number on the ball to the participants;

(8) The letter and number on the ball shall be called out prior to the drawing of any other ball;

(9) After the letter and number is called, the corresponding letter and number on the licensee's flashboard, if any, shall be lit for participant viewing;

(10) No bingo game shall be conducted to include a prize determined other than by the matching of letters and numbers on a bingo card with letters and numbers called by the licensee, in competition among all players in a bingo game. Provided, that the following activities are considered bingo games when conducted during a bingo occasion and prizes are determined through equal competition among all players paying to participate in that session:

(a) Drawings. Each licensee shall be allowed to award a single prize during each bingo session that is determined by a drawing if:

(i) Tickets or other facsimiles use to enter such drawings shall only be awarded to players purchasing cards to play in bingo games;

(ii) A record shall be completed setting out the criterion for granting tickets, the number of tickets awarded during each session, the winning ticket, and all details required by WAC 230-08-080 and WAC 230-20-100. Such records shall be maintained as a part of the daily bingo records;

(iii) Prizes awarded for drawings are limited to a maximum of $200 during any session and $500 during any calendar month;

(iv) All prizes awarded are considered bingo game prizes for purposes of prize payout and net income regulation;

(b) Creativity and originality contests (competition to determine the best costume, flower arrangement, cake decorating, ugliest tie, or other activities requiring skill or original thought). A bingo licensee may conduct contests in which players may demonstrate their creativity and originality skills on up to four occasions annually. The following rules must be observed in conducting these contests:

(i) The total value of prizes shall not exceed $300 during any session or $500 during any occasion;

(ii) Only players who have paid to participate in bingo games during the current session may participate in the contest;

(iii) A record shall be completed for each contest setting out the criterion for selecting the winners, the number of participants in the contest, and all details required by WAC 230-08-080 and WAC 230-20-100. Such records shall be maintained as a part of the daily bingo records;

(iv) All prizes awarded are considered bingo game prizes for purposes of prize payout and net income regulation;

(11) ((~~A winner is determined when a specified pattern of called numbers appears on a card;~~)) The amount of a prize or prizes available for each bingo game shall be established and disclosed to bingo players prior to their purchase of a chance to participate in a bingo game. The amount of a prize may be determined by the number of bingo balls selected to achieve a specific pattern on an approved bingo card or by the first or last ball selected, if:

(a) A minimum prize is established and disclosed;

(b) All rules of the game are explained in detail to the players; and

(c) All requirements of WAC 230-20-010 are met before cards are purchased.

The director may grant approval of the use of other schemes to determine the dollar amount of a bingo prize after cards are purchased if such schemes: contain control factors necessary for commission audit; are determined to be primarily of an entertainment nature; do not grant an unfair competitive advantage to any licensee; and do not act to defraud the public.

(12) Immediately upon a bingo player declaring a winning combination of letters and numbers, the winning card shall be verified by a game employee and at least one neutral player;

(13) Upon a bingo player declaring a winning bingo, the next ball out of the machine shall be removed from the machine prior to shutting the machine off and shall be the next ball to be called in the event the declared winning bingo is not valid;

(14) After a winning bingo is validated, the prize shall be awarded. All prizes shall be awarded by the end of the related session. All merchandise offered as prizes to bingo players shall have been paid in full, without lien or interest of others, prior to the merchandise being offered as a prize: Provided, That the licensee may enter into a contract to immediately purchase the merchandise when it is awarded as a prize, with the contract revocable if prize winners are allowed to exercise an option to receive a cash prize or the prize is no longer offered.

(15) Licensees may award promotional gifts to bingo players on up to six occasions annually.

(a) Must be merchandise with a cost to the licensee of no more than two dollars;

(b) A record shall be completed for each contest setting out the criterion for selecting the recipients, the number of gifts and all details required by WAC 230-08-080 and WAC 230-20-100. Such records shall be maintained as a part of the daily bingo records;

(c) All gifts purchased are considered bingo game prizes for purposes of prize payout and net income regulation;

((~~(15)~~)) (16) No operator shall engage in any act, practice, or course of operation as would operate as a fraud to affect the outcome of any bingo game.

WSR 89-13-059
ADOPTED RULES
GAMBLING COMMISSION
[Order 193—Filed June 20, 1989]

Be it resolved by the Washington State Gambling Commission, acting at Spokane Washington, that it does adopt the annexed rules relating to the amending of WAC 230-02-030.

This action is taken pursuant to Notice No. WSR 89-09-045 filed with the code reviser on April 18, 1989. These rules shall take effect thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2).

This rule is promulgated pursuant to RCW 9.46.070(14) and is intended to administratively implement that statute.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW), and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED June 16, 1989.

By Frank L. Miller
Deputy Director

AMENDATORY SECTION (Amending Order 136, filed 9/13/83)

WAC 230-02-030 ADDRESS OF COMMISSION. Unless specifically provided elsewhere in these rules, applications for licenses, submission of materials or requests for notices or information of any kind, may be made by addressing correspondence to:

Washington State Gambling Commission
((~~Jefferson Building~~
~~1110 South Jefferson~~
~~Olympia, Washington 98504.~~))
4511 Woodview Drive S.E.
Lacey, Washington 98504-8121.

WSR 89-13-060
NOTICE OF PUBLIC MEETINGS
BOARD FOR VOCATIONAL EDUCATION
[Memorandum—June 19, 1989]

MEETING NOTICE

JULY 12-13, 1989

SUNSHINE ROOM, RESOURCE CENTER
CLOVER PARK VOCATIONAL-TECHNICAL INSTITUTE
4500 STEILACOOM BOULEVARD S.W.
TACOMA, WASHINGTON

Work Study Session, 8:30 a.m., Wednesday, July 12, 1989, members of the Washington State Board for Vocational Education will meet in a work study session to discuss: The proposed SBVE mission statement; the process for review of discretionary uses of funds; and the 1990 distribution matrix for the Carl Perkins Vocational Education Act funds.

Regular Meeting, 8:30 a.m., Thursday, July 13, 1989, the regular business meeting of the state board will continue at 8:30 a.m. Primary agenda items include: Adoption of the 1989-90 board meeting schedule; adoption of the SBVE mission statement; adoption of the 1990 distribution matrix for the Carl Perkins Vocational Education Act funds; presentation of the new JSP video; and consideration of JSP grant applications.

People needing special accommodations, please call Patsi Justice at (206) 753-5660 or 234-5660 scan.

WSR 89-13-061
PROPOSED RULES
LOTTERY COMMISSION
[Filed June 20, 1989]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Washington State Lottery Commission intends to adopt, amend, or repeal rules concerning:

New	WAC 315-06-115	Overlapping on-line sales in consecutive fiscal years.
New	WAC 315-11-460	Definitions for Instant Game Number 46 ("Big Wheel").
New	WAC 315-11-461	Criteria for Instant Game Number 46 ("Big Wheel").
New	WAC 315-11-462	Ticket validation requirements for Instant Game Number 46 ("Big Wheel");

that the agency will at 10:00 a.m., Friday, August 4, 1989, in the Washington State Lottery, Region 3 Office, 5963 Corson Avenue, Suite 106, Seattle, WA 98108, conduct a public hearing on the proposed rules.

The adoption, amendment, or repeal of the rules will take place immediately following the hearing.

The authority under which these rules are proposed is RCW 67.70.040.

The specific statute these rules are intended to implement is RCW 67.70.040.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before August 4, 1989.

Dated: June 19, 1989
By: Scott L. Milne
Deputy Director

STATEMENT OF PURPOSE

Title and Number of Rule Section(s) or Chapter(s): See above.

Statutory Authority: RCW 67.70.040.

Specific Statute that Rules are Intended to Implement: RCW 67.70.040.

Summary of the Rule(s): WAC 315-06-115, provides that the lottery shall meet both legal and accounting financial reporting requirements; WAC 315-11-460, provides definitions of the terms used in Instant Game Number 46 rules; WAC 315-11-461, sets forth criteria for Instant Game Number 46; and WAC 315-11-462, states the ticket validation requirements for Instant Game Number 46.

Reasons Supporting the Proposed Rule(s): WAC 315-06-115, the lottery must pay no less than forty-five percent of revenue in prizes and must report its financial condition according to generally accepted accounting principles; WAC 315-11-460, certain terms need to be defined in order to provide consistency in understanding and interpreting the rules and regulations under WAC 315-11-461 and 315-11-462; WAC 315-11-461, licensed retailers and players of Instant Game Number 46 need to know how the game will function. Specifying the criteria which apply to Instant Game Number 46 will provide this information; and WAC 315-11-462, tickets for Instant Game Number 46 which are found to be counterfeit or tampered with will be declared void by the lottery and no prize(s) will be paid. Rigid validation requirements are set forth to discourage persons from tampering with tickets and to prevent the lottery from paying out prize money on invalid tickets.

Agency Personnel Responsible for Drafting: Judith Giniger, Licensing/Contracts Manager, Washington State Lottery, P.O. Box 9770, Olympia, Washington 98504, (206) 586-1088; Implementation and Enforcement: Washington State Lottery Commission, P.O. Box 9770, Olympia, Washington 98504, (206) 753-1412, Evelyn Y. Sun, Director, (206) 753-3330, Scott Milne, Deputy Director, (206) 753-3334 and Roger Wilson, Assistant Director, (206) 586-1065.

Name of Person or Organization, Whether Private, Public, or Governmental, that is Proposing this Rule: Washington State Lottery Commission.

Agency Comments or Recommendations, if any, Regarding the Statutory Language, Implementation, Enforcement, and Fiscal Matters Pertaining to the Rule: None.

The rule is not necessary to comply with federal law or a federal/state court decision.

Any Other Information that may be of Assistance in Identifying the Rule or its Purpose: None.

Small Business Economic Impact Statement: The Office of the Director, Washington State Lottery, has reviewed the requirements to file a small business economic impact statement and has determined that such a statement is not required for the rules proposed by the Washington State Lottery Commission for the following reason: These rules will only affect those businesses, large and small, which voluntarily apply to be licensed retailers for the sale of lottery tickets, or contractors who provide other services to the Office of the Director, Washington State Lottery, or who voluntarily interact with the Office of the Director, Washington State Lottery. No business or industry will be required to comply with these rules unless they wish to provide services to, or interact with, the Office of the Director, Washington State Lottery.

NEW SECTION

WAC 315-06-115 OVERLAPPING ON-LINE SALES IN CONSECUTIVE FISCAL YEARS. When the sales for an on-line jackpot overlap two fiscal years, any fiscal reporting discrepancy between the statutory requirement that payment of prizes not be less than forty-five percent of gross annual revenue and the preparation of an annual financial statement using generally accepted accounting principles shall be explained in a footnote to the financial statements.

NEW SECTION

WAC 315-11-460 DEFINITIONS FOR INSTANT GAME NUMBER 46 ("BIG WHEEL"). (1) Play symbols: The following are the "play symbols": "1", "2", "3", "4", "5", "6" and "9". One of these symbols appears under each of the circles under the rub-off material on the front of the ticket.

(2) Play symbol captions: The small printed characters appearing below each play symbol which corresponds with and verifies that play symbol. The caption contains four characters. The first character repeats the play symbol. The last three characters represent the ticket number. One and only one caption appears under each play symbol. For Instant Game Number 46, the captions which correspond with and verify the play symbols are:

PLAY SYMBOL	CAPTION (Example for ticket number 122)
1	1122
2	2122
3	3122
4	4122
5	5122
6	6122
9	9122

(3) Prize symbols: The following are the "prize symbols": "$1.00," "$2.00," "$4.00," "$10.00," "$20.00", "$100," and "$10,000". One of these prize symbols appears in each of the outer circles under the rub-off material on the front of the ticket.

(4) Prize symbol caption: The small printed characters which verify and correspond with that prize symbol. The caption is a spelling out, in full or abbreviated form, of the prize symbol. For Instant Game Number 46, the prize symbol captions which correspond with and verify the prize symbols are:

PRIZE SYMBOL	CAPTION
$1.00	OND
$2.00	TWD
$4.00	FOD
$10.00	TED
$20.00	TYD
$100	OHD
$10,000	TTD

(5) The center circle will contain one play symbol and its corresponding caption below. Each of the outer circles will contain one play symbol, a prize symbol and a seven-character caption below which combines the play symbol caption and the prize symbol caption.

(6) Validation number: The unique nine-digit number on the front of the ticket. The number is covered by latex.

(7) Pack-ticket number: The ten-digit number of the form 4600001-000 printed on the front of the ticket. The first two digits are the game identifier. The first seven digits of the pack-ticket number for Instant Game Number 46 constitute the "pack number" which starts at 4600001; the last three digits constitute the "ticket number" which starts at 000 and continues through 399 within each pack of tickets.

(8) Retailer verification codes: Codes consisting of small letters found under the removable covering on the front of the ticket which the lottery retailer uses to verify instant winners of $25.00 or less. For Instant Game Number 46, the retailer verification codes is a three-letter code, with each letter appearing in a varying three of six locations beneath the removable covering and among the play symbols on the front of the ticket. The retailer verification codes are:

VERIFICATION CODE	PRIZE
ONE	$1.00
TWO	$2.00
FOR	$4.00
TEN	$10.00
TTY	$20.00

(9) Pack: A set of four hundred fanfolded instant game tickets separated by perforations and packaged in a plastic bag or plastic shrinkwrapping.

NEW SECTION

WAC 315-11-461 CRITERIA FOR INSTANT GAME NUMBER 46. (1) The price of each instant game ticket shall be $1.00.

(2) Determination of prize winning tickets: An instant prize winner is determined in the following manner:

(a) The bearer of a ticket having one or more outer circles with play symbols which match the center circle play symbol shall win the prize in each of the matching outer circles.

(b) In any event, only the highest instant prize amount meeting the standards of (a) of this subsection will be paid on a given ticket.

(3) No portion of the display printing nor any extraneous matter whatever shall be usable or payable as a part of the instant game.

(4) The determination of prize winners shall be subject to the general ticket validation requirements of the lottery as set forth in WAC 315-10-070, to the particular ticket validation requirements for Instant Game Number 46 set forth in WAC 315-11-462, to the confidential validation requirements established by the director, and to the requirements stated on the back of each ticket.

NEW SECTION

WAC 315-11-462 TICKET VALIDATION REQUIREMENTS FOR INSTANT GAME NUMBER 46. (1) In addition to meeting all other requirements in these rules and regulations, to be a valid instant game ticket for Instant Game Number 46 all of the following validation requirements apply.

(a) Exactly one play symbol must appear under the center circle rub-off spot on the front of the ticket.

(b) Each play symbol must have a caption below and each must agree with its caption.

(c) The display printing and the printed numbers, letters, and symbols on the ticket must be regular in every respect and correspond precisely with the artwork on file with the director. The numbers, letters, and symbols shall be printed as follows:

Play Symbols	Positive Archer Font
Captions	Positive 5 x 9 Font
Pack-Ticket Number	Positive 9 x 12 Font
Validation Number	Positive 9 x 12 Font
Retailer Verification Code	Positive Archer Font

(d) Each of the play symbols and their captions, the validation number, pack-ticket number and retailer verification code must be printed in black ink.

(e) Each of the play symbols must be exactly one of those described in WAC 315-11-460(1) and each of the captions must be exactly one of those described in WAC 315-11-460(2).

(2) Any ticket not passing all the validation requirements in WAC 315-10-070 and subsection (1) of this section is invalid and ineligible for any prize.

WSR 89-13-062
PROPOSED RULES
DEPARTMENT OF LICENSING
(Board of Optometry)

[Filed June 20, 1989]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Washington State Board of Optometry intends to adopt, amend, or repeal rules concerning the practice of optometry including the use of drugs for diagnostic or therapeutic purposes and adopting:

New	WAC 308-53-330	Certification required for use of pharmaceutical agents.
New	WAC 308-53-340	Drug formulary;

that the agency will at 11:00 a.m., Tuesday, July 25, 1989, in the Nendel's University Plaza Hotel, Director Room, 400 N.E. 45th Street, Seattle, WA, conduct a public hearing on the proposed rules.

The adoption, amendment, or repeal of the rules will take place immediately following the hearing.

The authority under which these rules are proposed is RCW 18.54.070.

The specific statute these rules are intended to implement is RCW 18.53.010 as amended by chapter 36, Laws of 1989.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before July 24, 1989.

Dated: June 19, 1989
By: John H. Keith
Assistant Attorney General

STATEMENT OF PURPOSE

Name of Agency: Washington State Board of Optometry.

Purpose of Proposed Rules: To implement chapter 36, Laws of 1989 for the protection of the public.

Statutory Authority: RCW 18.54.070.

Summary of the Rule: WAC 308-53-330 Certification required for use of pharmaceutical agents, describes the educational requirements for qualification to use diagnostic or therapeutic pharmaceutical agents in the practice of optometry; and WAC 308-53-340 Drug formulary, lists the classes of topical drugs that may be used by qualified optometrists in the treatment of ocular disorders.

Responsible Personnel: The Washington State Board of Optometry and the program manager for the board have the responsibility for drafting, implementing and enforcing these rules. The program manager is Cynthia Jones, 1300 Quince Street S.E., Olympia, WA 98504, phone (206) 753-1966.

Proponents of Proposed Rules: The Washington State Optometry Board.

Federal Law or Federal or State Court Requirements: Not necessitated as the result of federal or state court action.

Small Business Economic Impact Statement: Not required as this rule does not impact small business as that term is defined in RCW 43.31.920.

NEW SECTION

WAC 308-53-330 CERTIFICATION REQUIRED FOR USE OF PHARMACEUTICAL AGENTS. (1) Licensed optometrists using pharmaceutical agents in the practice of optometry shall have a minimum of sixty hours of didactic and clinical instruction in general and ocular pharmacology as applied to optometry, and for therapeutic purposes an additional minimum seventy-five hours of didactic and clinical instruction, and certification from an institution of higher learning, accredited by those agencies recognized by the United States Office of Education or the Council on Post-Secondary Accreditation to qualify for certification by the optometry board to use drugs for diagnostic and therapeutic purposes.

(2) Optometrists must obtain the required instructions in both diagnostic and therapeutic categories in order to be eligible to qualify for certification to use drugs for therapeutic purposes.

(3) The instruction in ocular therapeutics must cover the following subject area in order to qualify for certification training:

(a) Ocular pharmacology.

(i) Corneal barrier, blood-aqueous, /-retinal barrier.

(ii) Routes of drug administration for ocular disease.

(iii) Prescription writing.

(iv) Ocular side-effects of systemic drugs.

(b) Anti-infectives.

(i) General principles of anti-infective drugs.
(ii) Antibacterial drugs.
(iii) Treatment of ocular bacterial infections.
(iv) Antiviral drugs.
(v) Treatment of ocular viral infections.
(vi) Antifungal drugs.
(vii) Treatment of ocular fungal infections.
(viii) Antiparasitic drugs.
(ix) Treatment of parasitic eye disease.
(c) Anti-inflammatory drugs.
(i) Nonsteroidal anti-inflammatory drugs (NSAIDS).
(ii) General principles of mast-cell stabilizers.
(iii) Antihistamines.
(iv) Ocular decongestants.
(v) Treatment of allergic disease.
(vi) Treatment of inflammatory disease.
(vii) Cycloplegic drugs.
(viii) Treatment of ocular trauma.
(ix) Ocular lubricants.
(x) Hypertonic agents.
(xi) Antiglaucoma drugs.

Each subject area shall be covered in sufficient depth so that the optometrist will be informed about the general principles in the use of each drug category, drug side effects and counter indications, and for each disease covered the subjective symptoms, objective signs, diagnosis and recommended treatment and programs.

NEW SECTION

WAC 308-53-340 DRUG FORMULARY. Pursuant to RCW 18.53.010(3) the optometry board adopts the following drug formulary of topically applied drugs for diagnostic and treatment purposes.

(1) Drugs for diagnostic or therapeutic purposes.
(a) Mydriatics.
(b) Cycloplegics.
(c) Miotics.
(d) Anesthetics.
(2) Drugs for therapeutic purposes only.
(a) Antimicrobials.
(b) Antihistamines and decongestants.
(c) Ocular lubricants.
(d) Antiglaucoma and ocular hypotensives.
(e) Anti-inflammatories.
(f) Hyperosmotics.
(g) Other topical drugs approved for ocular use by the FDA.

WSR 89-13-063
PROPOSED RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION
[Filed June 20, 1989]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Superintendent of Public Instruction intends to adopt, amend, or repeal rules concerning Finance—Special allocations, instructions and requirements, WAC 392-140-160, 392-140-164 and 392-140-165, 1987-89 Local education program enhancement allocations to school districts;

that the agency will at 9:00 a.m., Thursday, August 3, 1989, in the Wanamaker Conference Room, conduct a public hearing on the proposed rules.

The adoption, amendment, or repeal of the rules will take place immediately following the hearing.

The authority under which these rules are proposed is RCW 28A.41.170.

Dated: June 20, 1989
By: Judith A. Billings
Superintendent of
Public Instruction

STATEMENT OF PURPOSE

Rule: Chapter 392-140 WAC Finance—Special allocations, instructions and requirements.

Rule Section(s): WAC 392-140-160, 392-140-164 and 392-140-165.

Statutory Authority: RCW 28A.41.170.

Purpose of the Rule(s): To modify the process for allocating local education program enhancement moneys to school districts for school years 1987-88 and 1988-89.

Summary of the New Rule(s) and/or Amendments: The amendments limit local education program enhancement allocations to a maximum of $33.75 per annual average full-time equivalent student for the 1987-88 and 1988-89 school years.

Section Analysis: WAC 392-140-160 through 392-140-174 apply only to school years 1987-88 and 1988-89. A reference to the 1988 amendment to the 1987-89 Operating Appropriation Act is added; 392-140-164, the definition of biennial full-time equivalent students is repealed; and 392-140-165, the option of applying during only school year 1988-89 and receiving $67.50 per student is eliminated. $33.75 per student is established as the maximum local education program enhancement allocation for a school year.

Reasons Which Support the Proposed Action(s): The proposed rules implement changes made to the 1987-89 Operating Appropriations Act in section 505, chapter 289, Laws of 1988.

Person or Organization Proposing the Rule(s): SPI, government.

Agency Personnel Responsible for Drafting: Richard M. Wilson, SPI, 753-2298; Implementation and Enforcement: Doyle Winter, SPI, 753-1880.

Rule(s) is (are) Necessary as the Result of Federal Law, Federal Court Action, or State Court Action: No.

Agency Comments, if any, Regarding Statutory Language, Implementation, Enforcement and Fiscal Matter Pertaining to the Rule(s): No agency comments.

AMENDATORY SECTION (Amending Order 88-12, filed 4/18/88)

WAC 392-140-160 LOCAL EDUCATION PROGRAM ENHANCEMENT—APPLICABLE PROVISIONS. The provisions of WAC 392-140-160 through 392-140-174 shall be applicable to the distribution of moneys to school districts for the local education program enhancement program for the 1987-88 and 1988-89 school years pursuant to section 506, chapter 7, Laws of 1987 1st ex. sess., as amended by section 505, chapter 289, Laws of 1988.

AMENDATORY SECTION (Amending Order 88-12, filed 4/18/88)

WAC 392-140-165 LOCAL EDUCATION PROGRAM ENHANCEMENT—DEFINITION—SUPPORT LEVEL. As used in WAC 392-140-160 through 392-140-174, "support level" means:

(1) ((~~For those school districts that apply for local education program enhancement moneys during only school year 1988-89, no less than $67.50 multiplied by the biennial full-time equivalent students determined pursuant to WAC 392-140-164.~~

~~(2) For those school districts which apply for local education program enhancement moneys in school year 1987-88 and school year 1988-89:~~

~~(a)~~)) For school year 1987-88: A maximum of $33.75 multiplied by the annual average full-time equivalent students for school year 1987-88 for those school districts satisfying the conditions for receiving moneys pursuant to WAC 392-140-169; and

((~~(b)~~)) (2) For school year 1988-89: ((~~No less than~~)) A maximum of $33.75 multiplied by the annual average full-time equivalent students for school year 1988-89 for those school districts satisfying the conditions for receiving moneys pursuant to WAC 392-140-169.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 392-140-164 LOCAL EDUCATION PROGRAM ENHANCEMENT—DEFINITION—BIENNIAL FULL-TIME EQUIVALENT STUDENTS.

WSR 89-13-064
ADOPTED RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION
[Order 89-3—Filed June 20, 1989]

I, Judith A. Billings, Superintendent of Public Instruction, do promulgate and adopt at Olympia, Washington, the annexed rules relating to Definition—Total eligible credits, WAC 392-121-260.

This action is taken pursuant to Notice No. WSR 89-10-002 filed with the code reviser on April 20, 1989. These rules shall take effect thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2).

This rule is promulgated pursuant to RCW 28A.41-.170 and is intended to administratively implement that statute.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED June 20, 1989.

By Judith A. Billings
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending Order 88-24, filed 11/2/88)

WAC 392-121-260 DEFINITION—TOTAL ELIGIBLE CREDITS. As used in this chapter, "total eligible credits" means the number of credits determined as follows:

(1) For an employee whose highest degree is a bachelor's degree, sum academic and in-service credits as defined in WAC 392-121-255 and 392-121-257.

(2) For an employee whose highest degree is a master's degree ((~~which was awarded or conferred on or before August 31, 1987~~)), sum academic and in-service credits as defined in WAC 392-121-255 and 392-121-257 earned after the awarding or conferring of the master's degree.

((~~(3) For an employee whose highest degree is a master's degree earned after August 31, 1987, sum the following:~~

~~(a) Academic credits as defined in WAC 392-121-255 earned after the awarding or conferring of the master's degree;~~

~~(b) In-service credits as defined in WAC 392-121-257 earned after the awarding or conferring of the master's degree; and~~

~~(c) In-service credits as defined in WAC 392-121-257 earned after August 31, 1987, and before August 31, 1988, or the awarding or conferring of the master's degree whichever is earlier.~~))

WSR 89-13-065
PROPOSED RULES
DEPARTMENT OF NATURAL RESOURCES
[Filed June 20, 1989]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Department of Natural Resources intends to adopt, amend, or repeal rules concerning establishing eligibility and petitioning criteria for enterprises to purchase state timber set aside by counties intended for Washington state processors;

that the agency will at 10:00 a.m., Wednesday, July 26, 1989, in the John A. Cherberg Building, Hearing Room 1, Capitol Campus, Olympia, Washington, conduct a public hearing on the proposed rules.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on August 7, 1989.

The authority under which these rules are proposed is section 2, chapter 424, Laws of 1989.

The specific statute these rules are intended to implement is section 2, chapter 424, Laws of 1989.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before August 1, 1989.

Dated: June 20, 1989
By: Art Stearns
Supervisor

STATEMENT OF PURPOSE

Title and Number of Rule Section(s) or Chapter(s): WAC 332-140-400.

Description of Purpose: Establish eligibility and petitioning criteria for enterprises to purchase state timber set aside by counties intended for domestic processors.

Statutory Authority: Chapter 424, Laws of 1989.

Specific Statute Rule is Intended to Implement: Petitioning procedures for interested enterprises to become eligible to buy set aside timber sales as described in the law.

Summary of the Rule: The petitioning enterprise must supply timber volumes, certified by a certified public accountant, purchased from public and other sources for the previous three years and the processed volume within Washington state of purchased timber in the past year. The petitioner, if qualified, will be put on an eligibility list for set aside timber sales under the law for one year. The enterprise can submit a new petition annually.

Reasons Supporting the Proposed Action: Chapter 424, Laws of 1989 requires the department to make rule(s) defining the eligibility procedures for enterprises.

Name of the Person or Organization, Whether Private, Public or Governmental, Proposing the Rule: Washington State Department of Natural Resources.

Agency Comments or Recommendations, if any, Regarding Statutory Language, Implementation, Enforcement and Fiscal Matters Pertaining to the Rule: None.

Whether Rule is Necessary as a Result of Federal Law or Federal or State Court Action: Not applicable.

Small Business Economic Impact Statement: Chapter 424, Laws of 1989 encourages domestic processing of state timber by selecting those companies that currently process a high percentage of public timber as the only eligible bidders on sales set aside by the department. Those companies that export a high percentage of public timber will not be eligible and therefore excluded from buying set aside sales. The rule provides the mechanism to establish the list of eligible bidders and does not itself select for or against small businesses.

NEW SECTION

WAC 332-140-400 ELIGIBLE ENTERPRISE PETITION REQUIREMENTS TO PURCHASE SET ASIDE TIMBER. A business concern and its affiliates, as defined in 13 C.F.R. 121.3, in effect January 1, 1988, (enterprise) which operates in the state of Washington one or more facilities manufacturing lumber, plywood, veneer, posts, poles, pilings, shakes, or shingles must petition the department to become eligible to purchase timber reserved under chapter 424, Laws of 1989. The values on the petition must be certified by a certified public accountant in Washington state. The petition must be sent or delivered to the Timber Sales Division, Department of Natural Resources, Olympia, Washington 98504. The values required are:

(1) Total timber volume, converted to Scribner decimal C (Scribner) log scale, purchased by the enterprise in each of the previous three years.

(2) Scribner timber volume purchased by the enterprise from state and federally owned sources in each of the previous three years.

(3) Total Scribner volume purchased by the enterprise processed as defined by chapter 424, Laws of 1989 in the state of Washington in the previous year.

(4) Names and addresses of manufacturing facilities in Washington owned and/or affiliated with the enterprise.

The department will review the petition and supporting documents and determine if the petitioner is eligible under chapter 424, Laws of 1989 and if so add that enterprise to the eligibility list maintained in the Timber Sales Division, Department of Natural Resources, Olympia, Washington 98504, for sales reserved under chapter 424, Laws of 1989. The petitioner will remain on the list for one year from the date of petition. The enterprise may reestablish themselves on the list by petitioning again under this section.

WSR 89-13-066
PROPOSED RULES
DEPARTMENT OF LICENSING
(Securities Division)

[Filed June 21, 1989]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Department of Licensing intends to adopt, amend, or repeal rules concerning:

Amd	WAC 460-10A-160	Recognized securities manual.
New	WAC 460-20A-008	Fraudulent practices of broker-dealers and sales agents.
Amd	WAC 460-20A-420	Dishonest and unethical business practices—Broker-dealers.
Amd	WAC 460-20A-425	Dishonest and unethical business practices—Salespersons.
Amd	WAC 460-42A-081	Exchange and national market system exemption;

that the agency will at 2:00 p.m., Tuesday, July 25, 1989, in the 1st Floor Conference Room, Business License Services, Building 2, Black Lake Plaza, 405 Black Lake Boulevard, Olympia, WA 98504, conduct a public hearing on the proposed rules.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on August 8, 1989.

The authority under which these rules are proposed is RCW 21.20.450.

The specific statute these rules are intended to implement is RCW 21.20.010, 21.20.110, 21.20.310(8) and 21.20.320(2).

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before July 25, 1989.

The department reserves the right to modify the text of these proposed rules before the hearing or in response to written or oral comments received before or during the hearing.

The department may need to change the date for hearing or adoption on short notice. To ascertain that the hearing or adoption will take place as stated in this notice, an interested person may contact Jack L. Beyers, Securities Administrator, whose address is set forth herein.

Written or oral submissions may also contain data, views or agreements concerning the effect of the proposed rules or amendments of rules on economic values, pursuant to chapter 43.21H RCW.

Correspondence relating to this notice and the proposed rules shall be addressed to:

Jack L. Beyers
Securities Administrator
P.O. Box 648
Olympia, WA 98504

Dated: June 15, 1989
By: Mary Faulk
Director

STATEMENT OF PURPOSE

Name of Agency: Department of Licensing, Securities Division.

General Purpose of These Rules: The general purpose of these rules is two-fold. The rules under RCW 21.20-.310 and 21.20.320 govern both the primary and the secondary market. The exchange and national market system exemption rule provides a primary market and secondary market exemption for those companies that meet the qualifications to be listed on the New York Stock Exchange, the American Stock Exchange and the NASDAQ National Market System. The manual exemption rule reduces the number of manuals that the administrator recognizes under RCW 21.20.320(2). The rules under RCW 21.20.010 and 21.20.110 further define those acts and practices by broker-dealers and salespersons that will be found dishonest and unethical business practices and fraudulent practices.

Description and Summary of These Rules: WAC 460-10A-160 reduces the number of recognized securities manuals under RCW 21.20.320(2); WAC 460-20A-008 sets forth certain practices of broker-dealers and salespersons that will be deemed to be fraudulent under RCW 21.20.010; WAC 460-20A-420 increases the number of practices that will be found to be dishonest and unethical business practices by broker-dealers under RCW 21.20.110; WAC 460-20A-425 increases the number of practices that will be found to be dishonest and unethical business practices by salespersons under RCW 21.20.110; and WAC 460-42A-081 allows the use of the NASDAQ National Market System as the basis for an exemption from registration.

Statutory Authority: For WAC 460-10A-160 is RCW 21.20.320(2); for WAC 460-20A-008 is RCW 21.20.010; for WAC 460-20A-420 and 460-20A-425 is RCW 21.20.110; and for WAC 460-42A-081 is RCW 21.20.310(8).

Responsible Department Personnel: In addition to the director of the Department of Licensing, the following agency personnel have responsibility for drafting, implementing and enforcing this rule: Implementation: Ken Mark, Assistant Director, Business License Services, Black Lake Plaza Building 2, Olympia, Washington 98504, (206) 753-1749; Enforcement: Jack L. Beyers, Securities Administrator, 1300 Quince Street S.E., Olympia, WA 98504, (206) 753-6928; and Drafting: Deborah Bortner, Assistant Securities Administrator, 1300 Quince Street S.E., Olympia, WA 98504, (206) 753-6928.

Name of Organization Proposing Rule: The Department of Licensing, Securities Division.

Reasons Supporting the Proposed Rules: The rule pertaining to broker-dealers and salespersons are meant to provide better notice to those licensees that certain detailed practices are dishonest and unethical or fraudulent. The rules concerning exemptions are intended to increase the exemptions in an area which is perceived to be less risky to the public and decrease the number of companies covered by recognized securities manuals which is an area that needs the protection of the registration process.

Department Comments: These rules are intended to further define RCW 21.20.010 and 21.20.110. These rules are intended to allow an exemption for fairly low risk companies and to force other riskier companies to register. Many of the types of companies mentioned in the articles have been sold in the state of Washington based upon the manual exemption. Those companies will have to register or rely on some other exemption.

Federal or State Laws: Not necessary to comply with any federal law or federal or state court decision.

Small Business Impact Statement: Not been prepared because the department does not believe that any economic impact is involved on more than twenty percent of all industries or more than ten percent of any one industry. Any impact that these rules have upon small business is intended to fall equally on all business. Comments regarding any possible economic impact on small business should be addressed to Jack L. Beyers, Securities Administrator, at the address or telephone number listed above.

AMENDATORY SECTION (Amending Order SDO-100-82, filed 8/27/82)

WAC 460-42A-081 EXCHANGE EXEMPTION AND NATIONAL MARKET SYSTEM. ((~~Any security that meets all of the following conditions is exempt under RCW 21.20.310(8):~~

~~(1) Any security listed or approved for listing upon notice of issuance on an "approved national securities" exchange and any warrant or right to purchase or subscribe to any such security.~~

~~(2) An "approved national securities exchange" is one that requires all of the following be met:~~

~~(a) That the issuer of securities traded on the exchange be required to maintain a minimum of two outside directors on its board of directors.~~

~~(b) The exchange must have established reasonable procedures for trading oversight and surveillance over all exchange listed securities to ensure timely disclosure of material corporate developments to the interested public.~~

~~(c) The exchange must, in acting on applications for listing of common stock, have established procedures to ensure careful review of the issuer's financial integrity and risk and substantially apply each of the minimum qualifications set forth in (i) below, and in considering suspension or removal from listing, substantially apply each of the criteria set forth in (ii) below.~~

~~(i) Listing qualifications:~~

~~(A) Net tangible assets of at least four million dollars and net income of at least four hundred thousand dollars after all charges including federal income taxes in the fiscal year immediately preceding the filing of a listing application, or, in the alternative, net tangible assets of a least ten million dollars provided the issuer has had a minimum of three years of operations and the aggregate market value of the issuer's publicly held shares is ten million dollars.~~

~~(B) Minimum public distribution of 400,000 shares excluding the holdings of officers, directors, controlling shareholders and other concentrated or family holdings.~~

~~(C) Minimum price of stock or shares of three dollars per share for a reasonable period of time prior to the filing of a listing application, and/or an aggregate market value of publicly held shares of at least three million dollars.~~

~~(ii) Criteria for consideration of suspension or removal from listing:~~

~~(A) If a company which (A) has net tangible assets of less than two million dollars has sustained net losses in each of its two most recent fiscal years, or (B) has net tangible assets of less than four million dollars and has sustained net losses in three of its four most recent fiscal years.~~

~~(B) If the number of shares publicly held (excluding the holdings of officers, directors, controlling shareholders and other concentrated or family holdings) is less than 200,000.~~

~~(C) If the aggregate market value of shares publicly held in the aggregate remains less than one million dollars for a significant period of time.~~

~~(3)~~)) (1) Any security listed or designated, or approved for listing or designation upon notice of issuance on an exchange or interdealer quotation system, any other security of the same issuer which is of senior or substantially equal rank, any security called for by subscription rights or warrants so listed or approved, or any warrant or right to purchase or subscribe to any of the foregoing is exempt under RCW 21.20.310(8), if such exchange or interdealer quotation system has adopted the criteria for listing or designation as set forth in Securities Act Release 33-6810, 53 Federal Register 249 (December 28, 1988). The administrator shall have the authority to withdraw this exemption as to a system or category of securities when necessary in the public interest for the protection of investors.

(2) For the purposes of nonissuer transactions only, any security listed or approved for listing upon notice of issuance on ((~~the New York stock exchange, the American stock exchange, the Midwest stock exchange,~~)) the Spokane stock exchange ((~~or any other stock exchange registered with the federal securities and exchange commission and approved by the director~~)); any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing, is exempted under RCW 21.20.310(8).

AMENDATORY SECTION (Amending Order SDO-89-86, filed 7/14/86)

WAC 460-10A-160 RECOGNIZED SECURITIES MANUAL. For the purpose of RCW 21.20.320(2) "Recognized securities manual" shall mean((:)) Fitch Investors Service((~~, Moodys Investors Service (except for Moodys International Manual), and Standard and Poor's Corporation Records; provided Moodys OTC Industrial Manual is a "recognized securities manual" for the purposes of RCW 21.20.320(2) only with respect to outstanding securities of issuers meeting the following requirements:~~

~~(1) An entry describing the issuer and meeting the informational requirements of RCW 21.20.320(2) was published in Moodys Investors Service OTC-Industrial Manual and such an entry has appeared continuously in that manual since August 9, 1986 and the issuer has not subsequently reorganized, merged, consolidated, or had a stock split; or~~

~~(2) Securities of the issuer have been registered with the Securities and Exchange Commission pursuant to section 12 of the Securities and Exchange Act of 1934, and the issuer has been subject to the reporting requirements of section 13 of that act, and has promptly filed all reports required by section 13 for the three reporting periods immediately preceding the claim of the RCW 21.20.320(2) transactional exemption~~)).

NEW SECTION

WAC 460-20A-008 FRAUDULENT PRACTICES OF BROKER-DEALERS AND SALES AGENTS. A broker-dealer or agent who engages in one or more of the following practices shall be deemed to have engaged in an "act, practice, or course of business which operates or would operate as a fraud" as used in RCW 21.20.010. This section is not intended to be all inclusive, and thus, acts or practices not enumerated herein may also be deemed fraudulent.

(1) Entering into a transaction with a customer in any security at an unreasonable price or at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit.

(2) Contradicting or negating the importance of any information contained in a prospectus or other offering materials with intent to deceive or mislead or using any advertising or sales presentation in a deceptive or misleading manner.

(3) In connection with the offer, sale, or purchase of a security, falsely leading a customer to believe that the broker-dealer or agent is in possession of material, nonpublic information which would impact on the value of the security.

(4) In connection with the solicitation of a sale or purchase of a security, engaging in a pattern or practice of making contradictory recommendations to different investors of similar investment objective for some to sell and others to purchase the same security, at or about the same time, when not justified by the particular circumstance of each investor.

(5) Failing to make a bona fide public offering of all the securities allotted to a broker-dealer for distribution by, among other things, (a) transferring securities to a customer, another broker-dealer, or a fictitious account with the understanding that those securities will be returned to the broker-dealer or its nominees, or (b) parking or withholding securities.

(6) Although nothing in this section precludes application of the general antifraud provisions against anyone for practices similar in nature to the practices discussed below, the following subsections specifically apply only in connection with the solicitation of a purchase or sale of OTC non-NASDAQ equity securities:

(a) Failing to disclose the firm's present bid and ask price of a particular security at the time of solicitation, and the firm's bid and ask price at the time of execution on the confirmation.

(b) Failing to advise the customer, both at the time of solicitation and on the confirmation, of any and all compensation related to a specific securities transaction to be paid to the agent including commissions, sales charges, or concessions.

(c) In connection with a principal transaction, failing to disclose, both at the time of solicitation and on the confirmation, a short inventory position in the firm's account of more than five percent of the issued and outstanding shares of that class of securities of the issuer: PROVIDED, That this subsection shall apply only if the firm is a market maker at the time of the solicitation.

(d) Conducting sales contests in a particular security.

(e) After a solicited purchase by a customer, failing or refusing, in connection with a principal transaction, to promptly execute sell orders.

(f) Soliciting a secondary market transaction when there has not been a bona fide distribution in the primary market.

(g) Engaging in a pattern of compensating an agent in different amounts for effecting sales and purchases in the same security.

(7) Effecting any transaction in, or inducing the purchase or sale of any security by means of any manipulative, deceptive, or other fraudulent device or contrivance including but not limited to the use of boiler room tactics or use of fictitious or nominee accounts.

(8) Failure to comply with any prospectus delivery requirement promulgated under federal law.

AMENDATORY SECTION (Amending Order SDO-202-84, filed 12/27/84)

WAC 460-20A-420 DISHONEST OR UNETHICAL BUSINESS PRACTICES—BROKER-DEALERS. The phrase "dishonest or unethical practices" as used in RCW 21.20.110(7) as applied to broker-dealers is hereby defined to include any of the following:

(1) Engaging in a pattern of unreasonable and unjustifiable delays in the delivery of securities purchased by any of its customers and/or in the payment upon request of free credit balances reflecting completed transactions of any of its customers;

(2) Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;

(3) Recommending to a customer to purchase, sale or exchange of any security without reasonable grounds to believe that such transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer;

(4) Executing a transaction on behalf of a customer without authorization to do so;

(5) Exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time and/or price for the execution of orders;

(6) Executing any transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account;

(7) Failing to segregate customers' free securities or securities held in safekeeping;

(8) Hypothecating a customer's securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as permitted by rules of the securities and exchange commission;

(9) Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit;

(10) Failing to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, a final or preliminary prospectus, and if the latter, failing to furnish a final prospectus within a reasonable period after the effective date of the offering.

(11) Charging unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of monies due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business;

(12) Offering to buy from or sell to any person any security at a stated price unless such broker-dealer is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell;

(13) Representing that a security is being offered to a customer "at the market" or a price relevant to the market price unless such broker-dealer knows or has reasonable grounds to believe that a market for such security exists other than that made, created or controlled by such broker-dealer, or by any person for whom he is acting or with whom he is associated in such distribution, or any person controlled by, controlling or under common control with such broker-dealer;

(14) Effecting any transaction in, or inducing the purchase of sale of, any security by means of any manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, which may include but not be limited to:

(a) Effecting any transaction in a security which involves no change in the beneficial ownership thereof;

(b) Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security; provided, however, nothing in this subsection shall prohibit a broker-dealer from entering bona fide agency cross transactions for its customer;

(c) Effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in such security or raising or depressing the price of such security, for the purpose of inducting the purchase or sale of such security by others;

(15) Guaranteeing a customer against loss in any securities account of such customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer with or for such customer;

(16) Publishing or circulating, or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless such broker-dealer believes that such transaction was a bona fide purchase or sale of such security; or which purports to quote the bid price or asked price for any security, unless such broker-dealer believes that such quotation represents a bona fide bid for, or offer of, such security;

(17) Using any advertising or sales presentation in such a fashion as to be deceptive or misleading. An example of such practice would be a distribution of any nonfactual data, material or presentation based on conjecture, unfounded or unrealistic claims or assertations in any brochure, flyer, or display by words, pictures, graphs or otherwise designed to supplement, detract from, supersede or defeat the purpose or effect of any prospectus or disclosure; or

(18) Failing to disclose that the broker-dealer is controlled by, controlling, affiliated with or under common control with the issuer of any security before entering into any contract with or for a customer for the purchase or sale of security, the existence of such control to such customer, and if such disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction;

(19) Failing to make bona fide public offering of all of the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter, a selling group member of from a member participating in the distribution as an underwriter or selling group member; or

(20) Failure or refusal to furnish a customer, upon reasonable request, information to which he is entitled, or to respond to a formal written request or complaint.

(21) In connection with the solicitation of a sale or purchase of an OTC non-NASDAQ security, failing to promptly provide the most current prospectus or the most recently filed periodic report filed under Section 13 of the Securities Exchange Act, when requested to do so by a customer.

(22) Marking any order ticket or confirmation as unsolicited when in fact the transaction is solicited.

(23) For any month in which activity has occurred in a customer's account, but in no event less than every three months, failing to provide each customer with a statement of account which with respect to all OTC non-NASDAQ equity securities in the account, contains a value for each such security based on the closing market bid on a date certain: PROVIDED, That this subsection shall apply only if the firm has been a market maker in such security at any time during the month in which the monthly or quarterly statement is issued.

(25) Failing to comply with any applicable provision of the Rules of Fair Practice of the National Association of Securities Dealers or any applicable fair practice or ethical standard promulgated by the Securities and Exchange Commission or by a self-regulatory organization approved by the Securities and Exchange Commission.

(26) Any acts or practices enumerated in WAC 460-20A-008.

The conduct set forth above is not inclusive. Engaging in other conduct such as forgery, embezzlement, nondisclosure, incomplete disclosure or misstatement of material facts, or manipulative or deceptive practices shall also be grounds for denial, suspension or revocation of registration.

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

AMENDATORY SECTION (Amending Order SDO-202-84, filed 12/27/84)

WAC 460-20A-425 DISHONEST OR UNETHICAL BUSINESS PRACTICES—SALESPERSONS. The phrase "dishonest or unethical practices" as used in RCW 21.20.110(7) as applied to salespersons, is hereby defined to include any of the following:

(1) Engaging in the practice of lending or borrowing money or securities from a customer, or acting as a custodian for money, securities or an executed stock power of a customer;

(2) Effecting securities transactions not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transactions are authorized in writing by the broker-dealer prior to execution of the transaction;

(3) Establishing or maintaining an account containing fictitious information in order to execute transactions which would otherwise be prohibited;

(4) Sharing directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer and the broker-dealer which the agent represents;

(5) Dividing or otherwise splitting the agent's commissions, profits or other compensation from the purchase or sale of securities with any person not also registered for the same broker-dealer, or for a broker-dealer under direct or indirect common control; or

(6) Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;

(7) Recommending to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that such transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer;

(8) Executing a transaction on behalf of a customer without authorization to do so;

(9) Exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time and/or price for the execution of orders;

(10) Executing any transaction in a margin account without securing from the customer a properly executing written margin agreement promptly after the initial transaction in the account;

(11) Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit;

(12) Failing to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, a final or preliminary prospectus, and if the latter, failing to furnish a final prospectus within a reasonable period after the effective date of the offering.

(13) Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, which may include but not be limited to:

(a) Effecting any transaction in a security which involves no change in the beneficial ownership thereof;

(b) Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same time and substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security; provided, however, nothing in this subsection shall prohibit a broker-dealer from entering bona fide agency cross transactions for its customer;

(c) Effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in such security or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others;

(14) Guaranteeing a customer against loss in any securities account for such customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer with or for such customer;

(15) Publishing or circulating, or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless such broker-dealer believes that such transaction was a bona fide purchase or

sale of such security; or which purports to quote the bid price or asked price for any security, unless such broker-dealer believes that such quotation presents a bona fide bid for, or offer of, such security;

(16) Using any advertising or sales presentation in such a fashion as to be deceptive or misleading. An example of such practice would be a distribution of any nonfactual data, material or presentation based on conjecture, unfounded or unrealistic claims or assertions of any brochure, flyer, or display by words, pictures, graphs or otherwise.

(17) In connection with the solicitation of a sale or purchase of an OTC non-NASDAQ security, failing to promptly provide the most current prospectus or the most recently filed periodic report filed under Section 13 of the Securities Exchange Act, when requested to do so by a customer.

(18) Marking any order ticket or confirmation as unsolicited when in fact the transaction is solicited.

(19) Failing to comply with any applicable provision of the Rules of Fair Practice of the National Association of Securities Dealers or any applicable fair practice or ethical standard promulgated by the Securities and Exchange Commission or by a self-regulatory organization approved by the Securities and Exchange Commission.

(20) Any act or practice enumerated in WAC 460-20A-008.

The conduct set forth above is not inclusive. Engaging in other conduct such a forgery, embezzlement, nondisclosure, incomplete disclosure or misstatement of material facts, or manipulative or deceptive practices shall also be grounds for denial, suspension or revocation of registration.

WSR 89-13-067
PROPOSED RULES
DEPARTMENT OF LICENSING
(Securities Division)
[Filed June 21, 1989]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Department of Licensing intends to adopt, amend, or repeal rules concerning:

Amd	WAC 460-20A-220	Salesperson registration and examination.
Amd	WAC 460-24A-050	Investment adviser and investment adviser salesperson (representative) registration and examination;

that the agency will at 11:00 a.m., Tuesday, July 25, 1989, in the 1st Floor Conference Room, Business License Services, Building 2, Black Lake Plaza, 405 Black Lake Boulevard, Olympia, WA 98504, conduct a public hearing on the proposed rules.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on August 8, 1989.

The authority under which these rules are proposed is RCW 21.20.450.

The specific statute these rules are intended to implement is RCW 21.20.070.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before July 25, 1989.

The department reserves the right to modify the text of this proposed rule before the hearing or in response to written or oral comments received before or during the hearing.

The department may need to change the date for hearing or adoption on short notice. To ascertain that the hearing or adoption will take place as stated in this notice, an interested person may contact Jack L. Beyers, Securities Administrator, whose address is set forth in herein.

Written or oral submissions may also contain data, views or agreements concerning the effect of the proposed rules on economic values, pursuant to chapter 43-.21H RCW.

Correspondence relating to this notice and proposed rule shall be addressed to:

Jack L. Beyers
Securities Administrator
P.O. Box 648
Olympia, WA 98504

Dated: June 15, 1989
By: Mary Faulk
Director

STATEMENT OF PURPOSE

Name of Agency: Department of Licensing, Securities Division.

General Purpose of Rules: The rules shown below are proposed under the Securities Act of Washington, chapter 21.20 RCW [to] further implement the registration of investment advisers, securities salespersons, and investment adviser salespersons. The rules update the examination requirements to provide for two new examinations developed by the National Association of Securities Dealers and by the North American Securities Administrators Association.

Description and Summary of the Rules: WAC 460-20A-220 creates a new limited registration category, corporate securities limited representative; and WAC 460-24A-050 substitutes the new uniform investment adviser law examination for the uniform state law examination as a requirement for investment adviser and investment adviser salesperson registration.

Statutory Authority and Implementation: The authority under which WAC 460-20A-220 is proposed is RCW 21.20.450 and the specific statute which it is intended to implement is RCW 21.20.070; and the authority under which WAC 460-24A-050 is proposed is RCW 21.20.450 and the specific statute which it is intended to implement is RCW 21.20.070.

Responsible Department Personnel: In addition to the director of the Department of Licensing, the following agency personnel have responsibility for drafting, implementing and enforcing these rules: Implementation: Ken Mark, Assistant Director, Business License Services, Black Lake Plaza Building 2, Olympia, Washington 98504, (206) 753-1749; Enforcement: Jack L. Beyers, Securities Administrator, 1300 Quince Street S.E., P.O. Box 648, Olympia, WA 98504, (206) 753-6928; and Drafting: Suzanne E. Sarason, Securities Examiner, Securities Division, 1300 Quince Street S.E., P.O. Box 648, Olympia, WA 98504, (206) 753-6928.

Name of Organization Proposing Rules: The Department of Licensing, Securities Division.

Reasons Supporting the Proposed Rules: The proposed rules are intended to conform the requirements for securities salesperson, investment adviser, and investment adviser salesperson registration in Washington to the requirements in other states. The proposed changes reflect the adoption of two new national examinations: The corporate securities limited representative examination and the uniform investment adviser law examination.

Department Comments: These rules are intended to further implement the licensing provisions of chapter 21.20 RCW.

Federal or State Law: Not necessary to comply with any federal or state law or federal or state court decisions.

Small Business Impact Statement: Not been prepared because the department does not believe that any economic impact is involved on more than twenty percent of all industries or more than ten percent of any one industry. Any impact that the rules may have upon small business is intended to fall equally on all businesses. Comments regarding any possible economic impact on small business should be directed to Jack L. Beyers, Administrator of Securities, at the address or telephone number shown above.

AMENDATORY SECTION (Amending Order SDO-047-88, filed 8/8/88)

WAC 460-20A-220 SALESPERSON REGISTRATION AND EXAMINATION. (1) Every applicant for registration as a securities salesperson, unless exempt as provided herein, shall pass the following examinations with a score of seventy percent or better and complete the NASD Form U-4.

(a) For a salesperson's license to effect or attempt to effect sales of general securities, the individual shall pass the NASD uniform securities agent state law examination and the NASD general securities representative examination.

(b) For a limited salesperson's license to effect or to attempt to effect sales of investment company securities, variable contracts or mutual funds, the individual shall pass the NASD investment company products/variable contracts representative examination and the uniform securities agent state law examination.

(c) For a limited salesperson's license to effect or to attempt to effect sales of limited partnership interests and interests in tax shelters, the individual shall pass the NASD direct participation program representative examination and the uniform securities agent state law examination.

(d) For a limited salesperson's license to effect or to attempt to effect sales of municipal bonds, the individual shall pass the NASD municipal securities representative examination and the uniform securities agent state law examination.

(e) For a limited salesperson's license to effect or to attempt to effect sales of real estate program offerings, the individual shall pass the uniform real estate securities examination and the uniform securities agent state law ((~~exam~~)) examination.

(f) For a limited salesperson's license to effect or attempt to effect sales on behalf of the issuer of a single offering of the issuer where no commissions or similar remuneration will be paid or given directly or indirectly in connection with the offer or sale of the issuer's securities, the individual shall pass the uniform securities state law examination.

(g) For a limited salesperson's license to effect or attempt to effect sales of corporate securities, the individual shall pass the NASD corporate securities limited representative examination and the uniform securities agent state law examination.

(2) Any individual out of the business of effecting transactions in securities for less than two years and who has previously passed the required examinations in subsection (1)(a), (b), (c), (d), or (e) of this section or the Washington state securities examination shall not be required to retake the examination(s) to be eligible to be relicensed upon application.

(3) Upon written application and approval, the director may exempt the following persons from the testing requirements in subsection (1) ((~~above~~)) of this section:

(a) For a particular original offering of an issuer's securities where no commission or similar remuneration will be paid or given directly or indirectly in connection with the offer or sale of such securities, not more than two officers of the issuer or corporate general partner or two individual general partners, provided, however, that the period of such exemption from testing requirements shall not exceed ninety days. To remain licensed for any continuation of the offering of securities beyond ninety days, the applicant must comply with the requirements of subsection (1) ((~~above~~)) of this section.

(b) A salesperson engaged exclusively in the sale of condominium securities provided that written notice is given to the director five days prior to the exercise of the exemption and that such salesperson submit a copy of his/her current Washington real estate license to the director. If that license is cancelled, suspended or revoked, the exemption will not apply to any further transaction.

(4) The licenses in subsection (1) of this section shall be effective until December 31 of the year of issuance at which time it shall be renewed or if not renewed shall be deemed delinquent except that the expiration date of the licenses of salespersons representing issuers may be adjusted to coincide with the expiration date of the securities registration of the issuer. In the latter case, the license shall be renewed, or if not renewed, shall be deemed delinquent at the expiration of the issuer's securities registration. For any renewal application postmarked after the expiration date but received by the director within two months of the expiration date, the licensee shall pay a delinquency fee of ten dollars in addition to the renewal fee. No renewal applications will be accepted after that time.

(5) Any applicant not completing the salesperson application in full shall be issued a deficiency letter. The deficiency must be corrected within the subsequent six-month period. If not so completed, one-half the filing fee shall be returned to the applicant. A new application and filing fee must then be filed in order to initiate application.

(6) Any salesperson registered prior to August 15, 1981, and who was registered with the Washington state securities division as of the date of the adoption of these regulations and registered continuously thereafter, shall be subject to the regulation in effect at the time of the original application.

AMENDATORY SECTION (Amending Order SDO-220-85, filed 11/19/85)

WAC 460-24A-050 INVESTMENT ADVISER AND INVESTMENT ADVISER SALESPERSON (REPRESENTATIVE) REGISTRATION AND EXAMINATIONS. (1) In order to be licensed in this state as an investment adviser the individual applicant, the officer if the applicant is a corporation or a general partner if the applicant is a partnership shall complete the uniform ((~~securities agent state~~)) investment adviser law examination with a score of seventy percent or better and complete one of the following with a score of seventy percent or better:

(a) NASD general securities principal examination (Series 24) or

(b) NASD investment company products/variable contracts principal examination (Series 26).

The applicant must also complete a Form ADV for the state of Washington.

(2) An individual applicant, an officer if the applicant is a corporation or a general partner if the applicant is a partnership any one of which has completed the uniform ((~~securities agent state~~)) investment adviser law examination with a score of seventy percent or better and which holds one of the following designations, shall not be required to complete the exams designated in subsection (1)(a) and (b) of this section in order to apply for an investment advisers license:

(a) Chartered investment counselor, or

(b) Chartered financial analyst, or

(c) Certified financial planner which designation is completed on or after the effective date of these rules.

The applicant must also complete a Form ADV for the state of Washington.

(3) If the individual officer who takes the examination on behalf of a corporate applicant or the individual general partner who takes the examination on behalf of a partnership ceases to be an officer or general partner, then the investment adviser must notify the securities division of a substitute officer or general partner who has passed the examinations required in subsection (1) of this section within two months in order to maintain the investment adviser license.

(4) In order to be licensed in this state as an investment adviser salesperson (representative) the individual applicant shall complete the uniform ((~~securities agent state~~)) investment adviser law examination with a score of seventy percent or better and complete one of the following with a score of seventy percent or better unless subsection (6) of this section applies:

(a) NASD general securities representative examination (Series 7), or

(b) NASD investment company products/variable contracts limited representative qualifications examination (Series 6).

The applicant must also complete the Form U-4 for the state of Washington.

(5) An individual who has completed the uniform ((~~securities agent state~~)) investment adviser law examination with a score of seventy percent or better and who holds one of the following designations shall not be required to complete the exams designated in subsection (4) of this section in order to apply for an investment adviser salesperson (representative) license.

(a) Chartered investment counselor

(b) Chartered financial analyst

(c) Certified financial planner whose designation is completed on or after the effective date of these rules.

The applicant must also complete the Form U-4 for the state of Washington.

(6) The administrator may waive the testing requirements in subsection (5) of this section for an investment adviser representative whose activities will be limited to supervising the firm's investment advisory activities in Washington, provided that the applicant has been employed for five years preceding the filing of the application in a supervisory capacity, or as a portfolio manager, by an investment adviser registered under the Investment Advisers Act of 1940 for at least five years and the investment adviser has been engaged in rendering "investment supervisory services" as defined in section 202 (a)(13) of the Investment Advisers Act of 1940.

(7) Any individual who has been retained or employed by an investment adviser to solicit clients or offer the services of the investment adviser or manage the accounts of said clients any time during the two years prior to application and who has previously passed the required examination in subsection (1) or (4) of this section or the Washington state investment advisers examination shall not be required to retake the examination(s) to be eligible to be relicensed as an investment adviser salesperson (representative) upon application.

(8) Any investment adviser or investment adviser salesperson registered prior to August 15, 1981, and who was registered with the Washington state securities division as of the date of the adoption of these regulations and remained registered thereafter shall be subject to the regulations in effect at the time of the original application.

WSR 89-13-068
PROPOSED RULES
DEPARTMENT OF LICENSING
(Securities Division)
[Filed June 21, 1989]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Department of Licensing intends to adopt, amend, or repeal rules concerning the registration and examination of mortgage securities, broker-dealers and salespersons as follows:

Amd	WAC 460-33A-010	Application.
Amd	WAC 460-33A-015	Definitions.
Amd	WAC 460-33A-017	Registration not required.
Amd	WAC 460-33A-031	Minimum investor suitability requirements.
Amd	WAC 460-33A-055	Escrow account.
Amd	WAC 460-33A-065	Service agreement.
Amd	WAC 460-33A-080	Registration and examination of mortgage broker-dealer.
Amd	WAC 460-33A-085	Registration and examination of mortgage securities salespersons.
Amd	WAC 460-20A-220	Salesperson registration and examination.
Amd	WAC 460-20A-230	Broker-dealer registration and examination;

that the agency will at 10:30 a.m., Tuesday, July 25, 1989, in the 1st Floor Conference Room, Business License Services, Building 2, Black Lake Plaza, 405 Black Lake Boulevard, Olympia, WA 98504, conduct a public hearing on the proposed rules.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on August 8, 1989.

The authority under which these rules are proposed is RCW 21.20.450.

The specific statute these rules are intended to implement is chapter 21.20 RCW.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before July 25, 1989.

The department reserves the right to modify the text of this proposed rule before the hearing or in response to written or oral comments received before or during the hearing.

The department may need to change the date for hearing or adoption on short notice. To ascertain that the hearing or adoption will take place as stated in this notice, an interested person may contact Jack L. Beyers, Securities Administrator, whose address is set forth herein.

Written or oral submissions may also contain data, views or agreements concerning the effect of the proposed rules on economic values, pursuant to chapter 43-.21H RCW.

Correspondence relating to this notice and proposed rule shall be addressed to:

Jack L. Beyers
Securities Administrator
P.O. Box 648
Olympia, WA 98504

Dated: June 15, 1989
By: Mary Faulk
Director

STATEMENT OF PURPOSE

Name of Agency: Department of Licensing, Securities Division.

General Purpose of These Rules: To amend chapter 460-33A WAC, which governs the offer and sale of mortgage paper securities to individual investors. The requirements for broker-dealers and salespersons wishing to obtain limited licenses to transact business in mortgage paper securities have been moved to chapter 460-20A WAC, the section of the Washington Administrative Code that deals with securities broker-dealers and salesmen.

Description and Summary of These Rules: WAC 460-33A-010 establishes the scope of chapter 460-33A WAC. The proposed amendments clarify that chapter 460-33A WAC is intended to offer an optional method of registration for mortgage paper securities and that when applicable, the debenture company provisions of chapter 21.20 RCW must also be followed. Provisions regarding exemptions from registration have been moved to WAC 460-33A-017; WAC 460-33A-015(5) has been amended to simplify the definition "mortgage paper securities" and clarify that chapter 460-33A WAC is not intended to alter either the statutory definition of a "security" contained in RCW 21.20.005(12) or the security and transactional exemptions contained in RCW 21.20.310 and 21.20.320; WAC 460-33A-031(2) has been amended for clarification, to establish a limit regarding the size of investment that a purchaser can have in the mortgage paper securities of any one borrower, and to reflect the recent changes in WAC 460-

44A-500 through 460-44A-506; WAC 460-33A-055 has been amended to clarify that interest earned on escrowed funds shall not be paid to the mortgage broker-dealer. The amendment also clarifies that the escrow account must be acceptable to the administrator and that all checks by which mortgage paper securities are purchased must be written to the escrow account; WAC 460-33A-065 has been amended to correct an apparent typographical error in the current text with regard to service agreement requirements; WAC 460-33A-080, 460-33A-085, 460-20A-220 and 460-20A-230 have been amended to clarify the registration and exam requirements for mortgage broker-dealers and their salespersons. The exam requirements are essentially unchanged, but are now grouped with the other securities broker-dealer and salesperson requirements in chapter 460-20A WAC; and WAC 460-33A-105 has been amended so that the investor may no longer undertake to do his own appraisal. The amendment to WAC 460-33A-105(2) makes clear that an independent appraisal must reflect the value of the subject property on an "as is" basis. WAC 460-33A-105(3) has been added to require the appraiser be certified in conformance with HB 1917, which was recently passed by the legislature.

Statutory Authority and Implementation: The authority under which these rules are proposed is RCW 21.20-.450 and the statute that these rules are intended to implement is chapter 21.20 RCW.

Responsible Department Personnel: In addition to the director of the Department of Licensing, the following agency personnel have the responsibility for drafting, implementing and enforcing these rules: Implementation: Ken Mark, Assistant Director, Business License Services, Black Lake Plaza, Building 2, Olympia, Washington 98504, (206) 753-1749; Enforcement: Jack L. Beyers, Administrator, Securities Division, 1300 Quince Street, P.O. Box 648, Olympia, WA 98504, (206) 753-6928; and Drafting: William M. Beatty, Securities Examiner, 1300 Quince Street, P.O. Box 648, Olympia, WA 98504, (206) 753-6928.

Name of Organization Proposing Rules: The Department of Licensing, Securities Division.

Reasons Supporting the Proposed Rules: Most of the above-noted provisions have been amended for the sake of clarification of existing law and/or practice. Other sections, such as WAC 460-33A-105, have been amended in response to enforcement concerns.

Department Comments: These rules are intended to clarify existing rules and to establish needed changes in chapter 460-33A WAC. The changes reflect the division's registration and enforcement experiences under chapter 460-33A WAC.

Federal or State Laws: Not necessary to comply with any federal law or federal or state court decision.

Small Business Impact Statement: Not been prepared because the department does not believe that any economic impact is involved on more than twenty percent of all industries or more than ten percent of any one industry. Any impact that these rules may have upon small business is intended to fall equally on all business. Comments regarding any possible economic impact on small business should be addressed to Jack L. Beyers, Securities Administrator, at the address or telephone number shown above.

AMENDATORY SECTION (Amending Order SDO-047-88, filed 8/8/88)

WAC 460-20A-220 SALESPERSON REGISTRATION AND EXAMINATION. (1) Every applicant for registration as a securities salesperson, unless exempt as provided herein, shall pass the following examinations with a score of seventy percent or better and complete the NASD Form U-4.

(a) For a salesperson's license to effect or attempt to effect sales of general securities, the individual shall pass the NASD uniform securities agent state law examination and the NASD general securities representative examination.

(b) For a limited salesperson's license to effect or to attempt to effect sales of investment company securities, variable contracts or mutual funds, the individual shall pass the NASD investment company products/variable contracts representative examination and the uniform securities agent state law examination.

(c) For a limited salesperson's license to effect or to attempt to effect sales of limited partnership interests and interests in tax shelters, the individual shall pass the NASD direct participation program representative examination and the uniform securities agent state law examination.

(d) For a limited salesperson's license to effect or to attempt to effect sales of municipal bonds, the individual shall pass the NASD municipal securities representative examination and the uniform securities agent state law examination.

(e) For a limited salesperson's license to effect or to attempt to effect sales of real estate program offerings, the individual shall pass the uniform real estate securities examination and the uniform securities agent state law ((~~exam~~)) examination.

(f) For a limited salesperson's license to effect or attempt to effect sales on behalf of the issuer of a single offering of the issuer where no commissions or similar remuneration will be paid or given directly or indirectly in connection with the offer or sale of the issuer's securities, the individual shall pass the uniform securities state law examination.

(g) For a limited salesperson's license to effect or attempt to effect sales of corporate securities, the individual shall pass the NASD corporate securities limited representative examination and the uniform securities agent state law examination.

(h) For a limited salesperson's license to effect or attempt to effect sales of mortgage paper securities as defined in WAC 460-33A-015(5), the individual shall pass the uniform securities agent state law examination.

(2) Any individual out of the business of effecting transactions in securities for less than two years and who has previously passed the required examinations in subsection (1)(a), (b), (c), (d), or (e) of this section or the Washington state securities examination shall not be required to retake the examination(s) to be eligible to be relicensed upon application.

(3) Upon written application and approval, the director may exempt the following persons from the testing requirements in subsection (1) ((~~above~~)) of this section:

(a) For a particular original offering of an issuer's securities where no commission or similar remuneration will be paid or given directly or indirectly in connection with the offer or sale of such securities, not more than two officers of the issuer or corporate general partner or two individual general partners, provided, however, that the period of such exemption from testing requirements shall not exceed ninety days. To remain licensed for any continuation of the offering of securities beyond ninety days, the applicant must comply with the requirements of subsection (1) ((~~above~~)) of this section.

(b) A salesperson engaged exclusively in the sale of condominium securities provided that written notice is given to the director five days prior to the exercise of the exemption and that such salesperson submit a copy of his/her current Washington real estate license to the director. If that license is cancelled, suspended or revoked, the exemption will not apply to any further transaction.

(4) The licenses in subsection (1) of this section shall be effective until December 31 of the year of issuance at which time it shall be renewed or if not renewed shall be deemed delinquent except that the expiration date of the licenses of salespersons representing issuers may be adjusted to coincide with the expiration date of the securities registration of the issuer. In the latter case, the license shall be renewed, or

if not renewed, shall be deemed delinquent at the expiration of the issuer's securities registration. For any renewal application postmarked after the expiration date but received by the director within two months of the expiration date, the licensee shall pay a delinquency fee of ten dollars in addition to the renewal fee. No renewal applications will be accepted after that time.

(5) Any applicant not completing the salesperson application in full shall be issued a deficiency letter. The deficiency must be corrected within the subsequent six-month period. If not so completed, one-half the filing fee shall be returned to the applicant. A new application and filing fee must then be filed in order to initiate application.

(6) Any salesperson registered prior to August 15, 1981, and who was registered with the Washington state securities division as of the date of the adoption of these regulations and registered continuously thereafter, shall be subject to the regulation in effect at the time of the original application.

AMENDATORY SECTION (Amending Order SDO-047-88, filed 8/8/88)

WAC 460-20A-230 BROKER-DEALER REGISTRATION AND EXAMINATION. (1) In order to be licensed in this state as a broker-dealer the individual applicant, an officer if the applicant is a corporation, or a general partner if the applicant is a partnership shall pass the following examination with a score of 70% or better and complete the SEC Form B/D and complete the state of Washington registration check sheet.

(a) For a broker-dealers license to effect transactions in general securities one individual, officer or general partner shall pass the NASD general securities principal examination, the uniform securities agent state law examination, and the financial and operations principal examination.

(b) For a limited broker-dealer license to effect transactions in investment company securities, variable contracts or mutual funds one individual, officer or general partner shall pass the NASD investment company products/variable contracts principal examination and the uniform securities agent state law examination.

(c) For a limited broker-dealers license to effect transactions in limited partnership interests and interests in tax shelters one individual, officer or general partner shall pass the NASD direct participation programs principal examination and the uniform securities agent state law examination.

(d) For a limited broker-dealer's license to effect transactions in municipal bonds, one individual, officer or general partner shall pass the NASD municipal securities principal examination and the uniform securities agent state law examination.

(e) For a limited broker-dealer's license to effect transactions in mortgage paper securities as defined in WAC 460-33A-015(5), one individual, officer, or general partner shall pass the uniform securities agent state law examination.

(2) The director may upon application waive the financial and operations examination required in subsection (1)(a) of this section for brokerage firms which do not hold funds or securities for, or owe money or securities to customers and do not carry accounts of or for customers.

(3) If the individual officer who takes the examination on behalf of a corporate applicant or the individual general partner who takes the examination on behalf of a partnership ceases to be an officer or general partner, then the broker-dealer must notify the securities division of a substitute officer or general partner who has passed the same category of examination specified in subsection (1)(a), (b), (c), or (d) of this section within two months in order to maintain the broker-dealers license.

(4) The licenses in subsection (1)(a), (b), (c), or (d) of this section shall be effective until December 31 of the year of passage at which time it shall be renewed or be delinquent. For any renewal application postmarked after the expiration date but received by the director on or before March 1, the licensee shall pay a delinquency fee of twenty-five dollars in addition to the renewal fee. No renewal applications will be accepted thereafter.

(5) Any applicant not completing the broker-dealer application in full shall be issued a deficiency letter. The deficiency must be corrected within the subsequent six-month period. If not so completed, one-half the filing fee shall be returned to the applicant. A new application and filing fee must then be filed in order to initiate application.

(6) Any broker-dealer registered prior to August 15, 1981, and who was registered with the Washington state securities division as of the date of the adoption of these regulations and remained registered continuously thereafter shall be subject to regulations in effect at the time of the original application.

AMENDATORY SECTION (Amending Order SDO-140-86, filed 10/20/86)

WAC 460-33A-010 APPLICATION. (1) The rules contained in these regulations are intended to offer an optional method for the registration((s)) of ((~~securities involving notes and bonds secured by mortgages, trust deeds or property sales contracts and related instruments~~)) "mortgage paper securities" as defined in WAC 460-33A-015(5). While applications for registration not conforming to the standards contained herein shall be looked upon with disfavor, where good cause is shown, certain rules of this chapter may be modified or waived by the administrator, if consistent with the spirit of these rules.

(2) The application of these rules does not affect those issuers to which or to whom the debenture company sections of the Securities Act apply. ((~~If applicable, issuers must comply with those statutory sections.~~))

(3) These rules do not affect the statutory exemptions provided for by ((~~RCW 21.20.310 or 21.20.320~~)), nor ((~~do they intend to expand or restrict the definition of "security" as defined in RCW 21.20.005(12).~~

~~(4) The rules contained in this chapter~~)) will ((~~not~~)) they be applied to, those securities or transactions exempt under RCW 21.20.310 or 21.20.320. These rules are not intended to expand or restrict the definition of "security" as defined in RCW 21.20.005(12).

((~~(5)~~)) (4) The rules contained in this chapter are only applicable to mortgage paper securities, mortgage broker-dealers and mortgage salespersons registering under this chapter.

AMENDATORY SECTION (Amending Order SDO-140-86, filed 10/20/86)

WAC 460-33A-015 DEFINITIONS. As used in this chapter:

(1) "Liquid assets" means cash and other nonpledged assets which are convertible into cash within a five-day period in the normal course of business.

(2) "Mortgage broker-dealer" means a person who is defined as a "broker-dealer" in RCW 21.20.005(3) and who effects transactions in mortgage paper securities registered under the provisions of this chapter.

(3) "General offering circular" means a disclosure document that gives a general description of what is involved in the purchase of mortgage paper securities and the business of offering the mortgage paper securities including a description of the mortgage broker-dealer.

(4) "Mortgage salesperson" means a person other than a mortgage broker-dealer who is defined as a "salesperson" in RCW 21.20.005(2) and who represents a mortgage broker-dealer in effecting offers or sales of mortgage paper securities registered under the provisions of this chapter.

(5) "Mortgage paper securities" means((:

~~(a)~~)) notes and bonds, or other debt securities secured by mortgages or trust deeds on real or personal property or ((~~on~~)) by a vendor's interest in a property sales contract or options granting the right to purchase any of the foregoing ((~~when offered or sold under an arrangement constituting an investment contract as described in WAC 460-33A-017 provided that, notes or bonds secured by mortgages, deeds of trust, or a vendor's interest in a property sales contracts when given by a borrower to a lender at the time of the origination of the loan in the context of a loan transaction shall not, within the context of such transaction, be included within the definition of mortgage paper securities.~~

~~(b) A partial interest in more than one mortgage, trust deed, or property sales contract acquired by an investor along with other investors.~~

~~(c) An interest of several investors in a single mortgage, trust deed or single property sales contracts~~)), including any guarantee of or interest in the foregoing.

(6) "Specific offering circular" means a disclosure document describing the specific mortgage paper securities offering, which is meant to accompany the general offering circular.

AMENDATORY SECTION (Amending Order SDO-140-86, filed 10/20/86)

WAC 460-33A-017 REGISTRATION NOT REQUIRED. Each of the following ((~~shall~~)) need not be ((~~exempt from registration~~)) registered under the rules of this chapter:

(1) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer.

(2) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, any federal savings bank, or any bank, savings bank, or trust company organized or supervised under the laws of any state.

(3) Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association, federal savings bank, or any building and loan or similar association organized under the laws of any state and authorized to do business in this state.

(4) Any security issued by and representing an interest in or a debt of, or guaranteed by, any insurance company organized under the laws of this state and authorized to do and actually doing business in this state.

(5) Any security issued or guaranteed by any federal credit union or any credit union, industrial loan association, or similar association organized and supervised under the laws of this state.

(6) Any transaction in a note or bond secured by real property that is ((~~exempt if the entire mortgage, deed of trust, or agreement, is offered and sold as a unit~~)) exempted under RCW 21.20.320(5): PROVIDED, That ((~~any~~)) a transaction ((~~including~~)) shall not be deemed to be within the exemption granted by RCW 21.20.320(5) if any of the following ((~~elements shall not be deemed to be exempt under this provision~~)) services are offered or included by the mortgage broker-dealer or its affiliates:

((~~(i)~~)) (a) Guarantying the note or contract against loss at any time((~~;~~)); or

((~~(ii)~~)) (b) Guarantying that payments of principal or interest will be paid((~~;~~)); or

((~~(iii)~~)) (c) Assuming any payments necessary to protect the security of the note or contract, excluding necessary advances for taxes and insurance((~~;~~)); or

((~~(iv) Accepting, from time to time, partial payments toward the purchase of the note or contract, or~~

~~(v)~~)) (d) Guarantying a specific yield or return on the note or contract((~~;~~)); or

((~~(vi)~~)) (e) Paying any interest or premium by the mortgage broker-dealer for a period prior to actual purchase and delivery of the note or contract((~~;~~)); or

((~~(vii)~~)) (f) Paying any money other than that collected from the borrower after the note or contract falls into arrears((~~;~~)); or

((~~(viii)~~)) (g) Repurchasing the note or contract, provided that, this is not intended to prohibit good faith repurchases as an effort to assist the investor as long as the representation is not made at the time of sale and not as a part of the sales program((~~;~~)); or

((~~(ix) Accepting the grant of complete discretionary authority in collection of payments, forwarding of payments to other lienholders and investors, resolving delinquency problems, managing the investment or handling of foreclosures and the like for the investors. This does not include such servicing provided by an escrow company, the services strictly limited to the collection and remittance of interest to the investor, or services contractually necessitated by seller financed insurance, or~~

~~(x)~~)) (h) Promising the investor a market for the resale of the mortgage paper securities.

AMENDATORY SECTION (Amending Order SDO-140-86, filed 10/20/86)

WAC 460-33A-031 MINIMUM INVESTOR SUITABILITY REQUIREMENTS. In any sale of mortgage paper registered under the rules of this chapter, the mortgage broker-dealer shall have reasonable grounds to believe and after making reasonable inquiry shall believe that both the conditions of subsections (1) and (2) of this section are satisfied:

(1) The investment is suitable for the purchaser upon the basis of the facts disclosed by the purchaser as to the purchaser's other security holdings and as to the purchaser's financial situation and needs; and

(2) The purchaser qualifies for at least one of the following:

(a) The purchaser's investment in the mortgage paper securities ((~~shall~~)) being offered does not exceed twenty percent of the purchaser's net worth, or joint net worth with that person's spouse: PROVIDED, That the purchaser's total investment in mortgage paper securities involving any one borrower or his affiliates may not exceed twenty percent of the purchaser's net worth, or joint net worth with that person's spouse;

(b) The purchaser's investment ((~~shall~~)) in the mortgage paper securities being offered does not exceed ten percent of the purchaser's (including spouse) taxable income for federal tax purposes for the last year: PROVIDED, That the purchaser's total investment in mortgage paper securities involving any one borrower or his affiliates may not exceed twenty percent of the purchaser's net worth, or joint net worth with that person's spouse;

(c) The purchaser, either alone or with ((~~his~~)) a purchaser representative as defined in WAC 460-44A-501 ((~~shall have~~)), has, as ((~~set forth~~)) stated in WAC ((~~460-44A-506~~)) 460-44A-505, such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment; or

(d) The purchaser is an accredited investor as defined in WAC 460-44A-501.

AMENDATORY SECTION (Amending Order SDO-140-86, filed 10/20/86)

WAC 460-33A-055 ESCROW ACCOUNT. (1) All funds received from lenders or investors to purchase mortgage paper securities shall be deposited within forty-eight hours of receipt in ((~~a specific~~)) an escrow account acceptable to the administrator. The escrow account shall be maintained ((~~for that purpose~~)) in a financial institution as set forth in WAC 460-33A-050(2) or with an independent escrow agent registered under chapter 18.44 RCW. All checks by which purchases or investments are made shall be made payable to the escrow account. All necessary disbursements shall be made from ((~~that~~)) the escrow account. ((~~The escrow agreement must provide that funds may be disbursed from the escrow account only to a specific loan escrow, where funds will be disbursed only upon closing and recordation, or to return the funds to the lenders or investors.~~

~~(2)~~)) No person acting as a mortgage broker-dealer or his agent shall accept any purchase or investment funds for mortgage paper securities in advance of the time necessary to fund the loan transaction. No such fund shall be maintained in such account for longer than sixty days without disbursing the funds and the escrow agreement must provide that funds maintained in such account shall be returned to the investor on the sixty-first day from deposit in the account((~~: PROVIDED, That the interest from funds so retained shall not accrue to the benefit of the mortgage broker-dealer or his agent~~)). No interest earned on escrow account funds shall be paid to the mortgage broker-dealer or its affiliates. The escrow agreement must provide that funds may be disbursed from the escrow account only to a specific loan escrow, where funds will be disbursed only upon closing and recordation, or to return the funds to the lenders or investors.

((~~(3)~~)) (2) The escrow agreements shall provide that the funds will not be subject to the mortgage broker-dealer's creditors.

((~~(4)~~)) (3) The account shall be subject to an audit at any reasonable time by the securities division.

AMENDATORY SECTION (Amending Order SDO-140-86, filed 10/20/86)

WAC 460-33A-065 SERVICE AGREEMENT. (1) Every person acting as a mortgage broker-dealer, or an agent or affiliate thereof, who undertakes to service a mortgage paper security shall have a written agreement with the lender or holder of the contract setting forth specifically what services will be provided.

(2) The service agreement shall require:

(a) That payments received on the note, bond or obligation be immediately deposited to a trust account and in accordance with the provisions of this rule; ((~~and~~))

(b) That such payments shall not be commingled with the assets of the servicing agent or used for any transaction other than the transaction for which the funds are received((~~;~~));

((~~(3)~~)) (c) That payments received on the note, bond or obligation shall be transmitted to the purchasers or lenders pro rata according to their respective interests within thirty-one days after receipt thereof by the agent. If the source for such payment is not the maker of the note, bond or obligation, the agent will inform the purchasers or lenders of the source for payment. A broker or servicing agent who transmits to

the purchasers or lenders such broker's and/or servicing agent's own funds to cover payments due from the borrower but unpaid may recover the amount of such advances from the trust fund when the past due payment is received((;)); and

(d) That the servicing agent will file a request for notice of default upon any prior encumbrances and promptly notify the purchasers or lenders of any default on such prior encumbrances or on the note or notes subject to the servicing agreement.

AMENDATORY SECTION (Amending Order SDO-140-86, filed 10/20/86)

WAC 460-33A-080 REGISTRATION AND EXAMINATION OF MORTGAGE BROKER-DEALERS. (1) Every person acting as a mortgage broker-dealer, unless otherwise exempt, must first obtain a broker-dealer's license under the provisions of chapter 460-20A WAC ((~~or the provisions of this section~~)).

(2) ((~~Every applicant for registration as a mortgage broker-dealer under this section shall pass the Uniform Securities Agent State Law Examination (Series 63) with a score of seventy percent or better and complete the application form as prescribed by the director of the department of licensing.~~

~~(3)~~)) Every applicant under this section shall provide the securities administrator proof of compliance with either WAC 460-33A-040((~~: (Net liquid asset or net worth requirement.)~~

~~(4) For registration of a mortgage broker-dealer, under this section, the fee shall be one hundred fifty dollars for original registration and seventy five dollars for each annual renewal. The licenses shall be effective until December 31 of the year of passage at which time it shall be renewed or delinquent. For any renewal application postmarked after December 31 but before March 1 the late fee shall be twenty five dollars. No renewal applications will be accepted after March 1. Such licensee must submit a new application and filing fee. When an application is denied or withdrawn, the director shall return one-half the fee.~~

~~(5) A person may elect to register under this section in lieu of the registration procedures under chapter 460-20A WAC only if the applicant deals solely in mortgage paper securities as defined in this chapter~~)) or 460-20A-100.

AMENDATORY SECTION (Amending Order SDO-140-86, filed 10/20/86)

WAC 460-33A-085 REGISTRATION AND EXAMINATION OF MORTGAGE SECURITIES SALESPERSONS. (((~~(1)~~))) Every person acting as a mortgage securities salesperson, unless otherwise exempt, must first obtain a salesperson's license under the provisions of chapter 460-20A WAC ((~~or the provisions of this section~~)) and be employed by a broker-dealer or mortgage broker-dealer.

(((~~(2) Every applicant for registration as a mortgage securities salesperson under this section shall pass the Uniform Securities Agent State Law Examination (Series 63) with a score of seventy percent or better and complete the application form prescribed by the director of the department of licensing.~~

~~(3) For registration of a mortgage securities salesperson under this section, the fee shall be thirty five dollars for original registration and fifteen dollars for each annual renewal. The licenses shall be effective until December 31 of the year of passage at which time it shall be renewed or delinquent. For any renewal application postmarked after December 31 but before March 1, the late fee shall be ten dollars. No renewal applications will be accepted after March 1. Such licensee must submit a new application and filing fee. When an application is denied or withdrawn, the director shall retain one-half the fee.~~

~~(4) A person may elect to register under this section in lieu of the registration procedures under chapter 460-20A WAC only if the applicant deals solely in mortgage paper securities.~~))

AMENDATORY SECTION (Amending Order SDO-140-86, filed 10/20/86)

WAC 460-33A-105 APPRAISALS. (1) An appraisal of each parcel of real property or other property which secures or relates to a transaction subject to the provisions of this chapter shall be made by an independent appraiser ((~~unless the purchaser of the obligation to which the parcel or other property relates indicates in writing that he will obtain his own appraisal~~)). The appraisal ((~~or waiver thereof~~)) shall be kept on file by the mortgage broker-dealer for four years.

(2) The appraisal shall reflect the value of the property on an "as is" not an "as built" basis.

(3) The appraisal shall conform to the following requirements:

(a) The appraisal shall be prepared by a competent, independent appraiser acceptable to the administrator; and

(b) The appraiser shall be certified in conformance with House Bill No. 1917.

(4) An appraisal made within the twelve-month period prior to the sale of the mortgage paper security is sufficient.

(((~~(3)~~))) (5) The written consent of any appraiser who is named as having prepared an appraisal in connection with the mortgage paper securities offering shall be filed with the securities administrator.

(((~~(4)~~))) (6) In lieu of the appraisal required by this section, the mortgage broker-dealer may elect to rely on the most recent tax assessment valuation of each parcel of real property.

WSR 89-13-069
PROPOSED RULES
DEPARTMENT OF LICENSING
(Securities Division)
[Filed June 21, 1989]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Department of Licensing intends to adopt, amend, or repeal rules concerning the regulation and exemption of securities under the Securities Act of Washington, chapter 21.20 RCW, as follows:

New	WAC 460-42A-030	Exemption of securities pursuant to RCW 21.20.310(1).
Rep	WAC 460-42A-020	Health care facilities authority bonds;

that the agency will at 11:00 a.m., Tuesday, July 25, 1989, in the 1st Floor Conference Room, Business License Services, Building 2, Black Lake Plaza, 405 Black Lake Boulevard, Olympia, WA 98504, conduct a public hearing on the proposed rules.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on August 8, 1989.

The authority under which these rules are proposed is RCW 21.20.310(1) and 21.20.450.

The specific statute these rules are intended to implement is RCW 21.20.310(1).

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before July 25, 1989.

The department reserves the right to modify the text of these proposed rules before the hearing or in response to written or oral comments received before or during the hearing.

The department may need to change the date for hearing or adoption on short notice. To ascertain that the hearing or adoption will take place as stated in this notice, an interested person may contact Jack L. Beyers, Securities Administrator, whose address is set forth herein.

Written or oral submissions may also contain data, views or agreements concerning the effect of the proposed rules on economic values, pursuant to chapter 43-.21H RCW.

Correspondence relating to this notice and proposed rule shall be addressed to:

Jack L. Beyers
Securities Administrator
P.O. Box 648
Olympia, WA 98504

Dated: June 15, 1989
By: Mary Faulk
Director

STATEMENT OF PURPOSE

Name of Agency: Department of Licensing, Securities Division.

General Purpose: The rule shown below is proposed under the Securities Act of Washington, chapter 21.20 RCW, to allow certain government securities to be exempt from registration by rule rather than by order of the administrator.

Description and Summary of the Rule: WAC 460-42A-030 specifies conditions under which certain governmental securities payable solely from revenues to be received from nongovernmental industrial or commercial enterprises qualify for exemption from registration under RCW 21.20.310(1).

Statutory Authority: The authority under which WAC 460-42A-030 is proposed is RCW 21.20.310(1) and [21.20].450 and the specific statute it is intended to implement is RCW 21.20.310(1).

Responsible Department Personnel: In addition to the director of the Department of Licensing, the following agency personnel have responsibility for drafting, implementing and enforcing this rule: Implementation: Ken Mark, Assistant Director, Business License Services, Black Lake Plaza, Building Two, Olympia, WA 98504, (206) 753-1749; Enforcement: Jack L. Beyers, Securities Administrator, 1300 Quince Street, Olympia, WA 98504, (206) 753-6928; and Drafting: Janet McKinney, Securities Examiner, 1300 Quince Street, Olympia, WA 98504.

Name of Organization Proposing Rule: The Department of Licensing, Securities Division.

Reasons Supporting the Proposed Rule: The rule is intended to create greater certainty in the granting of exemptions from registration under RCW 21.20.310(1).

Department Comments: The rule will allow securities meeting the conditions of the rule to proceed without applying to the department for an order of exemption.

Federal or State Laws: Not necessary to comply with any federal law or state law or any federal or state court decision.

Small Business Impact Statement: Not been proposed because the department does not believe that any economic impact is involved on more than twenty percent of all industries or more than ten percent of any one industry. Any impact that the rule may have upon small business is intended to fall equally on all businesses. Comments regarding any possible economic impact on small business should be directed to Jack L. Beyers, at the address and telephone number shown above.

NEW SECTION

WAC 460-42A-030 EXEMPTION OF SECURITIES PURSUANT TO RCW 21.20.310(1). Any security which would otherwise be exempt from registration under RCW 21.20.310(1) except that it is payable from a nongovernmental industrial or commercial enterprise shall be exempt from registration if it meets the requirements of either subsection (1) or (2) of this section:

(1) The security receives a rating of "AA" or better from Standard and Poor's Corporation or an equivalent rating from Moody's Investors Service, Inc.; or

(2)(a) The security is issued to fund a single-family mortgage loan program established and operated by a state housing finance agency; and

(b) The security receives a rating of at least "A+" from Standard and Poor's Corporation or an equivalent rating from Moody's Investors Service, Inc.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 460-42A-020 HEALTH CARE FACILITIES AUTHORITY BONDS.

WSR 89-13-070
PROPOSED RULES
DEPARTMENT OF LICENSING
(Securities Division)
[Filed June 21, 1989]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Department of Licensing intends to adopt, amend, or repeal rules concerning the regulation and exemption of securities as follows:

New	WAC 460-44A-508	Insignificant deviations from a term, condition, or requirement of WAC 460-44A-501 through 460-44A-506.
Amd	WAC 460-44A-500	Preliminary notes.
Amd	WAC 460-44A-501	Definitions and terms.
Amd	WAC 460-44A-502	General conditions to be met.
Amd	WAC 460-44A-503	Filing of notice and payment of fee prior to sale.
Amd	WAC 460-44A-505	Uniform offering exemption for limited offers and sales of securities not exceeding $5,000,000.
Amd	WAC 460-44A-506	Exemption for nonpublic offers and sales without regard to dollar amount of offering;

that the agency will at 10:00 a.m., Tuesday, July 25, 1989, in the 1st Floor Conference Room, Business License Services, Building 2, Black Lake Plaza, 405 Black Lake Boulevard, Olympia, WA 98504, conduct a public hearing on the proposed rules.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on August 8, 1989.

The authority under which these rules are proposed is RCW 21.20.320 (1) and (16) and 21.20.450.

The specific statute these rules are intended to implement is RCW 21.20.320 (1) and (16).

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before July 25, 1989.

The department reserves the right to modify the text of this proposed rule before the hearing or in response to written or oral comments received before or during the hearing.

The department may need to change the date for hearing or adoption on short notice. To ascertain that

the hearing or adoption will take place as stated in this notice, an interested person may contact Jack L. Beyers, Securities Administrator, whose address is set forth herein.

Written or oral submissions may also contain data, views or agreements concerning the effect of the proposed rules on economic values, pursuant to chapter 43-.21H RCW.

Correspondence relating to this notice and proposed rules shall be addressed to:

Jack L. Beyers
Securities Administrator
P.O. Box 648
Olympia, WA 98504

Dated: June 15, 1989
By: Mary Faulk
Director

STATEMENT OF PURPOSE

Name of Agency: Department of Licensing, Securities Division.

General Purpose of Rule: Implements the exemptions from registration of WAC 460-44A-505 and 460-44A-506 under the Securities Act of Washington, chapter 21.20 RCW. A new section WAC 460-44A-508 is added. These additions are proposed to conform our state rules to the Federal Securities and Exchange Commission Rules 501, 502, 505, 506 and 508.

Statutory Authority: The addition and amendments to the rules are proposed under the statutory authority of RCW 21.20.450 and 21.20.320 (1) and (16) and are intended to administratively implement these statutes.

Summary of Rules: WAC 460-44A-500 notes the addition of WAC 460-44A-508 to the exemption rules; WAC 460-44A-501 adopts the amendments to Securities and Exchange Commission Rule 501 dealing with the definition of accredited investor, the calculation of the aggregate offering price, the addition of WAC 460-44A-508, and the definition of purchaser representative; WAC 460-44A-502 adopts the amendments to Securities and Exchange Commission Rule 502 dealing with information to be furnished and limitations on resale in exempt offerings; WAC 460-44A-503 conforms to a clarifying change in Securities and Exchange Commission Rule 503; WAC 460-44A-505 refers to WAC 460-44A-508; and WAC 460-44A-507 refers to WAC 460-44A-508.

Reason Proposed: To make the exemptions of WAC 460-44A-505 and 460-44A-506 conform to the amendments of Rules 505 and 506, adopted by the Securities and Exchange Commission on March 14, 1989, effective April 19, 1989.

Responsible Department Personnel: In addition to the director of the Department of Licensing, the following agency personnel have responsibility for drafting, implementing and enforcing these rules: Implementation: Ken Mark, Assistant Director, Business License Services, Black Lake Plaza, Building 2, Olympia, Washington 98504, (206) 753-1749; Enforcement: Jack L. Beyers, Securities Administrator, Securities Division, 1300 Quince Street, P.O. Box 648, Olympia, WA 98504, (206) 753-6928; and Drafting: Michael E. Stevenson, Securities Examiner, Securities Division, 1300 Quince Street, P.O. Box 648, Olympia, WA 98504, (206) 753-6928.

Proponents: The Department of Licensing, Securities Division.

Agency Comments: The amendments to these rules are necessary to keep the state exemptions from registration uniform with those of the Securities and Exchange Commission.

Federal Law: The amendments to these rules are made to conform to the amendments to Rules 501, 502, 503, 506, and 508 of Regulation D of the Securities and Exchange Commission.

Small Business Impact Statement: Not been prepared because the department does not believe that there is any economic impact on small business. Any impact that the amendments to these rules may have is intended to fall equally on all business. Comments regarding any possible economic impact on small business should be directed to Jack L. Beyers, Securities Administrator, at the address or telephone number shown above.

AMENDATORY SECTION (Amending Order SDO-71-88, filed 7/12/88)

WAC 460-44A-500 PRELIMINARY NOTES. (1) The rules of WAC 460-44A-501 through ((~~460-44A-506~~)) 460-44A-508 relate to transactions exempted from the registration requirements of the Federal Securities Act of 1933 and RCW 21.20.140. WAC 460-44A-505 is an exemption from registration for offerings exempted under Securities and Exchange Commission Rule 505. WAC 460-44A-506 is an exemption from registration for offerings exempted under Securities and Exchange Commission Rule 506. Such transactions are not exempt from the anti-fraud, civil liability, or other provisions of the federal and state securities laws. Issuers are reminded of their obligation to provide such further material information, if any, as may be necessary to make the information required under these rules, in light of the circumstances under which it is furnished, not misleading.

(2) Attempted compliance with the ((~~rules in WAC 460-44A-501 through~~)) exemption of WAC 460-44A-505 or 460-44A-506 does not act as an exclusive election; the issuer can also claim the availability of any other applicable exemption.

(3) These rules are available only to the issuer of the securities and not to any affiliate of that issuer or to any other person for resale of the issuer's securities. The rules provide an exemption only for the transactions in which the securities are offered or sold by the issuer, not for the securities themselves.

(4) In any proceeding involving the rules in WAC 460-44A-501 through ((~~460-44A-506~~)) 460-44A-508, the burden of proving the exemption or an exception from a definition or condition is upon the person claiming it.

(5) The effective date of the adoption of rules WAC 460-44A-501, 460-44A-502, 460-44A-503, and 460-44A-506 is May 25, 1982. Existing rules WAC 460-44A-010 through 460-44A-045 will be repealed on the adoption and effectiveness of the permanent rules WAC 460-44A-501, 460-44A-502, 460-44A-503, and 460-44A-506; no filings for exemption under rules WAC 460-44A-010 through 460-44A-045 will be accepted after repeal. For those offerings made in compliance with WAC 460-44A-010 through 460-44A-045 which commence or commenced prior to the date of repeal and which continue past the date of repeal, no registration is required if the offering terminates before June 30, 1983.

(6) For offerings commenced but not completed prior to the amendment of WAC 460-44A-501 through ((~~460-44A-506~~)) 460-44A-508, issuers may opt to follow the rules in effect at the date of commencement of the offering.

AMENDATORY SECTION (Amending Order SDO-71-88, filed 7/12/88)

WAC 460-44A-501 DEFINITIONS AND TERMS. As used in rules WAC 460-44A-501 through ((~~460-44A-506~~)) 460-44A-508, the following terms shall have the meaning indicated:

(1) "Accredited investor" shall mean any person who comes within any of the following categories, or who the issuer reasonably believes comes within any of the following categories, at the time of the sale of the securities to that person:

(a) Any bank as defined in section 3 (a)(2) of the Securities Act of 1933, or any savings and loan association or other institution as defined in section 3 (a)(5)(A) of the Securities Act of 1933 whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934; any insurance company as defined in section 2(13) of the Securities Act of 1933; any investment company registered under the Investment Company Act of 1940 or a business development company as defined in section 2 (a)(48) of that act; any small business investment company licensed by the U.S. Small Business Administration under section 301 (c) or (d) of the Small Business Investment Act of 1958; any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of $5,000,000; any employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974, if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such act, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of $5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;

(b) Any private business development company as defined in section 202 (a)(22) of the Investment Advisers Act of 1940;

(c) Any organization described in section 501 (c)(3) of the Internal Revenue Code, corporation, Massachusetts or similar business trust, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of $5,000,000;

(d) Any director, executive officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or general partner of a general partner of that issuer;

(e) Any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his purchase exceeds $1,000,000;

(f) Any natural person who had an individual income in excess of $200,000 in each of the two most recent years or joint income with that person's spouse in excess of $300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;

(g) Any trust, with total assets in excess of $5,000,000, not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person as described in 17 CFR Sec. 230.506 (b)(2)(ii); and

(h) Any entity in which all of the equity owners are accredited investors.

(2) "Affiliate" an "affiliate" of, or person "affiliated" with, a specified person shall mean a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified;

(3) "Aggregate offering price" shall mean the sum of all cash, services, property, notes, cancellation of debt, or other consideration to be received by an issuer for issuance of its securities. Where securities are being offered for both cash and noncash consideration, the aggregate offering price shall be based on the price at which the securities are offered for cash. Any portion of the aggregate offering price attributable to cash received in a foreign currency shall be translated into United States currency at the currency exchange rate in effect at a reasonable time prior to or on the date of the sale of the securities. If securities are not offered for cash, the aggregate offering price shall be based on the value of the consideration as established by bona fide sales of that consideration made within a reasonable time, or, in the absence of sales, on the fair value as determined by an accepted standard. Such valuations of noncash consideration must be reasonable at the time made;

(4) "Business combination" shall mean any transaction of the type specified in paragraph (a) of Rule 145 under the Securities Act of 1933 and any transaction involving the acquisition by one issuer, in exchange for all or a part of its own or its parent's stock, of stock of another issuer if, immediately after the acquisition, the acquiring issuer has control of the other issuer (whether or not it had control before the acquisition);

(5) "Calculation of number of purchasers." For purposes of calculating the number of purchasers under WAC 460-44A-505 and 460-44A-506 the following shall apply:

(a) The following purchasers shall be excluded:

(i) Any relative, spouse or relative of the spouse of a purchaser who has the same principal residence as the purchaser;

(ii) Any trust or estate in which a purchaser and any of the persons related to him as specified in WAC 460-44A-501 (5)(a)(i) or (iii) collectively have more than 50 percent of the beneficial interest (excluding contingent interests);

(iii) Any corporation or other organization of which a purchaser and any of the persons related to him as specified in WAC 460-44A-501 (5)(a)(i) or (ii) collectively are beneficial owners of more than 50 percent of the equity securities (excluding directors' qualifying shares) or equity interests; and

(iv) Any accredited investor.

(b) A corporation, partnership or other entity shall be counted as one purchaser. If, however, that entity is organized for the specific purpose of acquiring the securities offered and is not an accredited investor under WAC 460-44A-501 (1)(h), then each beneficial owner of equity securities or equity interests in the entity shall count as a separate purchaser for all provisions of WAC 460-44A-501 through ((~~460-44A-506~~)) 460-44A-508, except to the extent provided in subsection (1)(e) of this section.

(c) A noncontributory employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974 shall be counted as one purchaser where the trustee makes all investment decisions for the plan.

Note: The issuer must satisfy all the other provisions of WAC 460-44A-501 through 460-44A-506 for all purchasers whether or not they are included in calculating the number of purchasers. Clients of an investment adviser or customers of a broker-dealer shall be considered the "purchasers" under WAC 460-44A-501 through 460-44A-506 regardless of the amount of discretion given to the investment adviser or broker-dealer to act on behalf of the client or customer.

(6) "Executive officer" shall mean the president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), or any other officer who performs a policy making function, or any other person who performs similar policy making functions for the issuer. Executive officers of subsidiaries may be deemed executive officers of the issuer if they perform such policy making functions for the issuer.

(7) "Issuer" as defined in Section 2(4) of the Securities Act of 1933 or RCW 21.20.005(7) shall apply, except that in the case of a proceeding under the Federal Bankruptcy Code (11 U.S.C. 101 et seq.), the trustee or debtor in possession shall be considered the issuer in an offering under a plan or reorganization, if the securities are to be issued under the plan.

(8) "Purchaser representative" shall mean any person who satisfies all of the following conditions or who the issuer reasonably believes satisfies all of the following conditions:

(a) Is not an affiliate, director, officer or other employee of the issuer, or beneficial owner of 10 percent or more of any class of the equity securities or 10 percent or more of the equity interest in the issuer, except where the purchaser is:

(i) A relative of the purchaser representative by blood, marriage or adoption and not more remote than a first cousin;

(ii) A trust or estate in which the purchaser representative and any person related to him as specified in WAC 460-44A-501 (8)(a)(i) or (iii) collectively have more than 50 percent of the beneficial interest (excluding contingent interest) or of which the purchaser representative serves as trustee, executor, or in any similar capacity; or

(iii) A corporation or other organization of which the purchaser representative and any persons related to him as specified in WAC 460-44A-501 (8)(a)(i) or (ii) collectively are the beneficial owners of more than 50 percent of the equity securities (excluding directors' qualifying shares) or equity interests;

(b) Has such knowledge and experience in financial and business matters that he is capable of evaluating, alone, or together with other purchaser representatives of the purchaser, or together with the purchaser, the merits and risks of the prospective investment;

(c) Is acknowledged by the purchaser in writing, during the course of the transaction, to be his purchaser representative in connection with evaluating the merits and risks of the prospective investment; and

(d) Discloses to the purchaser in writing a reasonable time prior to the ((~~acknowledgment specified in WAC 460-44A-501 (8)(c)~~)) sale of securities to that purchaser any material relationship between himself

or his affiliates and the issuer or its affiliates that then exists, that is mutually understood to be contemplated, or that has existed at any time during the previous two years, and any compensation received or to be received as a result of such relationship.

Note 1: A person acting as a purchaser representative should consider the applicability of the registration and antifraud provisions relating to broker-dealers under chapter 21.20 RCW and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq., as amended) and relating to investment advisers under chapter 21.20 RCW and the Investment Advisers Act of 1940.

Note 2: The acknowledgment required by paragraph (8)(c) and the disclosure required by paragraph (8)(d) of this WAC 460-44A-501 must be made with specific reference to each prospective investment. Advance blanket acknowledgment, such as for "all securities transactions" or "all private placements," is not sufficient.

Note 3: Disclosure of any material relationships between the purchaser representative or his affiliates and the issuer or its affiliates does not relieve the purchaser representative of his obligation to act in the best interest of the purchaser.

AMENDATORY SECTION (Amending Order SDO-71-88, filed 7/12/88)

WAC 460-44A-502 GENERAL CONDITIONS TO BE MET. The following conditions shall be applicable to offers and sales made under WAC 460-44A-505 or 460-44A-506:

(1) "Integration." All sales that are part of the same offering under these rules must meet all of the terms and conditions of these rules. Offers and sales that are made more than six months before the start of an offering or are made more than six months after completion of an offering, will not be considered part of that offering, so long as during those six month periods there are no offers or sales of securities by or for the issuer that are of the same or a similar class as those offered or sold under these rules, other than those offers or sales of securities under an employee benefit plan.

Note: The term "offering" is not defined in the securities acts. If the issuer offers or sells securities for which the safe harbor rule in WAC 460-44A-502(1) is unavailable, the determination as to whether separate sales of securities are part of the same offering (i.e. are considered "integrated") depends on the particular facts and circumstances.

The following factors should be considered in determining whether offers and sales should be integrated for purposes of the exemptions under these rules:

(a) Whether the sales are part of a single plan of financing;

(b) Whether the sales involve issuance of the same class of securities;

(c) Whether the sales have been made at or about the same time;

(d) Whether the same type of consideration is received; and

(e) Whether the sales are made for the same general purpose.

See Securities and Exchange Commission Release No. 33-4552 (November 6, 1962).

(2) Information requirements.

(a) When information must be furnished.

((~~(i) If the issuer sells securities only to accredited investors, WAC 460-44A-502(2) does not require that specific information be furnished to purchasers.~~

~~(ii)~~)) If the issuer sells securities under WAC 460-44A-505 or 460-44A-506 to any purchaser that is not an accredited investor, the issuer shall furnish the information specified in WAC 460-44A-502 (2)(b) to ((~~all purchasers during the course of the offering and~~)) such purchaser a reasonable time prior to sale. The issuer is not required to furnish the specified information to any accredited investor.

Note: When an issuer provides information to investors pursuant to WAC 460-44A-502 (2)(a), it should consider providing such information to accredited investors as well, in view of the anti-fraud provisions of the federal and state securities laws.

(b) Type of information to be furnished.

(i) If the issuer is not subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934, at a reasonable time prior to the sale of securities the issuer shall furnish to the purchaser the following information, to the extent material to an understanding of the issuer, its business, and the securities being offered:

(A) Offerings up to $2,000,000. The same kind of information as would be required in Part II of Form 1-A, 17 CFR Sec. 239.90, except that the issuer's balance sheet, which shall be dated within one hundred twenty days of the start of the offering, must be audited.

(B) Offerings up to $7,500,000. The same kind of information as would be required in Part I of Form S-18 under the Securities Act of 1933, except that only the financial statements for the issuer's most recent fiscal year must be certified by an independent public or certified accountant. If Form S-18 is not available to an issuer, then the issuer shall furnish the same kind of information as would be required in Part I of a registration statement filed under the Securities Act of 1933 on the form that the issuer would be entitled to use, except that only the financial statements for the most recent two fiscal years prepared in accordance with generally accepted accounting principles shall be furnished and only the financial statements for the issuer's most recent fiscal year shall be certified by an independent public or certified accountant. If an issuer, other than a limited partnership, cannot obtain audited financial statements without unreasonable effort or expense, then only the issuer's balance sheet, which shall be dated within 120 days of the start of the offering, must be audited. If the issuer is a limited partnership and cannot obtain the required financial statements without unreasonable effort or expense, it may furnish financial statements that have been prepared on the basis of federal income tax requirements and examined and reported on in accordance with generally accepted auditing standards by an independent public or certified accountant.

(C) Offerings over $7,500,000. The same kind of information as would be required in Part I of a registration statement filed under the Securities Act of 1933 on the form that the issuer would be entitled to use. If an issuer, other than a limited partnership, cannot obtain audited financial statements without unreasonable effort or expense, then only the issuer's balance sheet, which shall be dated within 120 days of the start of the offering, must be audited. If the issuer is a limited partnership and cannot obtain the required financial statements without unreasonable effort or expense, it may furnish financial statements that have been prepared on the basis of federal income tax requirements and examined and reported on in accordance with generally accepted auditing standards by an independent public or certified accountant.

(D) If the issuer is a foreign private issuer eligible to use Form 20-F, the issuer shall disclose the same kind of information required to be included in a registration statement filed under the Securities Act of 1933 on the form that the issuer would be entitled to use. The financial statements need be certified only to the extent required by (2)(b)(i)(B) or (C) of this subsection, as appropriate.

(ii) If the issuer is subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934, at a reasonable time prior to the sale of securities the issuer shall furnish to the purchaser the information required by Securities and Exchange Commission Regulation D, Rule 502 (b)(2)(ii) as appropriate.

(iii) Exhibits required to be filed with the administrator of securities or the securities and exchange commission as part of a registration statement or report, other than an annual report to shareholders or parts of that report incorporated by reference in a Form 10-K report, need not be furnished to each purchaser that is not an accredited investor if the contents of ((~~the~~)) material exhibits are identified and ((~~the~~)) such exhibits are made available to ((~~the~~)) a purchaser, upon his written request, a reasonable time prior to his purchase.

(iv) At a reasonable time prior to the ((~~purchase~~)) sale of securities ((~~by~~)) to any purchaser that is not an accredited investor in a transaction under WAC 460-44A-505 or 460-44A-506, the issuer shall furnish to the purchaser a brief description in writing of any material written information concerning the offering that has been provided by the issuer to any accredited investor but not previously delivered to such unaccredited purchaser. The issuer shall furnish any portion or all of this information to the purchaser, upon his written request((~~,~~)) a reasonable time prior to his purchase.

(v) The issuer shall also make available to each purchaser at a reasonable time prior to his purchase of securities in a transaction under WAC 460-44A-505 or 460-44A-506 the opportunity to ask questions and receive answers concerning the terms and conditions of the offering and to obtain any additional information which the issuer possesses or can acquire without unreasonable effort or expense that is necessary to verify the accuracy of information furnished under WAC 460-44A-502 (2)(b)(i) or (ii).

(vi) For business combinations or exchange offers, in addition to information required by Form S-4, 17 CFR Sec. 239.25, the issuer shall provide to each purchaser at the time the plan is submitted to security holders, or, with an exchange, during the course of the transaction and prior to sale, written information about any terms or arrangements of the proposed transactions that are materially different from those for all other security holders. For purposes of this subsection, an issuer which is not subject to the reporting requirements of section 13 or

15(d) of the Securities Exchange Act of 1934 may satisfy the requirements of Part I.B. or C. of Form S-4 by compliance with (b)(i) of this subsection.

(vii) At a reasonable time prior to the sale of securities to any purchaser that is not an accredited investor in a transaction under WAC 460-44A-505 or 460-44A-506, the issuer shall advise the purchaser of the limitations on resale in the manner contained in subsection (4)(b) of this section. Such disclosure may be contained in other materials required to be provided by this paragraph.

(3) Limitation on manner of offering. Neither the issuer nor any person acting on its behalf shall offer or sell the securities by any form of general solicitation or general advertising, including, but not limited to, the following:

(a) Any advertisement, article, notice or other communication published in any newspaper, magazine, or similar media or broadcast over television or radio; and

(b) Any seminar or meeting whose attendees have been invited by any general solicitation or general advertising.

(4) Limitations on resale. Securities acquired in a transaction under ((~~these rules~~)) WAC 460-44A-501 through 460-44A-508 shall have the status of restricted securities acquired in a nonpublic offering transaction under section 4(2) of the Securities Act of 1933 and RCW 21.20.320(1) and cannot be resold without registration under the Securities Act of Washington or an exemption therefrom. The issuer shall exercise reasonable care to assure that the securities are restricted and that the purchasers of the securities are not underwriters within the meaning of Section 2(11) of the Securities Act of 1933, which reasonable care ((~~shall include, but not be limited to,~~)) may be demonstrated by the following:

(a) Reasonable inquiry to determine if the purchaser is acquiring the securities for himself or for other persons;

(b) Written disclosure to each purchaser prior to sale that the securities have not been registered under the Securities Act of 1933, and the Washington administrator of securities has not reviewed or recommended the offering or offering circular and the securities have not been registered under the Securities Act of Washington, chapter 21.20 RCW, and, therefore, cannot be resold unless they are registered under the Securities Act of 1933 and the Securities Act of Washington chapter 21.20 RCW or unless an exemption from registration is available; and

(c) Placement of a legend on the certificate or other document that evidences the securities stating that the securities have not been registered under the Securities Act of 1933 and the Securities Act of Washington chapter 21.20 RCW and setting forth or referring to the restrictions on transferability and sale of the securities.

(d) A written disclosure or legend will be deemed to comply with the provisions of WAC 460-44A-502 (4)(b) or (c) if it complies with the North American Securities Administrators Association Uniform Disclosure Guidelines on Legends, NASAA Reports CCH Para. 1352 ((~~(1988)~~)) (1989).

While taking these actions will establish the requisite reasonable care, it is not the exclusive method to demonstrate such care. Other actions by the issuer may satisfy this provision. In addition, WAC 460-44A-502 (2)(b)(vii) requires the delivery of written disclosure of the limitations on resale to investors in certain instances.

AMENDATORY SECTION (Amending Order SDO-71-88, filed 7/12/88)

WAC 460-44A-503 FILING OF NOTICE AND PAYMENT OF FEE PRIOR TO SALE. (1) ((~~The~~)) An issuer offering or selling securities in reliance on WAC 460-44A-505 or 460-44A-506 shall file with the administrator of securities of the department of licensing a notice and pay a filing fee as follows:

(a)(i) The issuer shall file the initial notice on Securities and Exchange Commission Form D checking box 505 (and box ULOE) or 506, as applicable, and pay a filing fee of three hundred dollars no later than ten business days (or such lesser period as the administrator may allow) prior to the receipt of consideration or the delivery of a signed subscription agreement by an investor in the state of Washington which results from an offer being made in reliance on the exemption of WAC 460-44A-505 or 460-44A-506;

(ii) The issuer shall also file with or on the initial notice a representation that the issuer has reviewed all the conditions of WAC 460-44A-505 or 460-44A-506 and such conditions shall be met; and

(iii) Unless previously filed, the issuer shall include with the initial notice an executed uniform consent to service of process on Form U-2.

(b) The issuer shall file with the administrator such other notices on Form D as are required to be filed with the Securities and Exchange Commission.

(c) The issuer shall file a report of sales in the state of Washington on a form prescribed by the administrator no later than thirty days after the last sale of securities in the offering.

(d) The notice or report of sales shall be manually signed by a person duly authorized by the issuer.

(2) By filing for the exemption of WAC 460-44A-505 or 460-44A-506, the issuer undertakes to furnish to the administrator, upon request, the information to be furnished or furnished by the issuer under WAC 460-44A-502 (2)(b) to any purchaser that is not an accredited investor. Failure to submit the information in a timely manner will be a ground for denial or revocation of the exemption of WAC 460-44A-505 or 460-44A-506.

AMENDATORY SECTION (Amending Order SDO-71-88, filed 7/12/88)

WAC 460-44A-505 UNIFORM OFFERING EXEMPTION FOR LIMITED OFFERS AND SALES OF SECURITIES NOT EXCEEDING $5,000,000. (1) Exemption. Offers and sales of securities by an issuer in compliance with the Securities Act of 1933, Regulation D, Rules 230.501 through 230.503 ((~~and~~)); 230.505; and 230-508 as made effective in Release No((s)). 33-6389, and as amended in Release Nos. 33-6437, ((~~and~~)) 33-6758, and 33-6825 that satisfy the conditions in subsection (2) of this section shall be exempt transactions under RCW 21.20.320(((~~(16)~~))) (17).

(2) Conditions to be met.

(a) General conditions. To qualify for exemption under this section, offers and sales must satisfy all the terms and conditions of WAC 460-44A-501 through 460-44A-503.

Note: In order to comply with this section the issuer must comply with the provisions of Rule 505 (17 CFR Sec. 230.505) of the Federal Securities and Exchange Commission.

(b) Specific conditions.

(i) No commission, fee, or other remuneration shall be paid or given directly or indirectly, to any person for soliciting any prospective purchaser that is not an accredited investor in the state of Washington unless such person is registered in this state as a broker-dealer or salesperson.

(ii) It is a defense to a violation of (b)(i) of this subsection if the issuer sustains the burden of proof to establish that he did not know and in the exercise of reasonable care could not have known that the person who offered or sold the security was not appropriately registered in this state.

(c) In all sales to nonaccredited investors in this state under this section the issuer and any person acting on its behalf shall have reasonable grounds to believe and after making reasonable inquiry shall believe that, as to each purchaser, one of the following conditions, (i) or (ii) of this subsection, is satisfied:

(i) The investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to his other security holdings and as to his financial situation and needs. For the purpose of this condition only, it may be presumed that if the investment does not exceed ten percent of the purchaser's net worth, it is suitable. This presumption is rebuttable; or

(ii) The purchaser either alone or with his purchaser representative(s) has such knowledge and experience in financial and business matters that he is or they are capable of evaluating the merits and risks of the prospective investment.

(d) No exemption under this rule shall be available for the securities of any issuer if any of the parties described in Securities Act of 1933, Regulation A, Rule 230.252 sections (c), (d), (e), or (f):

(i) Has filed a registration statement which is the subject of a currently effective registration stop order entered pursuant to the Securities Act of Washington, chapter 21.20 RCW, or any other state's securities law, within five years prior to the filing of the notice required under this exemption.

(ii) Has been convicted within ten years prior to the filing of the notice required under this exemption of any felony or misdemeanor in connection with the offer, purchase or sale of any security or any felony involving fraud or deceit, including but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud.

(iii) Is currently subject to any state administrative enforcement order or judgment entered by the Washington state administrator of securities or any other state's securities administrator within five years prior to the filing of the notice required under this section or is subject to any state's administrative enforcement order or judgment in which fraud or deceit, including but not limited to making untrue statements of material facts and omitting to state material facts, was found and the order or judgment was entered within five years prior to the filing of the notice required under this exemption.

(iv) Is subject to an order or judgment of the Washington state administrator of securities or any other state's administrative enforcement order or judgment which prohibits, denies or revokes the use of any exemption from registration in connection with the offer, purchase or sale of securities.

(v) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment or decree of any court of competent jurisdiction, permanently restraining or enjoining, such party from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any filing with this or any state entered within five years prior to the filing of the notice required under this exemption.

(vi) The prohibitions of (d)(i), (ii), (iii), and (v) of this subsection shall not apply if the person subject to the disqualification is duly licensed or registered to conduct securities related business in this state and the Form B-D filed with this state discloses the order, conviction, judgment or decree relating to such person. No person disqualified under (d) of this subsection may act in a capacity other than that for which the person is licensed or registered.

(vii) Any disqualification caused by (d) of this subsection is automatically waived if the Washington state administrator of securities or the state securities administrator or other agency which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption of this section be denied.

(e) The issuer shall file a notice, with a consent to service of process, and pay a filing fee as set forth in WAC 460-44A-503.

(3) Transactions which are exempt under this section may not be combined with offers and sales exempt under any other rule or section of the Securities Act of Washington, however, nothing in this limitation shall act as an election. Should for any reason the offer and sale fail to comply with all of the conditions for the exemption of this section, the issuer may claim the availability of any other applicable exemption.

(4) The Washington state administrator of securities may, by rule or order, waive the conditions of this section.

(5) The exemption authorized by this section shall be known and may be cited as the "Washington uniform limited offering exemption."

AMENDATORY SECTION (Amending Order SDO-71-88, filed 7/12/88)

WAC 460-44A-506 EXEMPTION FOR NONPUBLIC OFFERS AND SALES WITHOUT REGARD TO DOLLAR AMOUNT OF OFFERING. (1) Exemption. Offers and sales of securities by an issuer in compliance with the Securities Act of 1933, Regulation D, Rules 230.501 through 230.503 ((~~and~~)); 230.506; and 230-508 as made effective in Release No((s)). 33-6389, and as amended in Release Nos. 33-6437, ((~~and~~)) 33-6663, 33-6758, and 33-6825 that satisfy the conditions in subsection (2) of this section shall be deemed to be exempt transactions within the meaning of RCW 21.20.320(1).

(2) Conditions to be met.

(a) General conditions. To qualify for exemption under this section, offers and sales must satisfy all the terms and conditions of WAC 460-44A-501 through 460-44A-503.

Note: In order to comply with this section the issuer must comply with the provisions of Rule 506 (17 CFR Sec. 230.506) of the Federal Securities and Exchange Commission.

(b) Specific conditions.

(i) No selling commission unless registered as a broker-dealer or salesperson.

(A) No commission, fee, or other remuneration shall be paid or given directly or indirectly, to any person for soliciting any prospective purchaser that is not an accredited investor in the state of Washington unless such person is registered in this state as a broker-dealer or salesperson.

(B) It is a defense to a violation of (b)(i)(A) of this subsection if the issuer sustains the burden of proof to establish that he did not know and in the exercise of reasonable care could not have known that the person who received a commission, fee or other remuneration was not appropriately registered in this state.

(ii) Limitation on selling expenses.

(A) Selling expenses in any offering under this section shall not exceed fifteen percent of the aggregate offering price. For the purposes of this section, "selling expenses" means the total underwriting and brokerage discounts and commissions (including fees of the underwriters' attorneys paid by the issuer) paid in connection with the offering plus all other expenses actually incurred by the issuer relating to printing, engraving, mailing, salaries of employees while engaged in sales activity, charges of transfer agents, registrars, trustees, escrow holders, depositaries, and engineers and other experts, expenses of qualification of the sale of the securities under federal and state laws, including taxes and fees, and any other expenses actually incurred by the issuer and directly related to the offering and sale of the securities, but excluding accountants' and the issuer's attorneys' fees and options to underwriters.

(B) The number of shares or units called for by options issuable to underwriters or other persons as compensation, in whole or in part, for the offer or sale of securities in reliance on this section shall not exceed ten percent of the number of shares or units actually sold in the offering.

(3) Offers or sales which are exempted under this section may not be combined in the same offering with offers or sales exempted under any other rule or section of chapter 21.20 RCW; however, nothing in this limitation shall act as an election. Should for any reason an offering fail to comply with all of the conditions for this section, the issuer may claim the availability of any other applicable exemption.

(4) The issuer shall file a notice, with a consent to service of process, and pay a filing fee as set forth in WAC 460-44A-503.

NEW SECTION

WAC 460-44A-508 INSIGNIFICANT DEVIATIONS FROM A TERM, CONDITION, OR REQUIREMENT OF WAC 460-44A-501 THROUGH 460-44A-506. (1) A failure to comply with a term, condition, or requirement of WAC 460-44A-505 or 460-44A-506 will not result in the loss of the exemption from the registration requirements of RCW 21.20.140 for any offer or sale to a particular individual or entity, if the person relying on the exemption shows:

(a) The failure to comply did not pertain to a term, condition, or requirement directly intended to protect that particular individual or entity; and

(b) The failure to comply was insignificant with respect to the offering as a whole: PROVIDED, That any failure to comply with WAC 460-44A-502(3), 460-44A-503 (2)(d) and (e), 460-44A-505(3), 460-44A-506 (3) and (4), paragraph (c) of Securities and Exchange Commission Rule 502, paragraphs (b)(2)(i) and (ii) of Securities and Exchange Commission Rule 505 and paragraph (b)(2)(i) of Securities and Exchange Commission Rule 506 shall be deemed to be significant to the offering as a whole; and

(c) A good faith and reasonable attempt was made to comply with all applicable terms, conditions, and requirements of WAC 460-44A-505 or 460-44A-506.

(2) A transaction made in reliance on WAC 460-44A-505 or 460-44A-506 shall comply with all applicable terms, conditions, and requirements of WAC 460-44A-501 through 460-44A-506. Where an exemption is established only through reliance upon subsection (1) of this section, the failure to comply shall nonetheless be actionable by the securities administrator under chapter 21.20 RCW.

WSR 89-13-071
PROPOSED RULES
UTILITIES AND TRANSPORTATION COMMISSION
[Filed June 21, 1989]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the [Utilities and Transportation Commission] intends to adopt, amend, or repeal rules relating to discontinuance of service by gas utilities, WAC 480-90-071. The proposed amendatory section is shown below as Appendix A, Docket No. U-89-2707-R. Written and/or oral submissions may also contain data, views, and arguments concerning the effect of the proposed amendment on economic values, pursuant to chapter 43.21H RCW and WAC 480-08-050(17);

that the agency will at 9:00 a.m., Wednesday, July 26, 1989, in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 South Evergreen Park Drive S.W., Olympia, WA, conduct a public hearing on the proposed rules.

The adoption, amendment, or repeal of the rules will take place immediately following the hearing.

The authority under which these rules are proposed is RCW 80.01.040.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before July 21, 1989.

Dated: June 15, 1989
By: Paul Curl
Acting Secretary

STATEMENT OF PURPOSE

In the matter of amending WAC 480-90-071 relating to discontinuance of service by gas utilities.

The rules proposed by the Washington Utilities and Transportation Commission are to be promulgated pursuant to RCW 80.01.040 which directs that the commission has authority to implement the provisions of chapter 80.28 RCW.

The rules proposed by the Washington Utilities and Transportation Commission are designed to specify a procedure for recognition of medical emergencies in situations in which gas service might otherwise be discontinued.

Paul Curl, Acting Secretary, Chandler Plaza Building, 1300 South Evergreen Park Drive S.W., Olympia, WA, phone (206) 753-6451, and members of his staff were responsible for the drafting of the proposed rules and will be responsible for implementation and enforcement of the proposed rules.

The proponent of the rules is the Washington Utilities and Transportation Commission.

There are no comments or recommendations being submitted inasmuch as the proposal is pursuant to legislative authorization reflected in RCW 80.01.040.

The rule change is not necessary as the result of federal law, or federal or state court action.

The rule changes proposed will affect no economic values.

This certifies that copies of this statement are on file with the commission, are available for public inspection, and that three copies of this statement are this date being forwarded to the Joint Administrative Rules Review Committee.

APPENDIX "A"

AMENDATORY SECTION (Amending Order R-284, Cause No. U-87-1525-R, filed 3/18/88)

WAC 480-90-071 DISCONTINUANCE OF SERVICE. By customer – a customer shall be required to give notice to the utility of his or her intention to discontinue service.

By utility –

(1) service may be discontinued by the utility for any of the following reasons:

(a) For the nonpayment of bills. The utility shall require that bills for service be paid within a specified time after issuance. The minimum specified time shall be fifteen days. Upon the expiration of said specified time without payment, payment arrangement, or a payment plan, the bill may be considered delinquent.

(b) For the use of gas for purposes or properties other than that specified in the application.

(c) Under flat rate service, for increased use of gas without approval of the utility.

(d) For ((~~wilful~~)) willful waste of gas through improper or imperfect pipes, fixtures, or otherwise.

(e) For failure of the customer to eliminate any hazardous condition found to exist in his facilities (i.e., piping, venting, appliances, etc.).

(f) For tampering with the utility's property.

(g) In case of vacation of the premises by customer.

(h) For nonpayment of any proper charges, including deposit, as provided in the tariff of the utility, unless the customer has notified the utility of inability to pay a deposit in accordance with WAC 480-90-072 (4)(a) and has satisfied the remaining requirements to qualify for a payment plan.

(i) For refusal to comply with provisions of WAC 480-90-091, access to premises.

(j) For violation of rules, service agreements, or filed tariff(s).

(k) For use of equipment which adversely affects the utility's service to its other customers.

(l) For fraudulent obtaining or use of service. Whenever a fraudulent obtaining or use of the service is detected the utility may discontinue service without notice: PROVIDED, HOWEVER, That if the customer shall make immediate payment for such estimated amount of service as had been fraudulently taken and all costs resulting from such fraudulent use, the utility shall continue such service, subject to any applicable deposit requirements. If a second offense as to fraudulent obtaining or use is detected the utility may refuse to reestablish service subject to appeal to the commission. The burden of proof of such fraudulent obtaining or use will be upon the utility in case of an appeal to the commission. This rule shall not be interpreted as relieving the customer or other person of civil or criminal responsibility.

(m) For failure to keep any agreed upon payment plan.

(2) Except in case of danger to life or property, fraudulent use, impairment of service, or violation of law, no utility shall discontinue service unless the following conditions are met:

(a) Each utility shall provide written notice of disconnection served on the customer either by mail or, at its option, by personal delivery of the notice to the customer's address. If such written notice of disconnection is for nonpayment during the winter period, the utility shall advise the customer of the payment plan which is available pursuant to WAC 480-90-072(3), payment arrangements and responsibilities. If a mailed notice is elected, service shall not be disconnected prior to the eighth business day following mailing of the notice. If personal delivery is elected, disconnection shall not be permitted prior to 5 p.m. of the first business day following delivery. Delivered notice shall be deemed effective if handed to a person of apparent competence in the residence or, if a business account, a person employed at the place of business of the service customer. If no person is available to receive notice, notice shall be deemed served if attached to the primary door of the residence unit or business office at which service is provided. If service is not discontinued within ten working days of the first day on which disconnection may be effected, unless other mutually acceptable arrangements have been made, that disconnect notice shall become void and a new notice shall be required before the service can be discontinued.

(b)(i) Before effecting disconnection of service, a utility shall make a good faith, bona fide effort to reach the customer in person or by telephone to advise the customer of the pending disconnection and the reasons therefor. Where telephone contact is elected, at least two attempts to reach a customer by telephone shall be made during the utility's regular business hours. If a business or message telephone number is provided by the customer, the utility shall endeavor by that means to reach the customer if unable to make contact through the customer's home telephone. A log or record of the attempts shall be maintained by the utility showing the telephone number called and the time of call. Telephone or personal contact shall not be a substitute for written notice of disconnection as specified above.

(ii) Where the service address is different from the billing address, the utility shall in all instances prior to effecting discontinuance of service upon its own initiative provide notice to the service address except as provided in subsection (2)(e) of this section regarding master meters. If personal service is effected upon the billing address, then personal service must be effected upon the service address; if service by mail is effected to the billing address, then service by mail must also be effected to the service address.

(iii) When a customer of record orders termination of service at a service address, and the utility through its representative discovers that the actual service user at the service address has no prior notice of such termination, the utility shall delay termination for at least one complete business day following provision of actual notice to the service user.

(iv) All notices of delinquency or pending disconnection shall detail procedures pertinent to the situation and provide notice of means by which the customer can make contact with the utility to resolve any differences or avail himself or herself of rights and remedies as set forth in WAC 480-90-096 (complaints and disputes) herein.

(c) Except in case of danger to life or property, no disconnection shall be accomplished on Saturdays, Sundays, legal holidays, or on any other day on which the utility cannot reestablish service on the same or following day.

(d) When a utility employee is dispatched to disconnect service, that person shall be required to accept payment of a delinquent account at the service address if tendered in cash, but shall not be required to dispense change for cash tendered in excess of the amount due and owing. Any excess payment shall be credited to the customer's account. The utility shall be permitted to assess a reasonable fee as provided for in the tariff of the utility for the disconnection visit to the service address. Notice of the amount of such fee, if any, shall be provided within the notice of disconnection.

(e) Where service is provided through a master meter, or where the utility has reasonable grounds to believe service is to other than the customer of record, the utility shall undertake all reasonable efforts to inform occupants of the service address of the impending disconnection. Upon request of one or more service users, where service is to other than the subscriber of record, a minimum period of five days shall be allowed to permit the service users to arrange for continued service.

(f) Where service is provided to a hospital, medical clinic with resident patients, or nursing home, notice of pending disconnection shall be provided to the director, Washington state department of social and health services, as well as to the customer. Upon request from the director or his designee, a delay in disconnection of no less than five business days from the date of notice shall be allowed so that the department may take whatever steps are necessary in its view to protect the interests of patients resident therein who are responsibilities of the department.

(g) Service may not be disconnected while a customer is pursuing any remedy or appeal provided for by these rules, provided any amounts not in dispute are paid when due. The customer shall be so informed by the utility upon referral of a complaint to a utility supervisor or the commission.

(h) (i) The utility shall postpone termination of utility service or will reinstate service to a residential customer for thirty days from the date of receipt of a certificate by a licensed physician which states that termination of gas service will aggravate an existing medical condition or create a medical emergency for the customer, a member of the customer's family, or other permanent resident of the premises where service is rendered. Where service is reinstated, payment of a reconnection charge and/or a deposit shall not be required prior to such reinstatement of service.

(ii) This certificate of medical emergency must be in writing and show clearly the name of the person whose medical emergency would be adversely affected by termination, the nature of the medical emergency, and the name, title, and signature of the person certifying the medical emergency. If a notice of disconnection has been issued and the customer notifies the utility that a medical emergency exists, the customer shall be allowed five business days from when the utility is so notified to provide the utility with a certificate of medical emergency. If this five-day period extends beyond the time set for discontinuance of service, the utility shall extend the time of discontinuance until the end of the five-day period. If service has been discontinued and the customer requests reconnection of service due to a medical emergency, the utility shall reconnect service and the customer shall be allowed five business days to provide the utility with a certificate of medical emergency. If the utility does not receive a certificate of medical emergency within the time limit set herein, the utility may discontinue service following an additional twenty-four hour notice to the premises.

(iii) Any customer may designate a third party to receive notice of termination or other matters affecting the provision of service. The utility shall offer all customers the opportunity to make such designation. When the utility discovers that a customer appears to be unable to comprehend the impact of a termination of service, it shall consider an appropriate social agency to be third party. In either case, it shall not effect termination until five business days after provision of notice to the third party. Utilities shall discover which social agencies are appropriate for and willing to receive such notice, and the name and/or title of the person able to deal with the termination situation, and shall inform the commission on a current basis which agencies and position titles receive such notifications.

(3) Payment of any delinquent amounts to a designated payment agency of the utility shall constitute payment to the utility, if the customer informs the utility of such payment and the utility verifies such payment.

(4) Service shall be restored when the causes of discontinuance have been removed and when payment of all proper charges due from the customer, including any proper deposit, has been made as provided for in the tariff of the utility; or as the commission may order pending resolution of any bona fide dispute between the utility and customer over the propriety of disconnection.

(5) A utility may make a charge for restoring service when service has been discontinued for nonpayment of bills. The amount of such charge is to be specified in the utility's tariff.

WSR 89-13-072
PROPOSED RULES
TACOMA COMMUNITY COLLEGE
[Filed June 21, 1989]

Notice is hereby given in accordance with the provisions of RCW 28B.19.030, that the Tacoma Community College intends to adopt, amend, or repeal rules concerning confidentiality of student records, chapter 132V-15 WAC;

that the institution will at 4:00 p.m., Tuesday, August 1, 1989, in the John Binns Room, Tacoma Community College, conduct a public hearing on the proposed rules.

The adoption, amendment, or repeal of the rules will take place immediately following the hearing.

The authority under which these rules are proposed is RCW 28B.50.140(13).

The specific statute these rules are intended to implement is RCW 28B.50.140(13).

Interested persons may submit data, views, or arguments to this institution in writing to be received by this institution before July 30, 1989.

Dated: June 19, 1989
By: Carleton M. Opgaard
President

STATEMENT OF PURPOSE

Title: Chapter 132V-15 WAC.

Description of Purpose: Establish the policies and guidelines to comply with the intent of the Family Rights and Privacy Act and to ensure that the education records of its students are treated responsibly.

Statutory Authority: RCW 28B.50.140(13).

Specific Statute Rule is Intended to Implement: RCW 28B.50.140(13).

Summary of Rule: Identifies the policies and guidelines governing the review, inspection, release, confidentiality, and maintenance of students' education records.

Reasons Supporting Proposed Action: The need to establish policies governing students records.

Agency Personnel Responsible for Drafting: Carl Brown, Dean of Support Services, Tacoma Community College, 5900 South 12th Street, Tacoma, WA 98465, 548-5046 scan and L. Lawrence Coniff, Assistant Attorney General, Office of the Attorney General, 7th Floor, Highways-Licenses Building, PB-72, Olympia, Washington 98504, 321-0729 scan; Implementation and Enforcement: Dr. Priscilla J. Bell, Dean for Student Services, Tacoma Community College, 5900 South 12th Street, Tacoma, WA 98465, 548-5115 scan.

Person or Organization Proposing Rule: Dr. Carleton Opgaard, President, Tacoma Community College, 5900 South 12th Street, Tacoma, WA 98465, 548-5100 scan and Dr. Priscilla J. Bell, Dean for Student Services, Tacoma Community College, 5900 South 12th Street, Tacoma, WA 98465, 548-5115 scan.

Agency Comments or Recommendations Regarding Statutory Language, Implementation, Enforcement, Fiscal Matters: No anticipated fiscal impact upon the college. Implementation and enforcement of the code will be with the dean of students.

This rule is necessary to comply with the Federal Educational Rights and Privacy Act of 1974.

Small Business Impact Statement: No impact.

CHAPTER 132V-15
CONFIDENTIALITY OF STUDENT RECORDS

WAC

NEW SECTION

WAC 132V-15-010 GENERAL POLICY. The Family Educational Rights and Privacy Act of 1974, as amended, is a federal law which requires institutions of higher education to establish written policies and guidelines governing the review, inspection, release, confidentiality and maintenance of students' education records. Tacoma Community College hereby establishes the policies and guidelines in this chapter to comply with the intent of the Act and to ensure that the education records of its students are treated responsibly.

NEW SECTION

WAC 132V-15-020 DEFINITIONS. (1) Act: The Family Educational Rights and Privacy Act of 1974 (Buckley Amendment), as amended.

(2) College: Tacoma Community College, District 22, and its personnel and facilities.

(3) College official: A College employee acting in the student's educational interest within the limitations of his/her need to know. May include faculty, administrators, clerical and professional employees and other persons who manage student records information.

(4) Directory Information: Information authorized for external release by the College without the student's written consent. It includes only the student's name and the dates of his/her attendance.

(5) Disclosure: Permitting access to or the release, transfer or other communication of a student's education records or other personally identifiable information orally, in writing, by electronic means or any other means to any party.

(6) Education Records: Documents, materials, files, transcripts or other such information directly related to a student and maintained by the College. May be referred to as "records" in this chapter.

(7) Eligible Student: A student who has reached the age of 18 or is officially enrolled in classes at the College. Interchangeably used with "student" in this chapter.

(8) Legitimate Educational Interest: The demonstrated need to know by College officials determined to act in a student's educational interest. May include faculty, administrators, clerical and professional employees, and other persons who manage student records information.

(9) Office of Record: The official site where the originals of specific student records are maintained and authorized for student access.

(10) Parent: The mother, father, legal guardian of a student or the individual authorized to act on behalf of the student.

(11) Personally Identifiable Information: Data or documents which include

(a) the name of the student, the student's parents or other family members;

(b) the student's address;

(c) a personal identifier such as a social security or student number; and

(d) a list of personal characteristics or other information which would make the student's identity easily traceable.

(12) Instructional Day: Any day or evening, excluding Saturdays and Sundays, on which classes or examinations are scheduled and held.

NEW SECTION

WAC 132V-15-030 TYPE/LOCATION/RESPONSIBILITY OF RECORDS. (1) The College maintains the following student education records in the Offices of Record listed and under the control of the designated College official:

(a) Admissions Center - A designated records custodian oversees the maintenance and processing of student applications for admission and the high school records, test scores and supportive letters and materials which influence student access.

(b) Advising/Career Services Center - Designated records custodians are responsible for creating, maintaining and processing student educational records, such as copies of registration forms, unofficial transcripts and assessment scores.

(c) Cooperative Education - The records custodian reviews, monitors and maintains such student records as program orientation forms, student enrollment forms and program evaluation forms.

(d) Counseling Center - The Counseling Department Chairperson is responsible for the maintenance, security and access of such student educational records as interest inventories, advising transcripts, test scores, agency evaluations, and individual counseling case notes.

(e) Dial Center - The records custodian in this facility is responsible for the development and retention of student attendance and academic progress records.

(f) Financial Aid Office - The records custodian of this Office of Record is charged with collecting, analyzing, processing and maintaining personal fiscal data of students to assist in determining their eligibility for financial aid. Student records generated from this office include those associated with grants, loans, scholarships, employment and job placement.

(g) Registration/Records Center and Off-Campus Centers - The Registrar is responsible for maintaining and assessing student requests for registration forms, class attendance rosters, grade rosters, grade

change forms, change of program forms, certificate/degree applications, official transcripts and other forms which chart student achievement.

(h) Veterans Services – The records custodian of the Veterans' Services office collects and maintains for veteran students such records as forms for verification of enrollment for program completion and others which are required for compliance with Veteran Administration guidelines.

(i) Security and Parking Services – The records custodian in this unit is assigned the responsibility of processing and maintaining incident reports.

(j) Foreign Student Services – The records custodian manages such student records as high school transcripts from foreign countries; copies of I-20 identification cards; copies of I-94s; the student's arrival documents; copies of visas; copies of I-538s; reinstatement forms; proofs of financial support; proofs of English proficiency; and proofs of student transfers.

(2) The College shall retain the education records of students pursuant to the retention schedules established by each Office of Record.

(3) The College shall establish a student education records retention system in such other Offices of Record which may be created.

NEW SECTION

WAC 132V-15-040 RIGHT TO REVIEW AND INSPECT RECORDS. (1) A student shall have the right to review and inspect his/her education records provided he/she

(a) obtains from the Office of Record and completes TCC Form TCC-REG-063 REQUEST TO REVIEW AND/OR INSPECT EDUCATION RECORDS, and identifies the specific record(s) to be reviewed and/or inspected;

(b) submits the form to the College official responsible for the operation of the Office of Record and presents identification sufficient to validate his/her identity and signature.

(2) After a student submits such a request, the College official of the Office of Record shall respond to the request within a reasonable period of time, but in no case more than forty-five (45) days after the request has been made.

(3) A student authorized to review or inspect his/her education records shall be accompanied by a staff person of the Office of Record assigned to explain and interpret the record(s) of interest.

(4) A student may have copies made of his/her education records provided no financial hold has been placed on his/her records by any administrative unit. All copies produced shall be at the student's expense, and he/she shall be charged a rate no greater than ONE ($1.00) DOLLAR per page.

(5) A student shall maintain his/her right to review and inspect his/her education records irrespective of his/her outstanding financial obligation to the College.

NEW SECTION

WAC 132V-15-050 RIGHTS OF STUDENT. (1) If, after a review of his/her records, a student believes they contain information that is inaccurate, misleading or in violation of his/her privacy or other rights, the student may submit a written appeal to the Dean of Student Services.

(2) Within a reasonable time, but no more than twenty (20) instructional days after the receipt of an appeal, the Dean of Student Services shall establish an ad hoc committee consisting of two (2) students, two (2) faculty, one (1) classified staff person, and one (1) administrator to review the appeal.

NEW SECTION

WAC 132V-15-060 CONDUCT OF APPEAL. (1) A hearing shall normally be held within twenty (20) instructional days after the Dean of Student Services receives the appeal.

(2) The hearing shall be conducted by the Dean of Student Services or his/her designee who shall be an official of the College who does not have a direct interest in the final decision of the committee.

(3) In presenting his/her appeal, the student may have assistance from or be represented by an individual or an attorney of his/her choice and at his/her own expense. The College may choose to be represented by its Assistant Attorney General.

(4) Within ten (10) instructional days after the hearing the Dean of Student Services or his/her designee shall prepare a final written decisions based solely on the evidence presented during the hearing. A copy of the final decision shall be made available to the student.

(5) If the final decision of the Dean of Student Services mandates amendments to the student's education records, the College official of the Office of Record shall make said amendments within ten (10) instructional days after the notification and so inform the student in writing.

(6) If the student disagrees with the final decision, he/she shall have the right to place a statement to this effect in his/her education records. This statement shall be retained in the student's file and shall become a permanent part of the student's education record for as long as the record is maintained.

NEW SECTION

WAC 132V-15-070 LIMITATIONS ON A STUDENT'S RIGHT TO REVIEW AND INSPECT. (1) Pursuant to Section 438 of the Act, the College shall not permit a student to review and inspect the following records:

(a) the confidential financial records and statements of parents or any information contained in such records/statements;

(b) confidential letters and confidential statements of recommendation which were placed in the education records of the student prior to January 1, 1975; provided that the letters/statements were solicited with the written assurance of confidentiality and are to be used only for the purposes for which they were specifically intended;

(c) confidential letters of recommendation and confidential statements of recommendations which were placed in the education records of the student after January 1, 1975 pertaining to admission to an education institution, to an application for employment, or to the receipt of an honor or honorary recognition which a student has waived his/her inspection/review rights under WAC 132V-15-080; and

(d) the education records of a student which contains information on more than one student. Only the specific information pertaining to the student requesting access shall be considered for release.

(2) The College shall retain the education records of students pursuant to the retention schedules established by each Office of Records.

NEW SECTION

WAC 132V-15-080 WAIVING RIGHT TO INSPECT AND REVIEW. (1) A student may waive any or all of his/her all rights under the Act, subject to the following:

(a) that the College did not require the waiver;

(b) that no college services be denied a student who fails to supply a waiver;

(c) that he/she completes and signs TCC Form TCC-REG-062, and identifies which records may be examined; and

(d) that the documents to which a student has waived the right to access are used only for the purposes for which they were collected. If the College uses them for other purposes, the waiver shall be voided and the documents may be inspected.

NEW SECTION

WAC 132V-15-090 THIRD PARTY ACCESS TO RECORDS – EXTERNAL. (1) The College may authorize the following persons/agencies to have access to students' education records:

(a) officials of other institutions in which the student seeks to enroll;

(b) persons or organizations providing the student financial aid;

(c) accrediting agencies carrying out their accreditation function;

(d) persons in compliance with a judicial order after written notification to the student;

(e) persons acting pursuant to any lawfully issued subpoena;

(f) persons, in response to an emergency, whose actions are considered to protect the health or safety of students or other persons; and

(g) organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction; Provided, that the studies are conducted in a manner which will not permit the personal identification of student and their parents by individuals other than representatives of the organization and the information will be destroyed when no longer needed for the purposes for which the study was conducted. The term "organizations" includes, but is not limited to, Federal, State and local agencies, and independent organizations.

NEW SECTION

WAC 132V-15-100 THIRD PARTY ACCESS TO RECORDS - INTERNAL. (1) Within the Tacoma Community College community, only those persons, individually and collectively, acting in the student's educational interest shall be allowed access to a student's education records. These persons include employees in the

(a) Admissions, Counseling, Advising and Registration Centers;

(b) Financial Aid Office;

(c) Offices of the Deans of Support Services and Student Services;

(d) Security and Parking Services; and

(e) Offices of Record.

(2) Other administrative and academic personnel may have access within the limitations of their need to know.

NEW SECTION

WAC 132V-15-110 STUDENT RECORDS AS DIRECTORY INFORMATION. (1) The College shall provide only the student's name and the dates of his/her attendance as directory information.

(2) A student may withhold directory information by completing TCC Form TCC-REG-062 and submitting it to the Registrar or by notifying the Dean of Student Services or the Registrar in writing within two weeks after the first day of classes for any quarter.

(3) The College will honor a student's request for non-disclosure for only one academic year; therefore, a student must file a request to withhold directory information annually.

(4) The College may release directory information by telephone.

NEW SECTION

WAC 132V-15-120 ANNUAL NOTIFICATION ON RIGHTS. (1) The College shall notify students and parents of students currently in attendance of their rights under the Act

(a) by making copies of this Chapter available in the Admissions and Registration Centers during fall quarter registrations for currently-enrolled, new and returning students;

(b) by publishing an announcement regarding the existence of this Chapter in the College quarterly mailer;

(c) by publishing a summary of this Chapter in the College's biennial catalog; and

(d) by publishing this Chapter in the student handbook.

WSR 89-13-073
PROPOSED RULES
HIGHER EDUCATION PERSONNEL BOARD
[Filed June 21, 1989]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Higher Education Personnel Board intends to adopt, amend, or repeal rules concerning:

New	WAC 251-22-250	Shared leave.
New	WAC 251-22-260	Shared leave receipt.
New	WAC 251-22-270	Shared leave use.
New	WAC 251-22-280	Annual leave donation.
New	WAC 251-22-290	Shared leave administration.
New	WAC 251-22-300	Shared leave records;

that the agency will at 9:00 a.m., Thursday, August 3, 1989, in the Board Room, Peninsula College, Port Angeles, Washington, conduct a public hearing on the proposed rules.

The adoption, amendment, or repeal of the rules will take place immediately following the hearing.

The authority under which these rules are proposed is RCW 28B.16.100 and chapter 41.04 RCW.

The specific statute these rules are intended to implement is RCW 28B.16.100 and chapter 41.04 RCW.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before August 3, 1989.

Dated: June 21, 1989
By: John A. Spitz
Director

STATEMENT OF PURPOSE

This statement is related to the notice filed with the code reviser on June 21, 1989, and is filed pursuant to RCW 34.04.025.

Description of Purpose: To provide for establishment of an annual leave sharing program for state employees as specified in ESSB 5933.

Specific Statute this Rule is Intended to Implement: Chapter 41.04 RCW.

Statutory Authority: Chapter 41.04 RCW to implement the provisions of that section.

Title: WAC 251-22-250 Shared leave.

Summary of Rule: Explains the program and defines some of the terminology.

Title: WAC 251-22-260 Shared leave receipt.

Summary of Rule: Describes the conditions under which employees may receive shared leave.

Title: WAC 251-22-270 Shared leave use.

Summary of Rule: Discusses allowable use of shared leave by recipient.

Title: WAC 251-22-280 Annual leave donation.

Summary of Rule: Explains the conditions under which employees may donate annual leave.

Title: WAC 251-22-290 Shared leave administration.

Summary of Rule: Discusses administration of the program.

Title: WAC 251-22-300 Shared leave records.

Summary of Rule: Lists the types of records the institutions will need to maintain in order to allow for legislative review.

Reasons Supporting Proposed Action: The legislature passed and the governor signed ESSB 5933, which created the leave sharing program and mandated the Higher Education Personnel Board to adopt rules to implement the program.

Agency Personnel Responsible for Drafting, Implementation and Enforcement: John A. Spitz, Director, Higher Education Personnel Board, 1202 Black Lake Boulevard, FT-11, Olympia, WA 98504, 234-3730 scan or 753-3730.

Person or Organization Proposing Rule, and Whether Public, Private or Governmental: Higher Education Personnel Board staff, governmental.

Agency Comments or Recommendations Regarding Statutory Language, Implementation, Enforcement, Fiscal Matters: The change is not the result of federal law or state or federal court action.

NEW SECTION

WAC 251-22-250 SHARED LEAVE. The purpose of the Washington state leave sharing program is to permit state employees, at no significantly increased cost to the state of providing annual leave,

to come to the aid of a fellow state employee who is suffering from or has a relative or household member suffering from an extraordinary or severe illness, injury, impairment, or physical or mental condition which has caused or is likely to cause the employee to take leave without pay or terminate his or her employment. For purposes of the Washington state leave sharing program, the following definitions apply:

(1) "Employee's relative" normally shall be limited to the employee's spouse, child, stepchild, grandchild, grandparent, or parent.

(2) "Household members" is defined as persons who reside in the same home who have reciprocal duties to and do provide financial support for one another. This term shall include foster children and legal wards. The term does not include persons sharing the same general house when the living style is primarily that of a dormitory or commune.

(3) "Severe" or "extraordinary" condition is defined as serious or extreme and/or life threatening. The term does not include illnesses such as the common cold or minor injuries.

NEW SECTION

WAC 251-22-260 SHARED LEAVE RECEIPT. An employee may be eligible to receive shared leave if the employee's agency head has determined the employee meets the following criteria:

(1) The employee suffers from, or has a relative or household member suffering from, an illness, injury, impairment, or physical or mental condition which is of an extraordinary or severe nature and which has caused or is likely to cause the employee to go on leave without pay status or terminate state employment; and

(2) The employee has depleted or will shortly deplete his or her annual and sick leave reserves; and

(3) The employee's absence and the use of shared leave are justified; and

(4) The employee is not eligible for time loss compensation under chapter 51.32 RCW. If a time loss claim is approved at a later time, all leave received shall be returned to the donors, and the employee will return any and all overpayments to the agency. The employee is required to file a workers' compensation claim only in the event he or she is requesting shared leave due to a condition caused by an industrial injury or occupational disease; and

(5) The employee has abided by agency policy regarding the use of sick leave.

NEW SECTION

WAC 251-22-270 SHARED LEAVE USE. (1) The agency head shall determine the amount of leave, if any, which an employee may receive under these rules. However, an employee shall not receive more than two hundred sixty-one days of shared leave.

(2) The agency head shall require the employee to submit, prior to approval or disapproval, a medical certificate from a licensed physician or health care practitioner verifying the employee's required absence, the description of the medical problem, and expected date of return-to-work status.

(3) The agency head should consider other methods of accommodating the employee's needs such as modified duty, modified hours, flex-time or special assignments in lieu of shared leave usage per WAC 251-10-070, 251-10-080, 251-10-090, 251-17-090, 251-18-180, and 251-24-030.

(4) Leave transferred under these rules may be transferred from employees of one agency to an employee of the same agency or, with the approval of the heads of both agencies, to an employee of another state agency.

(5) Annual leave transferred under these rules shall be used solely for the purpose stated in WAC 251-22-250.

(6) The receiving employee shall be paid his/her regular rate of pay; therefore, the value of one hour of shared leave may cover more or less than one hour of the recipient's salary.

NEW SECTION

WAC 251-22-280 ANNUAL LEAVE DONATION. An employee may donate annual leave to another employee for purposes of the Washington state leave sharing program under the following conditions:

(1) The employee's agency head approves the employee's request to donate a specified amount of annual leave to an employee authorized to receive shared leave; and

(2) The employee's request to donate leave will not cause his/her annual leave balance to fall below ten days; and

(3) Employees may not donate excess vacation leave that they would not be able to take due to an approaching anniversary date; and

(4) No employee may be intimidated, threatened, or coerced into donating leave for purposes of this program.

NEW SECTION

WAC 251-22-290 SHARED LEAVE ADMINISTRATION. (1) The calculation of the recipient's leave value shall be in accordance with applicable office of financial management policies, regulations, and procedures. The leave received will be coded as shared leave and be maintained separately from all other leave balances. All compensatory time, sick leave, and annual leave accrued must be used prior to using shared leave.

(2) An employee on leave transferred under these rules shall continue to be classified as a state employee and shall receive the same treatment in respect to salary, wages, and employee benefits as the employee would normally receive if using accrued annual leave or sick leave.

(3) All salary and wage payments made to employees while on leave transferred under these rules shall be made by the agency employing the person receiving the leave.

(4) Where agency heads have approved the transfer of leave by an employee of one agency to an employee of another agency, the agencies involved shall arrange for the transfer of funds and credit for the appropriate value of leave in accordance with office of financial management policies, regulations, and procedures.

(5) Leave transferred under this section shall not be used in any calculation to determine an agency's allocation of full-time equivalent staff positions.

(6) Any shared leave not used by the recipient shall be returned to the donor(s). The shared leave remaining will be divided among the donor(s) and returned at its original donor value and reinstated to each donor's annual leave balance on a pro rata basis.

(7) Unused shared leave may not be cashed out under WAC 251-22-090 but shall be returned to the donors per subsection (6) of this section.

NEW SECTION

WAC 251-22-300 SHARED LEAVE RECORDS. Agency heads shall maintain the following records pertaining to the Washington state shared leave program:

(1) Number of requests received.

(2) Number of requests granted.

(3) Nature of request.

(4) Additional cost to the agency of allowing participation in the shared leave program.

WSR 89-13-074
ADOPTED RULES
HIGHER EDUCATION PERSONNEL BOARD
[Order 179—Filed June 21, 1989—Eff. October 1, 1989]

Be it resolved by the Higher Education Personnel Board, acting at Columbia Basin Community College, Pasco, Washington, that it does adopt the annexed rules relating to:

New	WAC 251-01-077	Consecutive months.
Amd	WAC 251-01-415	Temporary appointment.
Amd	WAC 251-04-040	Exemptions.
New	WAC 251-07-100	Temporary appointment records.
Amd	WAC 251-12-600	Remedial action.
Rep	WAC 251-19-030	Appointment—Provisional.
Rep	WAC 251-19-040	Appointment—Emergency.
Amd	WAC 251-19-120	Appointment—Temporary.
New	WAC 251-19-122	Written notification.

This action is taken pursuant to Notice Nos. WSR 89-06-045 and 89-09-061 filed with the code reviser on February 28, 1989, and April 19, 1989. These rules shall

take effect at a later date, such date being October 1, 1989.

This rule is promulgated under the general rule-making authority of the Higher Education Personnel Board as authorized in RCW 28B.16.100.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW), and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED June 1, 1989.

By John A. Spitz
Director

NEW SECTION

WAC 251-01-077 CONSECUTIVE MONTHS. A span of time which begins with the effective date of a personnel action and ends on the day preceding that date any number of months later as opposed to consecutive calendar months which is a span of time beginning on the first day of the first month in the sequence and ending on the last day of the last month in the sequence.

AMENDATORY SECTION (Amending Order 164, filed 12/30/87, effective 2/1/88)

WAC 251-01-415 TEMPORARY APPOINTMENT. (1) Work performed in the absence of an employee on leave for((:

~~(a) Less than ninety consecutive calendar days (WAC 251-19-120(4));~~

~~(b) Ninety or more consecutive calendar days (WAC 251-19-120(2))~~)) more than six consecutive months in accordance with WAC 251-19-120(2); or

(2) ((~~Formal assignment of the duties and responsibilities of a higher level class for a period of less than ninety consecutive calendar days~~)) Performance of work which does not exceed one thousand fifty hours in any twelve consecutive month period from the original date of hire in accordance with WAC 251-04-040(5); or

(3) ((~~Performance of extra work required at a work load peak, a special project, or a cyclic work load which does not exceed one hundred seventy-nine consecutive calendar days~~)) Formal assignment of the duties and responsibilities of a higher level class for a period of less than six consecutive months.

AMENDATORY SECTION (Amending Order 170, filed 7/12/88)

WAC 251-04-040 EXEMPTIONS. The following classifications, positions, and employees of higher education institutions/related boards are hereby exempted from coverage of this chapter.

(1) Members of the governing board of each institution/related board; all presidents, vice presidents and their confidential secretaries, administrative and personal assistants; deans, directors, and chairmen; academic personnel; executive heads of major administrative or academic divisions employed by institutions of higher education; and any employee of a community college district whose place of work is one which is physically located outside the state of Washington and who is employed pursuant to RCW 28B.50.092 and assigned to an educational program operating outside of the state of Washington.

(2) Students employed by the institution at which they are enrolled (or related board) and who either:

(a) Work five hundred sixteen hours or less in any six consecutive months, exclusive of hours worked in a temporary position(s) during the summer and other breaks in the academic year, provided such employment does not:

(i) Take the place of a classified employee laid off due to lack of funds or lack of work; or

(ii) Fill a position currently or formerly occupied by a classified employee during the current or prior calendar or fiscal year, whichever is longer;

(b) Provided further that the hour limitation shall not apply to student employees who were hired before July 20, 1984, with an understanding of working more than the stated number of hours monthly, and also with an understanding of such employment continuing for the duration of their education. However, this exception shall apply only to students who are continuously enrolled and shall not extend beyond September 1, 1988. Students covered by this exception shall be identified to the director;

(c) Are employed in a position directly related to their major field of study to provide training opportunity; or

(d) Are elected or appointed to a student body office or student organization position such as student officers or student news staff members.

(3) Students participating in a documented and approved programmed internship which consists of an academic component and work experience.

(4) Students employed through the state or federal work/study programs.

(5) Persons employed ((~~in a position scheduled for less than twenty hours per week or on an intermittent employment schedule~~)) to work one thousand fifty hours or less in any twelve consecutive month period from the original date of hire. Such an appointment may be subject to remedial action in accordance with WAC 251-12-600, if the number of hours worked exceeds one thousand fifty hours in any twelve consecutive month period from the original date of hire, exclusive of overtime or work time as described in subsection (2) of this section.

(6) ((~~Nonclassified employees filling positions identified in subsections (1)(a) and (3) of the definition of "temporary appointment" in WAC 251-01-415.~~

~~(7)~~)) Part-time professional consultants retained on an independent part-time or temporary basis such as physicians, architects, or other professional consultants employed on an independent contractual relationship for advisory purposes and who do not perform administrative or supervisory duties.

(((~~(8)~~))) (7) The director, his confidential secretary, assistant directors, and professional education employees of the state board for community college education.

(((~~(9)~~))) (8) The personnel director of the higher education personnel board and his confidential secretary.

(((~~10~~))) (9) The governing board of each institution/related board may also exempt from this chapter, subject to the employee's right of appeal to the higher education personnel board, classifications involving research activities, counseling of students, extension or continuing education activities, graphic arts or publications activities requiring prescribed academic preparation or special training, and principal assistants to executive heads of major administrative or academic divisions, as determined by the higher education personnel board: PROVIDED, That no nonacademic employee engaged in office, clerical, maintenance, or food and trades services may be exempted by the higher education personnel board under this provision.

(((~~11~~))) (10) Any employee who believes that any classification should or should not be exempt, or any employee because of academic qualifications which would enable such employee to teach and thus be exempt, may appeal to the board in the same manner as provided in WAC 251-12-080, et seq.

(((~~12~~))) (11) Any classified employee having civil service status in a classified position who accepts an appointment in an exempt position shall have the right of reversion to the highest class of position previously held, or to a position of similar nature and salary, within four years from the date of appointment to the exempt position. However, (a) upon the prior request of the appointing authority of the exempt position, the board may approve one extension of no more than four years; and (b) if an appointment was accepted prior to July 10, 1982, then the four-year period shall begin on July 10, 1982. Application for return to classified service must be made not later than thirty calendar days following the conclusion of the exempt appointment.

(((~~13~~))) (12) When action is taken to convert an exempt position to classified status, the effect upon the incumbent of such position shall be as provided in WAC 251-19-160.

NEW SECTION

WAC 251-07-100 TEMPORARY APPOINTMENT RECORDS. Each institution shall maintain information for temporary employees as specified in WAC 251-19-122. At least quarterly each institution shall produce a record which shows the cumulative hours worked for each temporary employee. This record shall be kept on file in the personnel office and shall be made available to the higher education personnel board staff upon request.

AMENDATORY SECTION (Amending Order 174, filed 11/1/88)

WAC 251-12-600 REMEDIAL ACTION. ((~~When it has been determined that an individual has served six consecutive months in an institution in a position subject to the civil service but whose appointment by the institution has not been in accordance with the provisions of these rules, and the employee was not a party to the willful disregard of the rules, the director may take such appropriate action as to confer permanent status, set provision for salary maintenance, establish appropriate seniority, determine accrual of benefits, and such other actions as may be determined appropriate pursuant to the best standards of personnel administration. The order of the director shall be final and binding unless written exceptions detailing the specific items of the order to which exception is taken are filed with the board within thirty calendar days of the date of service of the order.~~)) (1) The director may take remedial action when it is determined that the following conditions exist.

(a) The hiring institution has made an appointment that does not comply with higher education personnel board rules.

(b) The employee has worked in one or more positions for more than one thousand fifty hours in any twelve consecutive month period since the original hire date. (These hours do not include overtime or work time as described in WAC 251-04-040(2).)

(c) The position or positions are subject to civil service.

(d) The employee has not taken part in any willful failure to comply with these rules.

(2) Remedial action includes the power to confer permanent status, set salary, establish seniority, and determine benefits accrued from the seniority date. Remedial action also includes other actions the director may require to meet the highest personnel standards.

(3) If the institution has complied with WAC 251-19-122, the employee must:

(a) Submit any request for remedial action in writing; and

(b) File the request within thirty calendar days after the effective date of the alleged violation of the conditions of employment which are to be specified in the written notification of temporary appointment.

(4) The director's order for remedial action shall be final and binding unless exceptions are filed with the board within thirty calendar days of the date of service of the order. Exceptions must state the specific items of the order to which exception is taken. The board will review the exceptions and may hold a hearing prior to modifying or affirming the director's order.

AMENDATORY SECTION (Amending Order 165, filed 12/30/87, effective 2/1/88)

WAC 251-19-120 APPOINTMENT—TEMPORARY. (1) Temporary appointment may be made only to meet employment conditions set forth in the definition of "temporary appointment" in WAC 251-01-415.

(2) Temporary appointment to perform work in the absence of an employee on leave for ((~~ninety or more consecutive calendar days~~)) more than six consecutive months shall be made following certification from appropriate eligible lists of eligibles who have indicated willingness to accept such temporary appointment. Employees appointed to classified positions in accordance with this subsection are covered by chapter 28B.16 RCW and Title 251 WAC. Temporary appointment made in accordance with this subsection is not limited to the ((~~one hundred seventy-nine consecutive calendar day~~)) one thousand fifty hours in any twelve consecutive

month period from the original date of hire limitation identified in WAC 251-01-415((~~(3)~~)) (2) and ((~~subsection (5) of this section~~)) 251-12-600.

(3) The employing official may temporarily assign a classified employee the duties and responsibilities of a higher-level class for a period of less than ((~~ninety consecutive calendar days~~)) six consecutive months. The salary shall be determined per WAC 251-08-110.

(4) Temporary appointment to positions identified in the definition of "temporary appointment" in WAC 251-01-415 ((~~(1)(a),~~)) (2)((~~,~~)) and (3) may be made without regard to the rules governing appointment.

(5) ((~~Upon prior approval of the director, a temporary appointment to a position identified in WAC 251-01-415 (1)(a) may be extended beyond the eighty-ninth day, however the total period of appointment shall not exceed one hundred seventy-nine consecutive calendar days.~~

~~(6)~~)) A permanent classified employee accepting temporary appointment to a position identified in the definition of "temporary appointment" in WAC 251-01-415 (1)(a), (2), and (3), shall retain and continue to receive all rights and benefits provided by these rules for the duration of the temporary appointment.

((~~(7)~~)) (6) At the conclusion of a temporary appointment ((~~of less than one hundred eighty consecutive calendar days~~)) made in accordance with these rules, a permanent employee shall have the right to revert to his/her former position or to an equivalent position.

((~~(8)~~)) (7) Each institution shall ((~~file with the director~~)) develop for director approval a procedure which indicates ((~~their~~)) its system for controlling and monitoring exempt positions as identified in RCW 28B.16.040(2).

(8) An institution may petition the director in writing for approval of exceptions to these requirements. The director will annually review the appropriateness of exceptions granted and advise the board.

(9) No temporary appointment shall take the place of employees laid off due to lack of work or lack of funds.

NEW SECTION

WAC 251-19-122 WRITTEN NOTIFICATION OF TEMPORARY APPOINTMENT. (1) All temporary employees shall be notified in writing of the conditions of their employment prior to the commencement of each appointment and/or upon any subsequent change to the conditions of their employment.

(2) The written notification shall contain the following information:

(a) The reason for the temporary appointment (see WAC 251-01-415 (1), (2), and (3));

(b) The hours of work and the hourly rate of pay;

(c) The duration of appointment as adjusted by any current or former temporary appointments. The duration shall be expressed as a starting and expected end date;

(d) The name of the employee's supervisor;

(e) A statement regarding the receipt or nonreceipt of benefits. If the employee is to receive benefits, the statement shall include which benefits are to be received;

(f) The expected status of the employee within the higher education personnel board system upon completion of the appointment;

(g) The signature of the personnel officer and/or authorizing hiring official;

(h) The signature of the employee verifying receipt of the written notification;

(i) An identification of any current and/or previously held temporary positions at the institution;

(j) A statement of appeal rights for those positions in which a violation of WAC 251-01-415 may result in permanent status.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 251-19-030 APPOINTMENT—PROVISIONAL.
WAC 251-19-040 APPOINTMENT—EMERGENCY.

WSR 89-13-075
ADOPTED RULES
HIGHER EDUCATION PERSONNEL BOARD
[Order 180—Filed June 21, 1989—Eff. August 1, 1989]

Be it resolved by the Higher Education Personnel Board acting at Columbia Basin Community College, Pasco, Washington, that it does adopt the annexed rules relating to:

Amd	WAC 251-19-100	Transfer—Lateral movement—Voluntary demotion.
New	WAC 251-19-105	Accommodation due to disability.
New	WAC 251-24-200	HIV and AIDS training for employees.
Amd	WAC 251-24-030	Training and development programs—Contents.

This action is taken pursuant to Notice No. WSR 89-09-063 filed with the code reviser on April 19, 1989. These rules shall take effect at a later date, such date being August 1, 1989.

This rule is promulgated under the general rule-making authority of the Higher Education Personnel Board as authorized in RCW 28B.16.100.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW), and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED June 1, 1989.

By John A. Spitz
Director

AMENDATORY SECTION (Amending Order 165, filed 12/30/87, effective 2/1/88)

WAC 251-19-100 TRANSFER—LATERAL MOVEMENT—VOLUNTARY DEMOTION. (1) The personnel officer for each institution shall develop a

"transfer/lateral movement/voluntary demotion procedure" to provide reasonable opportunity for employees desiring to transfer within class or to voluntarily demote or move laterally to classes where they have previously attained permanent status at the institution, or equivalent classes as determined by the personnel officer, when:

(a) The action is by employee request; or

(b) The employee's position is being reallocated upward and the employee is not appointed to the reallocated position; or

(c) The personnel officer determines that the employee seeking the action is no longer able to perform in the current class due to a medically verified physical ((or)), mental ((~~incapacity; or~~

~~(c) The employee's position is being reallocated upward and the employee is not appointed to the reallocated position~~)), or sensory disability. An employee is eligible to apply for appointment to a position under the provisions of this subsection if the employee meets the minimum qualifications and is able to perform the work of the position as confirmed by medical verification which provides adequate guidance to the employer.

(2) Except as provided in subsection (1) of this section, permanent employees who wish to be considered for appointment to classes with an equal or lower salary range maximum than their current class must apply in accord with institutional procedure, meet the minimum qualifications, pass the examination and be placed on the appropriate eligible list for the class.

(3) Upon appointment via the provisions of this rule, the following shall apply:

(a) For voluntary demotion, the salary shall be determined by the personnel officer and the periodic increment date shall remain unchanged.

(b) For transfer within class or lateral movement, the salary and periodic increment date shall remain unchanged.

NEW SECTION

WAC 251-19-105 ACCOMMODATION DUE TO DISABILITY. (1) Each institution shall develop and disseminate a procedure regarding accommodation of disabled employees. Such procedure shall be approved and on file with the director.

(2) The institution shall be responsible for notifying the employee of steps to be followed should the employee request accommodation.

(3) When an employee requests reasonable accommodation due to disability, such requests will be submitted to the supervisor. The request must state the nature of the disability and the accommodation desired. An employee requesting reasonable accommodation due to a disability will be required to submit a medical statement which provides adequate guidance to the employer specifying:

(a) Pertinent diagnosis;

(b) Prognosis;

(c) Anticipated duration of disability; and

(d) Recommended accommodation and anticipated duration of the need for such accommodation.

(4) The institution shall make good faith efforts to accommodate an employee with a medically verified disability which impacts the employee's ability to perform the work of the regular position.

NEW SECTION

WAC 251-24-200 HIV AND AIDS TRAINING FOR EMPLOYEES. (1) The following categories are descriptive of job-related tasks which have a substantial likelihood of coming in contact with human immunodeficiency virus (HIV) or acquired immunodeficiency syndrome (AIDS) virus:

(a) All procedures or other job-related tasks that involve potential for mucous membrane or skin contact with blood, body fluids, or tissues, or a potential for spills or splashes of them.

(b) The normal work routine does not involve exposure to blood, body fluids, or tissues, but exposure or potential exposure may occur in certain tasks such as providing or assisting in emergency medical care or first aid or providing maintenance services in patient care areas.

(2) Each institution which employs persons who, in the course of their employment, meet the category of subsection (1)(a) or (b) of this section shall:

(a) Provide or arrange for those employees to receive appropriate education and training on the prevention, transmission, and treatment of HIV and AIDS;

(i) Training specifically related to law enforcement shall be provided to law enforcement employees;

(ii) Training specifically related to health care shall be provided to health care employees, including those with responsibilities for laboratory work and analysis, maintenance and cleanup, and HIV/AIDS related research;

(iii) Training specifically related to correctional institutions shall be provided to employees working in correctional institutions.

(b) Use educational material and infection control standards consistent with recommendations by the office of HIV/AIDS; and

(c) Report such training in accordance with WAC 251-24-010(2).

AMENDATORY SECTION (Amending Order 176, filed 3/23/89, effective 5/1/89)

WAC 251-24-030 TRAINING AND DEVELOPMENT PROGRAMS—CONTENTS. Each institution will develop and maintain on file with the board (subject to approval by the director) an employee training and development plan that provides as a minimum:

(1) The policy and objectives of the institution concerning training and development programs;

(2) The institution's policy regarding training program expenses;

(3) Identification of the person(s) responsible for employee training and development programs;

(4) Provision for the identification and appraisal of training and development needs;

(5) The identification of proposed training activities in the following areas:

(a) New employee orientation;

(b) Functional training, such as in accounting, data processing, office administration and job skills;

(c) System training, such as affirmative action, labor relations and safety;

(d) Professional/technical training;

(e) Management and organizational development;

(f) The institution's off-hour training or continuing education program;

(g) Specific training in the prevention, transmission, and treatment of HIV and AIDS for those employees who have a substantial likelihood of on-the-job exposure to the human immunodeficiency virus or acquired immunodeficiency syndrome virus;

(6) Provision specifying the manner of selecting employees for training or development programs;

(7) Provision for training records of employee participation;

(8) Provision for training and upgrading of skills of women and members of racial or ethnic minority groups as part of the institution's affirmative action program, including special training programs to achieve corrective action for underutilization of minority or female employees;

(9) Involvement of a representative group of employees in the development of the institution's training policy and plans;

(10) Provision for evaluation of training and development programs;

(11) The criteria by which the institution may provide employees the opportunity to attend class instruction in academic session during regular working hours;

(12) The institution's policy regarding release time during work hours for training course attendance;

(13) Provision for access to in-house training and development programs for former permanent employees returning from separation as set forth in WAC 251-10-070.

WSR 89-13-076
PROPOSED RULES
DEPARTMENT OF GENERAL ADMINISTRATION
[Filed June 21, 1989]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Department of General Administration intends to adopt, amend, or repeal rules concerning payment of prevailing wages for leased facilities.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on July 25, 1989.

The authority under which these rules are proposed is chapter 43.82 RCW.

The specific statute these rules are intended to implement is chapter 39.12 RCW.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before July 25, 1989.

Dated: June 21, 1989
By: K. Wendy Holden
Director

STATEMENT OF PURPOSE

Title and Number of Rule Section or Chapter: Chapter 236-22 WAC.

Description of Purpose: To ensure that payment of prevailing wages are made in compliance with chapter 39.12 RCW and chapter 296-127 WAC in cases of leased facilities.

Statutory Authority: Chapters 39.12 and 43.82 RCW.

Specific Statute Rule is Intended to Implement: Chapter 39.12 RCW and chapter 296-127 WAC.

Summary of Rule: When the state of Washington causes new construction to be built by a party through a contract for rent, lease, or purchase for at least 80 percent occupancy of such facility, prevailing wages must be paid, effective July 26, 1987. When the state of Washington contracts directly for maintenance or janitorial services of a facility, prevailing wages shall be paid.

Reasons Supporting the Proposed Action: This rule is being proposed to comply with the Department of Labor and Industries rule (chapter 39.12 RCW and chapter 296-127 WAC) regarding payment of prevailing wages for public works projects.

Agency Personnel Responsible for Drafting, Implementation and Enforcement of the Rule: Ronald J. McQueen, Assistant Director, Division of Property Development, Department of General Administration.

Name of the Person or Organization Proposing the Rule: Ronald J. McQueen, Assistant Director, Division of Property Development, Department of General Administration.

Agency Comments or Recommendations, if any, Regarding Statutory Language, Implementation, Enforcement and Fiscal Matters Pertaining to the Rule: This WAC formalizes the Department of General Administration's policy to give notice to those parties who provide services to the state requiring the payment of prevailing wages.

Whether Rule is Necessary as a Result of Federal Law or Federal or State Court Action: N/A.

Small Business Economic Impact Statement: Small business development companies will have cost impacts associated with the payment of prevailing wages.

Chapter 236-22 WAC
PAYMENT OF PREVAILING WAGES/LEASED FACILITIES

WAC

NEW SECTION

WAC 236-22-010 AUTHORITY. This chapter is promulgated pursuant to chapters 39.12 and 43.82 RCW.

NEW SECTION

WAC 236-22-020 PURPOSE. The purpose of this chapter is to ensure that prevailing wages are paid in compliance with chapter 39.12 RCW and chapter 296-127 WAC and to define in which instances prevailing wages are paid for leased and lease development office space.

NEW SECTION

WAC 236-22-030 DEFINITION OF TERMS. (1) Prevailing wage means the hourly wage, benefits, and overtime pay provided for in chapter 39.12 RCW which is calculated pursuant to chapter 296-127 WAC. Vocationally handicapped services contracted for directly by a state agency are subject to the prevailing wage regulations of the United States Department of Labor.

(2) Facility of new construction means construction of a facility where no facility previously existed. It is also an addition to an existing facility where the addition requires placing new footings or new foundation.

(3) Maintenance means keeping existing facilities in good, usable condition, and does not pertain to repairing damages or breaks or to ordinary maintenance as the term is used in RCW 39.04.010.

(4) Janitorial services means only that work which is performed by janitors, waxers, shampooers, and window cleaners.

NEW SECTION

WAC 236-22-040 APPLICABILITY TO PROJECTS. (1) Any work, construction, alteration, repair, enlargement, improvement, or demolition to real estate leased or rented pursuant to RCW 43.82.010, which is done by a state agency through a contract between the state agency and a contractor or developer will require payment of the prevailing wage.

(2) Except as provided by subsection (3) of this section, where a state agency leases or otherwise uses, but does not own, the real estate or improvement, and the owner performs or contracts to have done work, construction, alteration, repair, enlargement, improvement or demolition, the payment of prevailing wages does not apply.

(3) The prevailing wage shall be paid for new construction caused by a state agency to be built by a private party through a contract to rent, lease, or purchase at least eighty percent of such facility for occupation by a state agency. This subsection applies only to facilities of new construction for which a call for competitive bid was made on or after July 26, 1987. Any agreement between the state of Washington and a developer must include the requirement that the contractor or developer shall comply with the prevailing wage provisions of chapter 39.12 RCW.

(4) When a state agency contracts directly for maintenance or janitorial services of a facility, prevailing wages shall be paid. Where maintenance or janitorial services provided to a privately-owned building are contracted for by the owner of the building, payment of prevailing wages is not required.

WSR 89-13-077
PROPOSED RULES
DEPARTMENT OF LABOR AND INDUSTRIES
[Filed June 21, 1989]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Department of Labor and Industries intends to adopt, amend, or repeal rules concerning the amendment of rules and definitions contained in chapter 296-17 WAC applicable to workers' compensation insurance underwritten by the Washington state fund, Department of Labor and Industries, and specifically rules and definitions applicable to the trucking industry of Washington and retrospective rating group qualifications;

that the agency will at 10 a.m., Tuesday, August 1, 1989, in the First-Floor Conference Room, General Administration Building, Olympia, Washington, conduct a public hearing on the proposed rules.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on August 31, 1989.

The authority under which these rules are proposed is RCW 51.04.020.

The specific statute these rules are intended to implement is RCW 51.16.035 and 51.12.095.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before August 1, 1989.

The agency reserves the right to modify the text of these proposed rules prior to the public hearing thereon or in response to written and/or oral comments thereon received prior to or during the public hearing.

Written and/or oral submissions may also contain data, news, and arguments concerning the effect of the proposed rules or amendments of rules on economic values, pursuant to chapter 43.21 RCW.

Correspondence relating to this notice and proposed rules shown below should be addressed to:

Douglas Connell
Assistant Director for Employer Services
Department of Labor and Industries
905 Plum Street S.E.
Olympia, WA 98504

Dated: June 21, 1989
By: Joseph A. Dear
Director

STATEMENT OF PURPOSE

Title and Number of Rule Section(s) or Chapter(s): The proposals for rule changes which follow amend portions of chapter 296-17 WAC. This title pertains to the calculation, reporting, and collection of premiums for worker's compensation insurance coverage provided by the Department of Labor and Industries.

Statutory Authority: RCW 51.04.020.

Specific Statute that Rule is Intended to Implement: RCW 51.16.035 and 51.12.095.

Summary of the Rule(s): The purpose of these proposed rules is to make the following substantive changes in Title 296 WAC: Repeal subsection (4) of WAC 296-17-910 which deals with retrospective rating - group size qualifications, and renumber the remaining section; and establish a new reporting rule, WAC 296-17-45002, special trucking industry interpretations, for the trucking industry of Washington.

Reasons Supporting Changes: Revisions and/or amendments to existing rules and the establishment of new rules are intended to extend uniform treatment and equity to all affected parties. The changes being proposed are reflective of practices consistent with recognized workers' compensation insurance practices and are in conformance with new legislation.

Agency Personnel responsible for Drafting, Implementation, and Enforcement of the Rule(s): R. L. McCallister, Deputy Director for Industrial Insurance, 753-5173; Douglas Connell, Assistant Director for Employer Services, 586-8401; and Francis A. Romero, Manager, Classification Development, 753-1434.

Name of Person or Organization, Whether Private, Public, or Governmental, that is Proposing the Rule(s): State of Washington, Department of Labor and Industries.

Agency Comments or Recommendations, if any, Regarding Statutory Language, Implementation, Enforcement, and Fiscal Matters Pertaining to the Rule(s): None.

These rules are not proposed to comply with a federal law or a federal or state court decision.

Any Other Information that may be of Assistance in Identifying the Rule or its Purpose: None.

Small Business Economic Impact Statement: This statement pertains to revisions to chapter 296-17 WAC, which are being proposed by the Department of Labor and Industries to become effective permanently on October 1, 1989, and is prepared to conform with sections 3(2) and 4 of the Regulatory Fairness Act (chapter 6, Laws of 1982).

Existing Rules: Chapter 296-17 WAC presently defines approximately 291 risk classifications for purposes of reporting exposures and computing premiums for workers' compensation insurance as well as rules governing the application of these risk classifications to businesses or occupations, provisions for an experience rating plan, optional rating plans, insurance base rates applicable to each risk classification, and rules governing the reporting of worker hours, premium payment, and the assessment of penalties for employers who fail to register or file late payroll reports.

Treatment of Small Business Under Existing Rules: Risk classification definitions are keyed to the nature of an employer's business operations within this state and in certain cases individual employments, and are independent of business size. Once the number of risk classifications statistically supportable has been determined and the risks defined, base rates are developed for each risk classification. All new employers conducting like businesses are assigned into a common classification pool representative of their business undertaking and are assigned the same base rate. As experience is developed by each employer, a modified rate as provided for in the experience rating plan is calculated except for those employers engaged in the horse racing industry whose rates are by law to be base rated. Those employers not involved in the horse racing industry with a favorable past experience receive rate reductions while those employers with unfavorable past experience receive rate increases. Within the experience rating plan, small employers with a loss-free record during the experience rating period are allowed rate credits in excess of those initially computed by the rating plan based on risk size, by imposing a maximum modification for loss-free firms of various sizes in WAC 296-17-890. Additional premium reduction incentives are also provided to employers under individual and group retrospective rating plans.

Effect of Proposed Revisions: The department is proposing to delete the special group member size qualification (WAC 296-17-910(4)) and renumber the remaining subsections. This change will provide employers and group members greater enrollment flexibility in the department's retrospective rating plans. The second part of this filing established a new special rule to govern the underwriting of trucking risks. The new rule deals with insurance liability, reporting, and exemptions.

Each rule has been developed to minimize the cost of administration and record keeping for employers, large and small alike. Since no new records or forms are required, cost of compliance is unchanged.

NEW SECTION

WAC 296-17-45002 SPECIAL TRUCKING INDUSTRY INTERPRETATIONS. The following subsection shall apply to all trucking industry employers as applicable.

(1) 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 a qualified self-insured employer.

Washington employers operating exclusively in interstate or foreign commerce or any combination of interstate and foreign commerce must insure their workers' compensation insurance liability with the Washington state fund or under the workers' compensation insurance laws of another state.

Each interstate or foreign commerce trucking employer who insures his/her 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.

Any employer who elects 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 result in the employer being declared as an unregistered employer and be subject to all the penalties contained in Title 51 RCW.

(2) Reporting. Every trucking industry employer 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 for each driver in their employ including time spent loading and unloading trucks. For purposes of this section, actual hours worked does not include time spent during lunch or rest periods or overnight lodging.

Failure of an employer to keep accurate records of actual hours worked by their employees will result in the department estimating work hours by dividing gross payroll wages for each worker for whom records were not kept by the state minimum wage. However, in no case will the estimated hours exceed five hundred twenty hours per calendar quarter for each worker.

(3) Exclusions. Trucking industry employers meeting all of the following conditions are exempted from mandatory coverage.

(a) Must be engaged exclusively in interstate or foreign commerce.

(b) 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.

(c) 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 (a), (b), and (c) of this subsection have not been met, the employer must insure their workers' compensation insurance liability with the Washington state fund or under the laws of another state.

AMENDATORY SECTION (Amending Order 87-30, filed 5/31/88)

WAC 296-17-910 QUALIFICATIONS FOR EMPLOYER GROUPS FOR WORKERS' COMPENSATION INSURANCE. The department may insure the workers' compensation obligations of employers as a group, provided the following conditions are met:

(1) All the employers in the group are members of an organization that has been in existence for at least two years.

(2) The organization was formed for a purpose other than that of obtaining workers' compensation coverage.

(3) The business of the employers in the organization is substantially similar, taking into consideration the nature of the work being performed by workers of such employers such that the group comprises substantially homogeneous risks.

(4) ((~~The employers in the group constitute at least fifty percent of the total eligible employers in such organization.~~

~~(5)~~)) The formation and operation of the group program in the organization will substantially improve accident prevention and claims handling for the employers in the group.

Each employer seeking to enroll in a group for workers' compensation insurance must have an industrial insurance account in good

standing with the department such that at the time the agreement is processed no outstanding premiums, penalties or assessments are due and quarterly reporting of payroll has been made in accordance with WAC 296-17-310.

The above conditions do not pertain to groupings or combination of persons or risks by way of common ownership or common use and control for experience rating purposes. Combinations for experience rating are governed by WAC 296-17-873.

Final determination of group eligibility under this section rests with the department subject to review under chapter 51.52 RCW.

In providing employer group plans under this rule, the department may consider an employer group as a single employing entity for purposes of dividends or retrospective rating. No employer will be a member of more than one group for the purposes of insuring their workers' compensation obligations.

WSR 89-13-078
PROPOSED RULES
DEPARTMENT OF COMMUNITY DEVELOPMENT
[Filed June 21, 1989]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Department of Community Development intends to adopt, amend, or repeal rules concerning chapter 365-40 WAC;

that the agency will at 10:00 a.m., Wednesday, July 26, 1989, in the 5th Floor Conference Room, Department of Community Development, 9th and Columbia Building, Olympia, Washington 98504-4151, conduct a public hearing on the proposed rules.

The adoption, amendment, or repeal of the rules will take place immediately following the hearing.

The authority under which these rules are proposed is RCW 43.63A.060.

The specific statute these rules are intended to implement is RCW 43.63A.065.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before July 25, 1989.

Dated: June 21, 1989
By: Chuck Clarke
Director

STATEMENT OF PURPOSE

Title: Chapter 365-40 WAC, Head Start.

Description of Purpose: To revise existing conditions and procedures under which state funds are made available to Head Start programs to conform with recommendations made by the Head Start work group and approved by the Department of Community Development. Other purposes for the proposed revisions include wording clarification and avoiding language duplication with other program documents.

Statutory Authority: This activity is undertaken pursuant to RCW 43.63A.060.

Specific Statute Rule is Intended to Implement: RCW 43.63A.065.

Summary of Rule: The rules establish procedures under which state funds will be made available to Head Start programs.

Agency Personnel Responsible for Drafting, Implementation, and Enforcement of the Rule: Peggy Jo Mihata, Assistant Director, Community Assistance Division, Department of Community Development, Ninth and Columbia, Mailstop GH-51, Olympia, Washington 98504, (206) 753-4979.

These rules are not necessary as a result of federal law, federal court action, or state court decision.

The proposed rule does not impose an additional cost of compliance, and therefore, no economic impact statement is required under the Regulatory Fairness Act.

AMENDATORY SECTION (Amending Order 87-20, filed 12/16/87)

WAC 365-40-020 DEFINITIONS. (1) "Applicant" means a ((~~unit(s) of local government, a qualified private organization, or a combination thereof, which applies for state~~)) public or private nonsectarian organization which receives federal Head Start funds.

(2) "Contractor" means an applicant which has been allocated state Head Start funds ((~~and which has entered into a contract to carry out a~~)) under the state Head Start match program.

(3) "Department" means the department of community development.

(4) "Director" means the director of the department of community development (((~~hereafter, the agency~~))).

(((~~(4)~~))) (5) "Head Start program" means an operation undertaken in accordance with the program performance standards set forth in the OCD-HS HEAD START POLICY MANUAL (OCD Notice N-30-364-4) "Head Start program performance standards," published by the United States Department of Health, Education, and Welfare July((~~,~~)) 1975.

AMENDATORY SECTION (Amending Order 86-02, filed 8/27/86)

WAC 365-40-041 FINANCIAL SUPPORT APPLICATION PROCESS. (1) Each potential applicant will be notified by the ((~~agency~~)) department that application for state Head Start financial assistance is to be made to the ((~~agency~~)) department.

(2) An applicant must make formal application in the form and manner specified by the ((~~agency. Such application shall be for the period July 1 - June 30 of each fiscal year~~)) department. Failure of an applicant to make application in the specified time will result in no state Head Start funds being allocated.

(3) Applications for state Head Start funds shall contain ((~~the following information, in detail:~~

~~(a)~~)) a description of the services to ((~~be provided or activities proposed to be undertaken by the applicant consistent with the provisions of WAC 365-40-051 and 365-40-061.~~

~~(b) A budget specifying~~)) which the intended uses of state Head Start funds are to be used.

(4) The agency shall provide a contract for signature to the applicant or a request for additional information.

AMENDATORY SECTION (Amending Order 87-20, filed 12/16/87)

WAC 365-40-051 ELIGIBILITY CRITERIA. In order to receive state Head Start funds, a contractor must ((~~provide services to families and individuals eligible according to federal Head Start guidelines who are in need of skills, knowledge, opportunities and motivation to become economically self-sufficient. Each Head Start program must be designed to improve the health and general well-being of the children involved, develop their mental processes, and enhance their conceptual and verbal skills~~)) currently be receiving federal funds to operate a Head Start program. State Head Start funds may be used only for activities which result in direct and measurable services to Head Start program children. ((~~State Head Start funds are allocated to programs based on the federal enrollment levels. An additional set-aside of 3% of the pass-through funds are allocated for programs with 60 or less children.~~)) The department shall determine the formula for distribution of state funds based on current federal enrollment levels at the time of funding.

AMENDATORY SECTION (Amending Order 87-20, filed 12/16/87)

WAC 365-40-071 METHOD OF PAYMENT AND REPORTING REQUIREMENTS. (1) State Head Start funds will be paid in accordance with the provisions of the applicable contract and these regulations.

(2) ((~~All contracts will specify procedures for expenditure reimbursement, with vouchers submitted within a specified time as required by the agency.~~

~~(a) If vouchers are not submitted in a timely manner, the agency may recapture unclaimed funds.~~

~~(b) If a contractor fails to file a claim for expense reimbursement within any six-month period, the agency may elect to terminate the contract.~~

~~(c) Funds allocated for a program may be reduced by the amount unclaimed in the program year immediately preceding the new funding year.~~

~~(3) If an intended use is not allowable under these rules or the approved contract, the contractor will not be reimbursed for the cost of the item.~~

~~(4) The agency will notify the contractor within ten days of its discovery of any deficiency and of the need to take corrective action.~~

~~(5) In the event corrective action is not taken within thirty days, the contract will be terminated. Funds allocated to the contractor may be subject to redistribution upon termination of any contract.~~

~~(6) By agreement between the agency and the contractor, the provisions of the contract may be amended.~~

~~(7)~~)) Reports to the agency to assure that funds are being expended for purposes authorized in the approved contract are required in a format approved by the agency.

((~~(8)~~)) (3) The contractor at time of application shall submit an annual audit of funds by an independent auditor or office of state auditor and resolution of findings provided under this rule ((~~by an independent auditor using~~)). Standard accepted auditing techniques shall be used. Such audit may be that conducted for and provided to other funding sources. This audit report must include a breakdown of state funds by contract number.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 365-40-061 ALLOWABLE AND UNALLOWABLE COSTS.

WSR 89-13-079
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Health)

[Filed June 21, 1989]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Department of Social and Health Services intends to adopt, amend, or repeal rules concerning regulations for crippled children's services, amending chapter 248-105 WAC;

that the agency will at 10:00 a.m., Tuesday, July 25, 1989, in the Auditorium, OB-2, 12th and Franklin, Olympia, conduct a public hearing on the proposed rules.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on July 26, 1989.

The authority under which these rules are proposed is RCW 43.20.140 and 43.20.050.

The specific statute these rules are intended to implement is RCW 43.20.140 and RCW 43.20.050.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before July 25, 1989.

Correspondence concerning this notice and proposed rules shown below should be addressed to:

Troyce Warner
Office of Issuances
Department of Social and Health Services
Mailstop OB-33H
Olympia, WA 98504

Interpreters for people with hearing impairments and brailled or taped information for people with visual impairments can be provided. Please contact the Office of Issuances, State Office Building #2, 12th and Franklin, Olympia, WA, phone (206) 753-7015 by June [July] 14, 1989. The meeting site is in a location which is barrier free.

Dated: June 19, 1989
By: Leslie F. James, Director
Administrative Services

STATEMENT OF PURPOSE

This statement is filed pursuant to RCW 34.04.045.

Re: Amending WAC 248-105-010, 248-105-020, 248-105-030, 248-105-070, 248-105-080, 248-105-090 and 248-105-100; and repealing WAC 248-105-040, 248-105-050 and 248-105-060.

Purpose of the Rule Changes: To update chapter 248-105 WAC to comply with the current policies and procedures of the children's coordinated services (CCS) program.

Reason(s) These Rules are Necessary: To allow provision of services to children who have physically handicapping conditions but may have been excluded from receiving services under the medical eligibility requirement in the current WAC rule.

Statutory Authority: RCW 43.20.140.

Summary of Rule Changes: Establishes new definitions and client eligibility criteria. Repeals some restrictive limitations on provision of services to children.

Person or Persons Responsible for Drafting, Implementation and Enforcement of the Rule: Kathy Chapman, M.N., Manager, Child Health Services Section, Bureau of Parent-Child Health Services, phone 753-0908, mailstop LC-11B.

Department proposed amendments.

These rules are not necessary as a result of federal law, federal court decision, or state court decision.

AMENDATORY SECTION (Amending Order 247, filed 12/2/82)

WAC 248-105-010 DECLARATION OF PURPOSE. (1) The following rules ((~~are adopted pursuant to~~)) implement RCW 43.20.140 ((~~wherein~~)) appointing both the:

(a) State board of health ((~~is empowered~~)) authority to promulgate rules and regulations ((~~as shall be~~)) necessary to carry out the purposes of RCW 43.20A.635 ((~~empowering the~~)); and

(b) Secretary of the department of social and health services authority to establish and administer a program of services for ((~~crippled~~)) children with special health care needs. ((~~It is the purpose of the crippled children's services program to develop, extend, and improve services for locating, diagnosing, and treating children who are crippled or who are suffering from physical conditions leading to crippling.~~))

(2) The department shall administer the children's coordinated services (CCS) program:

(a) In accordance with RCW 43.20A.635 ((and these)), rules((, the crippled children's services (CCS) program shall limit services in such manner and degree as will assure, in the judgment of the physician-director, provision of optimum services to crippled children with the greatest needs, commensurate with the fixed funding available to CCS.

It is the declared purpose of the department of social and health services and the state board of health that the CCS program shall be administered strictly)) of this section, and program manuals; and

(b) Within the limits of funds available ((for CCS purposes and that CCS may not authorize provision of services beyond those limits)).

AMENDATORY SECTION (Amending Order 247, filed 12/2/82)

WAC 248-105-020 DEFINITIONS. (1) "Client" means an individual ((whose application for crippled children's services program funds has been approved)) seventeen years of age and under with a physical impairment placing the client at risk of being disabled or handicapped.

(a) "Physical impairment" means any loss or abnormality of physiological or anatomical structure or function.

(b) "Disability" means any restriction or lack resulting from a physical impairment of ability to perform an activity in the manner or within the range considered normal.

(c) "Handicap" means a disadvantage for a given individual, resulting from a physical impairment or disability, that limits or prevents the fulfillment of a role that is normal, depending on age, sex, and social and cultural factors, for that individual.

(2) ((~~"Crippled child" means an individual below the age of eighteen years having an organic disease, defect or condition substantially interfering with normal growth and development.~~

~~(3)~~)) "CCS" means ((~~crippled~~)) children's coordinated services.

(((~~(4) "DSHS"~~)) (3) "Department" means department of social and health services or its successor.

(((~~(5) "Limited intervention" means treatment given during a limited period of time designed to move a client's status from a lower to a substantially higher level of functioning.~~

~~(6)~~)) (4) "Local CCS agency" means the local health department and/or district or other local agency ((~~locally~~)) administering the CCS program ((~~for~~)) in the county where the CCS ((~~applicant or~~)) client resides.

(((~~(7) "Physician-director" means a medical doctor or osteopath employed by the department of social and health services having the following qualifications:~~

~~(a) Doctorate of medicine from a school of medicine accredited by the liaison committee on medical education; and~~

~~(b) Licensed to practice medicine in the state of Washington; and~~

~~(c) Certified (or eligible for certification) by an appropriate medical specialty board.~~

~~(8)~~)) (5) "Services" means health-related interventions including early identification, case management, medical, surgical and rehabilitation care, and equipment and appliances provided in hospitals, clinics, offices, and homes by approved physicians and other approved health care providers.

AMENDATORY SECTION (Amending Order 247, filed 12/2/82)

WAC 248-105-030 ((~~PROGRAM~~)) CLIENT ELIGIBILITY. ((~~Medical and financial eligibility is required in order to confine program expenditures for services to the program funding available. Both medical and financial eligibility must be established before an applicant may receive service which may be paid for by CCS program funds. However, determinations of financial and medical eligibility do not constitute entitlement to services. Services must be requested by providers and authorized in advance by CCS according to procedures outlined in WAC 248-105-060.~~))

(1) ((~~Medical eligibility shall be determined by the physician-director of the crippled children's services program and shall be based upon the following medical criteria:~~

~~(a) The applicant's physical condition must be of such a nature that the applicant is crippled or is expected to become crippled; and~~

~~(b) The condition must be beyond the usual scope of routine medical care and must not be a problem common to children during the growing-up process, such as upper respiratory infections, ear infections, urinary tract infection, pneumonia, and appendicitis; and~~

~~(c) The condition must be amenable to limited intervention; and~~

~~(d) The condition must not be of a kind requiring long-term continuous treatment to maintain the condition at a relatively stable level; and~~

~~(e) There must be a strong likelihood the treatment will have a substantial impact upon the crippling conditions~~)) Children seventeen years of age and under having physical impairments placing them at risk of being disabled or handicapped shall be provided, or provided access to, early identification, case management, and introduction into community-based comprehensive medical care under WAC 248-105-020(5).

(2) ((~~The crippled children's services program shall determine at least annually the financial eligibility of individual clients for CCS services according to criteria established by the department. These criteria shall consider nationally accepted standards of living for low-income families such as federal poverty levels or state median income, adjusted for family size. A client shall be determined eligible if his or her family's resources are insufficient to cover the cost of eligible medical services required by the client during the period of his or her eligibility. Resources shall include:~~

~~(a) Family income from all sources;~~

~~(b) Family savings, property, and other assets;~~

~~(c) Medical insurance or other third-party resources~~)) Families financially eligible under this section may be eligible for the purchase of health-related intervention services, such as medical or surgical care, or equipment and appliances under WAC 248-105-020(5). CCS-funded services may be limited even when financial eligibility criteria are met.

(3) The local CCS agency shall determine financial eligibility by a financial means test published by the department and based on poverty income guidelines issued annually by the department of health and human services.

AMENDATORY SECTION (Amending Order 247, filed 12/2/82)

WAC 248-105-070 QUALIFICATIONS AND ASSURANCES OF PROVIDERS. (1) Hospitals ((~~authorized by CCS to provide services must be accredited by~~)) providing services under RCW 43.20.140 and this chapter shall:

(a) Be approved by the joint commission of accreditation of hospitals; and ((~~licensed~~))

(b) Qualify and receive a license by the state ((~~of location~~)) where the hospital is located.

(2) ((~~Physicians and other health care providers authorized by CCS to provide services must meet all requirements and assurances set forth in the crippled children's services provider agreement form~~)) Providers of services under RCW 43.20.040 and this chapter shall:

(a) Have a license or certificate in the state of Washington as required; and

(b) Meet certification requirements for provider profession as required by an organization representing provider profession at the national level.

(3) The department shall provide services under RCW 43.20.140 and this chapter. Physicians shall have:

(a) A license to practice medicine in each state where they practice; and

(b) Certification under the appropriate American specialty board; or

(c) Board certification eligibility as designated by the appropriate specialty board.

AMENDATORY SECTION (Amending Order 247, filed 12/2/82)

WAC 248-105-080 FEES AND PAYMENTS. ((~~Payments~~)) (1) The department shall pay CCS-sponsored services to providers ((~~of services shall be made~~)) only in accordance with:

(a) The ((~~DSHS~~)) department's division of medical assistance schedule of maximum allowances; and

(b) The ((~~crippled~~)) children's coordinated services supplemental fee schedule as published and distributed by the bureau of parent-child health services.

(2) The department or local CCS agency may negotiate fees with the providers below the rates under subsection (1) of this section.

(3) Each provider shall accept the fees described under subsection (1) and (2) of this section as full payment for services rendered.

AMENDATORY SECTION (Amending Order 247, filed 12/2/82)

WAC 248-105-090 THIRD-PARTY ((~~RESOURCES~~)) PAYMENT. ((~~CCS is a secondary payer to all private and other public funded health programs. Such sources of funding must be utilized before CCS payment is made. These sources include, but are not limited to, insurance, Medicaid, Medicare, CHAMPUS (Civilians Health and~~

~~Medical Program of the Uniformed Services) including provisions for basic benefits and benefits under the program for the handicapped, and other special programs with liability for health care, such as prisons, group or foster homes, and state mental hospitals and facilities. No payment will be made where trust funds or other protected assets are available~~)) The department shall pay CCS funds to hospitals, providers, and physicians only after payment by all other private and public funding resources, except where prohibited by federal law.

AMENDATORY SECTION (Amending Order 247, filed 12/2/82)

WAC 248-105-100 REPAYMENT. The department shall require repayment ((~~from~~)) to CCS when the provider((~~,~~)) or family ((~~or other source is required should trusts,~~)) subsequently receives insurance benefits, court-awarded damages, or like funds ((~~become available, and where payments have been made to the family or provider~~)) for services previously paid for by CCS.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 248-105-040 PROGRAM LIMITATIONS.
WAC 248-105-050 FUNDING CEILINGS ON NEUROMUSCULAR PROGRAM AND INDIVIDUAL NEUROMUSCULAR CENTERS.
WAC 248-105-060 AUTHORIZATION OF SERVICES.

WSR 89-13-080
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Public Assistance)
[Filed June 21, 1989]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Department of Social and Health Services intends to adopt, amend, or repeal rules concerning prospective eligibility, prospective budgeting and retrospective budgeting, amending WAC 388-28-483;

that the agency will at 10:00 a.m., Tuesday, July 25, 1989, in the Auditorium, 12th and Franklin, Olympia, conduct a public hearing on the proposed rules.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on July 26, 1989.

The authority under which these rules are proposed is RCW 74.08.090.

The specific statute these rules are intended to implement is chapter 74.08 RCW.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before July 25, 1989.

Correspondence concerning this notice and proposed rules shown below should be addressed to:

Troyce Warner
Office of Issuances
Department of Social and Health Services
Mailstop OB-33H
Olympia, WA 98504

Interpreters for people with hearing impairments and brailled or taped information for people with visual impairments can be provided. Please contact the Office of Issuances, State Office Building #2, 12th and Franklin, Olympia, WA, phone (206) 753-7015 by July 11, 1989. The meeting site is in a location which is barrier free.

Dated: June 19, 1989
By: Leslie F. James, Director
Administrative Services

STATEMENT OF PURPOSE

This statement is filed pursuant to RCW 34.04.045.

Re: Amending WAC 388-28-483.

Purpose of the Rule Change: To clarify rules for budgeting income when a case has been closed less than 30 days.

This change is necessary to implement an AFDC policy interpretation of 45 CFR 233.34(b).

Statutory Authority: RCW 74.04.055.

Summary of the Rule Change: Clarifies income budgeting for cases closed less than 30 days including editorial changes.

Person Responsible for Drafting, Implementation and Enforcement of the Rule Change: Tim Roth, Program Manager, Division of Income Assistance, mailstop OB-31C, phone: 753-3177.

The organization which proposed this rule is the Office of Family Assistance.

This rule is necessary as a result of federal law, AFDC policy interpretation of 45 CFR 233.34(b).

AMENDATORY SECTION (Amending Order 2613, filed 3/23/88)

WAC 388-28-483 PROSPECTIVE ELIGIBILITY, PROSPECTIVE BUDGETING, AND RETROSPECTIVE BUDGETING. (1) Definitions. The department shall call the:

(a) ((~~The~~)) Calendar month for which payment is made ((~~shall be called~~)), the payment month.

(b) ((~~The~~)) Second calendar month preceding the payment month ((~~shall be called~~)), the budget month.

(c) ((~~The~~)) Calendar month between the budget month and the payment month ((~~shall be called~~)), the process month.

(2) Eligibility determination. The department shall determine eligibility based on the best estimate of income and circumstances ((~~which will exist~~)) existing in the payment month.

(3) Prospective budgeting.

(a) The department shall budget income prospectively for one month if the case has been closed less than one month and the case was closed in the first prospective month.

(b) Except as specified ((~~in~~)) under subsections (3)(a) and (4)(a), the department shall budget all income prospectively for the first two months of initial eligibility, including income of an individual added to an existing assistance unit.

((~~(b)~~)) (c) The department shall compute the amount of the assistance payment based on the expected income and circumstances ((~~which will exist~~)) existing in the payment month.

((~~(c)~~)) (d) The department shall:

(i) Establish an overpayment if the income is underestimated((~~,~~)); and

(ii) Issue a corrective payment if the income is overestimated.

(4) Retrospective budgeting.

(a) The department shall retrospectively budget all income for the first two months of initial eligibility if one of the following exist:

(i) A case is reopened as terminated in error; ((~~or~~))

(ii) An individual having had income deemed to an assistance unit is added to that assistance unit; ((~~or~~))

(iii) Assistance had been suspended as specified ((~~in~~)) under subsection (5)((~~, and~~)) when:

(A) The initial month follows the month of suspension((~~,~~)); and

(B) The family's circumstances for the initial authorization month have not changed significantly from ((~~those~~)) the circumstances reported in the budget month.

(iv) A case is reopened that has been closed less than one month and was closed in the second prospective month.

(b) After the first two months of initial eligibility, the department shall budget all income retrospectively.

(c) The department shall compute the amount of assistance based on the income ((~~which existed~~)) or circumstances existing in the budget month.

(d) The department shall consider all income received during the calendar month of application approval for retrospective budgeting purposes.

(e) Noncontinuous income budgeted prospectively during the first two months of eligibility shall not be budgeted for the first and second payment month for which retrospective budgeting is used.

(5) ((~~f~~))See WAC 388-33-135 for effective dates of ineligibility.((~~f~~)) Suspension. The department shall suspend rather than terminate if:

(a) The department has knowledge of or reason to believe ineligibility would be only for one payment month((~~;~~)); and

(b) Ineligibility for that one payment month was caused by income or other circumstances in the corresponding budget month.

WSR 89-13-081
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Public Assistance)

[Filed June 21, 1989]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Department of Social and Health Services intends to adopt, amend, or repeal rules concerning common eligibility conditions, amending WAC 388-55-010;

that the agency will at 10:00 a.m., Tuesday, July 25, 1989, in the Auditorium, 12th and Franklin, OB-2, Olympia, conduct a public hearing on the proposed rules.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on July 26, 1989.

The authority under which these rules are proposed is RCW 43.20A.550.

The specific statute these rules are intended to implement is RCW 43.20A.550.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before July 25, 1989.

Correspondence concerning this notice and proposed rules shown below should be addressed to:

Troyce Warner
Office of Issuances
Department of Social and Health Services
Mailstop OB-33H
Olympia, WA 98504

Interpreters for people with hearing impairments and brailled or taped information for people with visual impairments can be provided. Please contact the Office of Issuances, State Office Building #2, 12th and Franklin, Olympia, WA, phone (206) 753-7015 by July 11, 1989. The meeting site is in a location which is barrier free.

Dated: June 19, 1989
By: Leslie F. James, Director
Administrative Services

STATEMENT OF PURPOSE

This statement is filed pursuant to RCW 34.04.045.

Re: Amending WAC 388-55-010.

Purpose of the Rule Change: To implement a federal regulation which was published final February 3, 1989. The regulation change was originally proposed January 30, 1986. The change is effective July 1, 1989.

This change is necessary to implement changes in Federal Register 54 FR 5463.

Statutory Authority: RCW 74.04.400.

Summary of the Change: Recipients of refugee cash assistance will be required to submit mandatory monthly reports under the same criteria as AFDC as a condition of eligibility.

Person Responsible for Drafting, Implementation and Enforcement of the Rule Change: Betty Brinkman, Program Manager, Division of Income Assistance, mailstop OB-31C, phone 753-4915.

This rule is necessary as a result of federal law, Federal Register 54 FR 5463.

AMENDATORY SECTION (Amending Order 2752, filed 1/6/89)

WAC 388-55-010 COMMON ELIGIBILITY CONDITIONS. (1) The department shall grant assistance to refugees within the provisions of P.L. 96-212, the Refugee Assistance Program.

(2) For the purpose of the refugee assistance program, the department defines refugee as a person who has fled from and cannot return to ((~~his or her~~)) the refugee's country due to persecution or fear of persecution because of race, religion, or political opinion. Under this definition, the department shall include the following persons as refugees:

(a) A person from Cambodia, Laos, or Vietnam who:

(i) Has parole status; or

(ii) Has voluntary departure status; or

(iii) Has conditional entry status; or

(iv) Was admitted to the United States with permanent resident status on or after April 8, 1975 (the date the president designated Vietnamese and Cambodians to be refugees under the Migration and Refugee Assistance Act); or

(v) Has permanent resident status as a result of adjustment of status under P.L. 95-145.

(b) A person from Cuba receiving assistance or services under the Cuban phase-down program, who entered the United States on or after October 1, 1978. Such persons shall have:

(i) A registration card issued by the United States Cuban Refugee Center in Miami on or after October 1, 1978; and

(ii) Immigration and Naturalization Service (INS) documentation sufficient to establish the person entered the United States on or after October 1, 1978, or verification with the United States Cuban Refugee Center of the person's date of entry.

(c) A person from any country having parole status as a refugee or asylee under Section 212 (d)(5) of the INA;

(d) A person admitted from any country as a conditional entrant under Section 203 (a)(7) of the INA;

(e) A person from any country admitted as a refugee under Section 207 of the Immigration and Naturalization Act (INA);

(f) A person classified as an Amerasian immigrant from Vietnam admitted through the orderly departure program, under section 584 of the Foreign Operations Appropriations Act, incorporated in the FY88 Continuing Resolution P.L. 100-202;

(g) A person from any country having been granted asylum under Section 208 of the INA; and

(h) A person from any country previously holding one of the statuses identified in this section whose status has changed to permanent resident alien.

(3) The department shall transfer eligible refugees to the AFDC, FIP, and/or Medicaid programs retroactively effective October 1, 1977, or as of such date as the refugees qualified for refugee assistance, whichever is later. The department shall regard such refugees as recipients rather than new applicants and shall disregard ((~~their~~)) the recipient's income accordingly.

(4) The department shall determine eligibility for AFDC or Medicaid before determining eligibility for the refugee assistance program for applications from refugees not currently receiving refugee cash assistance and/or medical assistance.

(a) If ((~~the department determines~~)) the applicant is not eligible for AFDC or FIP, then the department shall determine eligibility under the refuge assistance program.

(b) If ((~~the department determines~~)) the applicant is not eligible for Medicaid, then the department shall determine eligibility under the refugee assistance program.

(5) The department shall waive requirements of categorical relatedness of federal assistance programs, except for mandatory monthly reporting, for refugee assistance program. Requirements under WAC 388-24-044 apply.

(6) The department shall determine as not eligible for refugee assistance, refugees terminated from the AFDC program because of refusal to comply with eligibility requirements.

(7) Except as specified in subsection (8) of this section, the department shall provide assistance to all refugees, regardless of family composition, at the AFDC monthly standards. The department shall treat income and resources according to AFDC standards. The department shall not consider resources which are unavailable, including property remaining in other countries, in determining eligibility for financial assistance.

(8) Applicants for and recipients of refugee assistance are not eligible for the thirty dollar plus one-third of the remainder exemption from earned income.

(9) The department shall treat the refugee family unit including United States citizen's children, by virtue of being born in this country, as a single assistance unit under the refugee assistance program ((~~in accordance with~~)) under the provisions of WAC 388-24-050.

(10) Beginning October 1, 1988, the department shall consider refugees meeting the criteria in this section as eligible for refugee assistance only during the twelve-month period beginning the first of the month the refugee entered the United States.

(11) The department shall not consider full-time students in an institution of higher education eligible for refugee assistance, unless participating in a department-approved job or language training program not to exceed twelve months.

(12) The department shall notify the voluntary agency (VOLAG) sponsoring the refugee ((~~whenever~~)) when the refugee applies for assistance.

(13) Refugees meeting the criteria in this section are eligible for additional requirements for emergent situations ((~~as in~~)) under chapter 388-29 WAC.

Reviser's note: RCW 34.04.058 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

WSR 89-13-082
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Public Assistance)
[Filed June 21, 1989]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Department of Social and Health Services intends to adopt, amend, or repeal rules concerning Services available to recipients of categorical needy medical assistance, amending WAC 388-86-005; Payment—Eligible providers defined, amending WAC 388-87-005; and repealing WAC 388-86-02301 and 388-87-04701;

that the agency will at 10:00 a.m., Tuesday, July 25, 1989, in the Auditorium, OB-2, 12th and Franklin, Olympia, conduct a public hearing on the proposed rules.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on July 26, 1989.

The authority under which these rules are proposed is RCW 74.08.090.

The specific statute these rules are intended to implement is chapter 74.09 RCW.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before July 25, 1989.

Correspondence concerning this notice and proposed rules shown below should be addressed to:

Troyce Warner
Office of Issuances
Department of Social and Health Services
Mailstop OB-33H
Olympia, WA 98504

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Dated: June 20, 1989
By: Leslie F. James, Director
Administrative Services

STATEMENT OF PURPOSE

This statement is filed pursuant to RCW 34.04.045.

Re: Amending WAC 388-86-005 and 388-87-005 and repealing WAC 388-87-04701 and 388-86-02301.

Purpose: To remove chiropractor care services from the services provided by medical assistance program; adds midwifery to the eligible providers of medical care; adds personal care as an optional service provided under Title XIX; and adds hospice services to eligible categorically needy Title XIX recipients.

Reason: The department has removed chiropractic care services from the optional services provided by the department; to have consist policy that midwives are eligible provides of medical care; and state law adds personal care and hospice services as an optional service under Title XIX.

Statutory Authority: RCW 74.08.090.

Summary: The references to chiropractic care services and payment is removed from the WAC; midwifery is added as an eligible provider of medical services; personal care services are added to the optional services provided under Title XIX; and hospice services are added to the optional services provided to categorically needy Title XIX recipients.

Person Responsible for Drafting, Implementation and Enforcement of the Rule: Bobbe Andersen, Program Manager, Division of Medical Assistance, mailstop HB-41, phone 753-0529.

Rules are proposed by DSHS.

These rules are necessary as a result of a state law, RCW 74.09.520(6) as amended by section 10, chapter 427, Laws of 1989 and sections 207(3) and 213(7), chapter 19, Laws of 1989 1st ex. sess.

No economic impact statement is required under the Regulatory Fairness Act.

AMENDATORY SECTION (Amending Order 2600, filed 3/2/88)

WAC 388-86-005 SERVICES AVAILABLE TO RECIPIENTS OF CATEGORICAL NEEDY MEDICAL ASSISTANCE. (1) The department shall provide the following Title XIX mandatory services:

(a) Early and periodic screening diagnosis and treatment services to eligible individuals ((~~under twenty-one~~)) twenty years of age or under;

(b) Family planning services;
(c) Home health agency services;
(d) Inpatient and outpatient hospital care;
(e) Other laboratory and x-ray services;
(f) Skilled nursing home care;
(g) Certified registered nurse practitioner services; and
(h) Physicians' services in the office or away from the office as needed for necessary and essential medical care.

(2) The department shall provide the following Title XIX optional services:
(a) Anesthetization services;
(b) Blood;
(c) ((~~Chiropractic services;~~
~~(d)~~)) Drugs and pharmaceutical supplies;
(((~~(e)~~))) (d) Eyeglasses and examination;
(((~~(f)~~))) (e) Hearing aids and examinations;
(f) Hospices services;
(g) Nurse and licensed midwife services;
(h) Oxygen;
(i) Personal care services;
(j) Physical therapy services;
(((~~(j)~~))) (k) Private duty nursing services;
(((~~(k)~~))) (l) Rural health clinic services;
(((~~(l)~~))) (m) Surgical appliances;
(((~~(m)~~))) (n) Prosthetic devices and certain other aids to mobility; and
(((~~(n)~~))) (o) Dental services.

(3) The department shall limit organ transplants ((~~shall be limited~~)) to the cornea, heart, kidney, liver, and bone marrow.

(4) The department shall provide treatment, dialysis, equipment, and supplies for acute and chronic nonfunctioning kidneys ((~~shall be provided~~)) in the home, hospital, and kidney center. See WAC 388-86-050(5).

(5) The department shall provide detoxification and medical stabilization to chemically dependent pregnant women in a hospital or on an outpatient basis.

(6) The department shall not provide treatment to detoxify narcotic addiction cases, other than pregnant women, in a hospital or on an outpatient basis ((~~shall not be provided~~)) as a part of the medical assistance program. The department shall provide treatment for concurrent diseases and complications.

(((~~(6)~~))) (7) The department shall provide detoxification of an acute alcoholic condition ((~~shall be provided~~)) only in a certified detoxification center or in a general hospital with certified detoxification facilities.

(((~~(7)~~))) (8) The department shall approve requested services:
(a) That are listed in this section; and
(b) Where evidence is obtainable to establish medical necessity, ((~~as~~)) defined ((~~in~~)) under WAC 388-80-005, if the recipient or provider submits sufficient objective clinical information (((~~(~~))including, but not limited to((~~,~~)):
(i) A physiological description of the disease, injury, impairment, or other ailment;
(ii) Pertinent laboratory findings;
(iii) X-ray reports; and
(iv) Patient profiles((~~)~~)).

(((~~(8)~~))) (9) The department shall deny a request for medical services ((~~shall be denied by the department~~)) if the requested service is:
(a) ((~~Is~~)) Not medically necessary as defined ((~~in~~)) under WAC 388-80-005; or
(b) ((~~Is~~)) Generally regarded by the medical profession as experimental in nature or as unacceptable treatment, unless the recipient can demonstrate through sufficient objective clinical evidence the existence of particular circumstances which render the requested service medically necessary.

(((~~(9)~~))) (10) The department shall:
(a) Approve or deny all requests for medical services within fifteen days of the receipt of the request; or
(b) If additional justifying information is necessary before a decision can be made, ((~~the request shall be~~)) neither ((~~approved~~)) approve nor ((~~denied~~)) deny the request, but shall ((~~be returned~~)) return the request to the provider within five working days of the original receipt. If additional justifying information is:
(i) ((~~Is~~)) Not returned within thirty days of the date ((~~it~~)) the request was returned to the provider, then the department shall approve or deny the original request ((~~shall be approved or denied~~)).
(ii) ((~~Is~~)) Returned to the department, the department shall act on the request ((~~shall be acted upon~~)) within five working days of the receipt of the additional justifying information.

(((~~(10)~~))) (11) ((~~Whenever~~)) When the department denies a request for medical services, the department shall, within five working days of the decision, give the recipient and the provider written notice of the denial ((~~to the recipient and the provider~~)). The notice shall state:
(a) The specific reasons for the department's conclusion to deny the requested service((~~:~~));
(b) The recipient has a right to a fair hearing if the request is made within ninety days of receipt of the denial, with the instruction on how to request the hearing((~~:~~));
(c) The recipient may be represented at the hearing by legal counsel or other representative((~~:~~));
(d) That upon request, the CSO shall furnish the recipient the name and address of the nearest legal services office((~~:~~)); and
(e) If a fair hearing is requested, a medical assessment other than that of the person or persons involved in making the original decision may be obtained at the expense of the department.

(((~~(11)~~))) (12) For services available under:
(a) The limited casualty program-medically needy (((~~(~~))), see chapter 388-99 WAC((~~)~~));
(b) The limited casualty program-medically indigent (((~~(~~))), see chapter 388-100 WAC((~~)~~)).

(((~~(12)~~))) (13) The department may require a second opinion and/or consultation prior to the approval of any elective surgical procedure.

(((~~(13)~~))) (14) The department shall designate those surgical procedures which:
(a) Can be performed in other than a hospital in-patient setting; and
(b) Require prior approval by the ((~~area medical~~)) central authorization unit for a hospital admission.

(((~~(14)~~))) (15) The department shall assure the ((~~availity (~~))availability((~~)~~)) of necessary transportation to and from covered Title XIX medical services.

AMENDATORY SECTION (Amending Order 2665, filed 8/2/88)

WAC 388-87-005 PAYMENT—ELIGIBLE PROVIDERS DEFINED. (1) The following providers shall be eligible for enrollment to provide medical care services:
(a) Persons currently licensed by the state of Washington to practice medicine, osteopathy, dentistry, optometry, podiatry, midwifery, nursing, ((~~chiropractic,~~)) dental hygiene, or physical therapy;
(b) A hospital currently licensed by the department;
(c) A nursing home currently licensed and classified by the department as a skilled nursing or intermediate care facility;
(d) A licensed pharmacy;
(e) A home health services agency certified according to chapter 70-.126 RCW;
(f) An independent (outside) laboratory certified to participate under Title XVIII or determined currently to meet the Medicare requirements for such participation;
(g) A company or individual, not excluded in subsection (3) of this section, supplying items vital to the provision of medical care services such as ambulance service, oxygen, eyeglasses, other appliances, or approved services, not otherwise covered by this section;
(h) A provider of screening services that has signed an agreement with the department to provide such services to eligible individuals in the early and periodic screening and diagnosis and treatment (EPSDT) program;
(i) A qualified and approved center for the detoxification of acute alcoholic conditions;
(j) A qualified and approved outpatient clinical community mental health center, an approved inpatient psychiatric facility, drug treatment center, or Indian health service clinic;
(k) A Medicare certified rural health clinic;
(l) Approved prepaid health maintenance, prepaid health plans and/or health insuring organizations; and
(m) An out-of-state provider of services listed in subsection (1)(a) through (k) of this section subject to conditions specified in WAC 388-87-105.

(2) Under the mandatory and discretionary provision of RCW 74-.09.530, the services of the following practitioners shall not be furnished to applicants or recipients:
(a) Sanipractors;
(b) Naturopaths;
(c) Homopathists;

(d) Herbalists;
(e) Masseurs or manipulators;
(f) Christian Science practitioners or theological healers; and
(g) Any other licensed or unlicensed practitioners not otherwise specifically provided for in these rules.
(3) Conditions of eligibility.
(a) Nothing in this section shall bind the department to enroll all eligible providers capable of delivering covered services. The department shall demonstrate its plan for service delivery creates adequate access to covered services.
(b) When a provider has a restricted professional license or has been terminated, excluded, or suspended from the Medicare/Medicaid programs, the department shall not authorize provider eligibility unless the department has determined the violations leading to the sanction or license restriction are not likely to be repeated. In its determination, the department shall consider whether the provider has been convicted of offenses related to the delivery of professional or other services not considered during the development of the previous sanction.
(c) The department shall not reinstate in the medical assistance program, a provider suspended from Medicare or suspended by the department of health and human services (DHHS) until notified by DHHS that the provider may be reinstated.
(d) Nothing in this subsection shall preclude the department from denying provider enrollment if, in the opinion of the medical director, division of medical assistance, the provider constitutes a danger to the health and safety of recipients.

REPEALER

The following section of the Washington Administration Code is repealed:

WAC 388-86-02301 CHIROPRACTIC SERVICES.

REPEALER

The following section of the Washington Administration Code is repealed:

WAC 388-87-04701 PAYMENT—CHIROPRACTIC SERVICES.

WSR 89-13-083
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Public Assistance)
[Filed June 21, 1989]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Department of Social and Health Services intends to adopt, amend, or repeal rules concerning unallowable costs, amending WAC 388-96-585;

that the agency will at 10:00 a.m., Tuesday, July 25, 1989, in the Auditorium, 12th and Franklin, OB-2, Olympia, conduct a public hearing on the proposed rules.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on July 26, 1989.

The authority under which these rules are proposed is RCW 74.46.800.

The specific statute these rules are intended to implement is RCW 74.46.800.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before July 25, 1989.

Correspondence concerning this notice and proposed rules shown below should be addressed to:

Troyce Warner
Office of Issuances
Department of Social and Health Services
Mailstop OB-33H
Olympia, WA 98504

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Dated: June 21, 1989
By: Leslie F. James, Director
Administrative Services

STATEMENT OF PURPOSE

Re: Amending chapter 388-96 WAC, Nursing home accounting and reimbursement system.

Background: The proposed rule change is made for clarification and to comply with amendments to RCW 74.46.410 contained in ESHB 1864, section 2, which takes effect July 1, 1989. Due to the importance of the legislation and the close effective date, emergency adoption is sought by the department. As explained below, the legislative changes add three expenses to the list of costs unallowable for reimbursement under the Medicaid program in the state of Washington for skilled nursing and intermediate care facilities.

Statutory Authority: The new legislation found generally in RCW 74.09.120 and 74.46.800.

The changes will be effective for July 1, 1989, and following Medicaid rate setting periods.

Summaries of the Rule Changes and Reasons for Adoption: WAC 388-96-585 (2)(pp) makes unallowable payroll tax expense associated with unallowable compensation of nursing home business owners or relatives of owners. This is not a substantive change but for clarification only; subsection (2)(qq), makes unallowable post survey charges resulting from survey inspections occurring after the first post survey visit during the certification survey calendar year. Complies with new legislation; subsection (2)(rr), makes unallowable costs and fees for legal services in excess of the 85th percentile of costs of all Medicaid providers, if the contractor has exceeded this percentile in any of the three preceding cost report years. Complies with new legislation; and subsection (2)(ss), makes unallowable costs and fees for bookkeeping and accounting services in excess of the 85th percentile of costs of all Medicaid providers, if the contractor has not exceeded this percentile in any of the three preceding cost report years. Complies with new legislation.

Responsible Person: These amendments are proposed by the Department of Social and Health Services. The person responsible for drafting, implementing and enforcing these changes is Denise Gaither, Manager of Residential Rates, Aging and Adult Services Administration, Department of Social and Health Services, Mailstop HB-11, Olympia, Washington 98504. Written

or oral comments may be addressed to Ms. Gaither. Her telephone number is (206) 753-5817, 234-5817 scan.

Type of Adoption and Small Business Impact: Because the corresponding statutory amendment will take effect shortly, emergency as well as regular adoption is sought. The effective date is July 1, 1989, and this does not allow time for presentation of comments and views. It would be contrary to public interest to adopt the changes after July 1, 1989. Regular adoption is being sought simultaneously which will allow full presentation of public comments prior to final adoption. The above-described changes are not expected to have a significant financial impact due to costs of compliance to Medicaid nursing homes, whether classified as small businesses or not. Therefore, a small business impact statement is not provided.

AMENDATORY SECTION (Amending Order 2742, filed 12/21/88)

WAC 388-96-585 UNALLOWABLE COSTS. (1) The department shall not allow costs if not documented, necessary, ordinary, and related to the provision of care services to authorized patients.

(2) The department shall include, but not limit unallowable costs to the following:

(a) Costs of items or services not covered by the medical care program. Costs of nonprogram items or services even if indirectly reimbursed by the department as the result of an authorized reduction in patient contribution.

(b) Costs of services and items provided to SNF or ICF recipients ((~~which are~~)) covered by the department's medical care program but not included in SNF or ICF services respectively. Items and services covered by the medical care program are listed in chapters 388-86 and 388-88 WAC.

(c) Costs associated with a capital expenditure subject to Section 1122 approval (Part 100, Title 42 C.F.R.) if the department found the capital expenditure inconsistent with applicable standards, criteria, or plans. If the contractor did not give the department timely notice of a proposed capital expenditure, all associated costs shall be nonallowable as of the date the costs are determined not to be reimbursable under applicable federal regulations.

(d) Costs associated with a construction or acquisition project requiring certificate of need approval pursuant to chapter 70.38 RCW if such approval was not obtained.

(e) Costs of outside activities (e.g., costs allocable to the use of a vehicle for personal purposes or related to the part of a facility leased out for office space).

(f) Salaries or other compensation of owners, officers, directors, stockholders, and others associated with the contractor or home office, except compensation paid for service related to patient care.

(g) Costs in excess of limits or violating principles set forth in this chapter.

(h) Costs resulting from transactions or the application of accounting methods circumventing the principles of the prospective cost-related reimbursement system.

(i) Costs applicable to services, facilities, and supplies furnished by a related organization in excess of the lower of the cost to the related organization or the price of comparable services, facilities, or supplies purchased elsewhere.

(j) Bad debts. Beginning July 1, 1983, the department shall allow bad debts of Title XIX recipients only if:

(i) The debt is related to covered services;

(ii) It arises from the recipient's required contribution toward the cost of care;

(iii) The provider can establish reasonable collection efforts were made;

(iv) The debt was actually uncollectible when claimed as worthless; and

(v) Sound business judgment established there was no likelihood of recovery at any time in the future.

Reasonable collection efforts shall consist of three documented attempts by the contractor to obtain payment. Such documentation shall demonstrate the effort devoted to collect the bad debts of Title XIX recipients is at the same level as the effort normally devoted by the contractor to collect the bad debts of non-Title XIX patients. Should a contractor collect on a bad debt, in whole or in part, after filing a cost report, reimbursement for the debt by the department shall be refunded to the department to the extent of recovery. The department shall compensate a contractor for bad debts of Title XIX recipients at final settlement through the final settlement process only.

(k) Charity and courtesy allowances.

(l) Cash, assessments, or other contributions, excluding dues, to charitable organizations, professional organizations, trade associations, or political parties, and costs incurred to improve community or public relations. Any portion of trade association dues attributable to legal and consultant fees and costs in connection with lawsuits or other legal action against the department shall be unallowable.

(m) Vending machine expenses.

(n) Expenses for barber or beautician services not included in routine care.

(o) Funeral and burial expenses.

(p) Costs of gift shop operations and inventory.

(q) Personal items such as cosmetics, smoking materials, newspapers and magazines, and clothing, except items used in patient activity programs where clothing is a part of routine care.

(r) Fund-raising expenses, except expenses directly related to the patient activity program.

(s) Penalties and fines.

(t) Expenses related to telephones, televisions, radios, and similar appliances in patients' private accommodations.

(u) Federal, state, and other income taxes.

(v) Costs of special care services except where authorized by the department.

(w) Expenses of key-man insurance and other insurance or retirement plans not in fact made available to all employees on an equal or fair basis in terms of costs to employees and benefits commensurate to such costs.

(x) Expenses of profit-sharing plans.

(y) Expenses related to the purchase and/or use of private or commercial airplanes which are in excess of what a prudent contractor would expend for the ordinary and economic provision of such a transportation need related to patient care.

(z) Personal expenses and allowances of owners or relatives.

(aa) All expenses of maintaining professional licenses or membership in professional organizations.

(bb) Costs related to agreements not to compete.

(cc) Goodwill and amortization of goodwill.

(dd) Expense related to vehicles which are in excess of what a prudent contractor would expend for the ordinary and economic provision of transportation needs related to patient care.

(ee) Legal and consultant fees in connection with a fair hearing against the department relating to those issues where:

(i) A final administrative decision is rendered in favor of the department or where otherwise the determination of the department stands at the termination of administrative review; or

(ii) In connection with a fair hearing, a final administrative decision has not been rendered; or

(iii) In connection with a fair hearing, related costs are not reported as unallowable and identified by fair hearing docket number in the period they are incurred if no final administrative decision has been rendered at the end of the report period; or

(iv) In connection with a fair hearing, related costs are not reported as allowable, identified by docket number, and prorated by the number of issues decided favorably to a contractor in the period a final administrative decision is rendered.

(ff) Legal and consultant fees in connection with a lawsuit against the department, including suits which are appeals of administrative decisions.

(gg) Lease acquisition costs and other intangibles not related to patient care.

(hh) Interest charges assessed by the state of Washington for failure to make timely refund of overpayments and interest expenses incurred for loans obtained to make such refunds.

(ii) Beginning January 1, 1985, lease costs, including operating and capital leases, except for office equipment operating lease costs.

(jj) Beginning January 1, 1985, interest costs.

(kk) Travel expenses outside the states of Idaho, Oregon, and Washington, and the Province of British Columbia. However, travel to or from the home or central office of a chain organization operating a nursing home will be allowed whether inside or outside these areas if such travel is necessary, ordinary, and related to patient care.

(ll) Board of director fees for services in excess of one hundred dollars per board member, per meeting, not to exceed twelve meetings per year.

(mm) Moving expenses of employees in the absence of a demonstrated, good-faith effort to recruit within the states of Idaho, Oregon, and Washington, and the Province of British Columbia.

(nn) Depreciation expense in excess of twenty-five hundred dollars per year for passenger cars or other vehicles primarily used for the administrator, facility staff, or central office staff.

(oo) Any costs associated with the use of temporary health care personnel from any nursing pool not registered with the director of the department of licensing at the time of such pool personnel use.

(pp) Costs of payroll taxes associated with compensation in excess of allowable compensation for owners, relatives, and administrative personnel.

(qq) Department-imposed postsurvey charges incurred by the facility as a result of subsequent inspections which occur beyond the first postsurvey visit during the certification survey calendar year.

(rr) Costs and fees otherwise allowable for legal services, whether purchased, allocated by a home office, regional office or management company, or performed by the contractor or employees of the contractor, in excess of the eighty-fifth percentile of such costs, measured on a total cost basis, reported by all contractors for the most recent cost report period: PROVIDED, That this limit shall not apply to a contractor if the contractor has not exceeded this percentile at any time during the three years preceding the most recent cost report year.

(ss) Costs and fees otherwise allowable for accounting and bookkeeping services, whether purchased, allocated by a home office, regional office or management company, or performed by the contractor or employees of the contractor, in excess of the eighty-fifth percentile of such costs, measured on a per patient-day cost basis, reported by all contractors for the most recent cost report period: PROVIDED, That this limit shall not apply to a contractor if the contractor has not exceeded this percentile at any time during the three years preceding the most recent cost report year.

WSR 89-13-084
ADOPTED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Public Assistance)
[Order 2815—Filed June 21, 1989]

I, Leslie F. James, director of Administrative Services, do promulgate and adopt at Olympia, Washington, the annexed rules relating to:

Amd WAC 388-15-208 Definitions.
Amd WAC 388-15-212 Service determinations.

This action is taken pursuant to Notice No. WSR 89-10-046 filed with the code reviser on May 1, 1989. These rules shall take effect thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2).

This rule is promulgated under the general rule-making authority of the Department of Social and Health Services as authorized in RCW 74.08.090.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED June 21, 1989.

By Leslie F. James, Director
Administrative Services

AMENDATORY SECTION (Amending Order 2674, filed 8/17/88)

WAC 388-15-208 DEFINITIONS. (1) "Chore services" means services in performing ((~~light work and household and other~~)) personal care and related tasks ((~~which eligible applicants/clients are unable to do for themselves because of frailty or handicapping conditions~~)) as provided in the department's medical assistance state plan provision addressing personal care.

(2) "Contracted program" means that method of hourly chore service delivery where the contractor is responsible for recruiting, supervising, training, and paying the chore service provider.

(3) "Individual provider program" means that method of chore service delivery where the client employs and supervises the chore service provider. Payment is made to the client((,)) who, in turn, pays the provider.

(4) "Attendant care" means the service provided to eligible clients ((~~who were~~)) receiving attendant care services ((~~prior to~~)) before April 1, 1988:

(a) Who need full-time care((,)); and/or

(b) Require assistance that cannot be scheduled with personal care tasks, e.g., toileting, ambulation, ((~~wheelchair~~)) transfer((,)); and/or

(c) Need protective supervision when it is dangerous for a client to be left alone. Protective supervision does not include responsibilities a legal guardian should assume. The department authorizes a daily rate payment for attendant care in the individual provider program.

(5) "Hourly care" means the service the department provides to eligible applicants needing assistance that may be scheduled with household and/or personal care tasks.

(6) "Own home" means the client's present or intended place of residence whether in a building rented or owned by the client or in the home of another person. The department provides chore services within the confines of the home property except for essential shopping, errands, and transportation necessary for the completion of authorized tasks.

(7) "Client review questionnaire ((~~(CRQ)~~))" means an assessment form the department uses to determine the amount and type of chore services to be provided. The department staff uses the ((~~CRQ~~)) assessment to identify, document, and score the allowable chore service needs of all eligible applicants/clients.

(8) ((~~The~~)) "((~~CRQ~~)) service authorization ceiling chart" means the chart ((~~that indicates~~)) indicating the maximum number of hours the department may authorize for a client's score.

(9) "Personal care" means such tasks as meal preparation, ((~~feeding~~)) eating, dressing((~~/undressing~~)), ((~~care of appearance~~)) personal hygiene, specialized body care, ((~~bed~~)) transfer, positioning, ambulation, ((~~wheelchair transfer,~~)) bathing, toileting, ((~~reminding to take medicines which~~)) self-medication a client ((~~would normally~~)) provides for himself or herself and ((~~are~~)) is necessary to maintain a client in ((~~his or her~~)) the client's own ((~~home~~)) residence. The department shall not authorize sterile procedures and administering

of medications by injection unless the provider of the individual provider program is a licensed health practitioner or a member of the client's immediate family.

(10) "Shared living arrangement" means a situation where two or more adults share expenses and live together in a home of one of ((them)) the adults with common facilities, such as living, cooking, and eating areas.

(11) "At risk of institutionalization" or "at risk of residential placement" means ((that)) the applicant/client meets the criteria as outlined ((in)) under WAC 388-15-209 (1)(c).

(12) "High risk of residential care placement" means ((that)) the applicant/client meets the criteria as outlined ((in)) under WAC 388-15-209 (1)(b).

(13) ((~~"Client" means a person who is receiving chore services.~~

~~(14)~~)) "Applicant" means a person ((~~who applies~~)) applying for chore services.

(14) "Client" means a person receiving chore services.

(15) "Grandparented client" means a person approved for hourly household tasks before December 14, 1987, or a person approved for attendant care or family care services before April 1, 1988.

(16) "Resources" means ((~~all~~)) real or personal property owned by or available to an applicant at the time of application which the department may apply toward meeting the applicant's requirements, either directly or by conversion into money or its equivalent.

((~~(16)~~)) (17) "Property ((~~that is~~)) owned or available" means property over which the applicant/client has legal right of control.

((~~(17)~~)) (18) "Companionship" means being with a person in the client's own home for the purpose of preventing loneliness or to accompany the client outside the home for other than basic errands, medical appointments, or laundry.

((~~(18)~~)) (19) "Activities essential to daily living" means the tasks listed in the ((~~CRQ~~)) assessment.

AMENDATORY SECTION (Amending Order 2674, filed 8/17/88)

WAC 388-15-212 SERVICE DETERMINATIONS. (1) The department shall determine the need for and amount of chore services for all applicants and clients of chore services according to the score on ((~~a CRQ~~)) the assessment form. The department shall ((~~use~~)) perform a separate ((~~CRQ~~)) assessment for each adult.

(2) Department staff shall administer the ((~~CRQ~~)) assessment.

(3) The department shall not duplicate services nor payment in multiple-client households. In households with community options program entry system (COPES) and chore services, the department shall consider the chore services client as the secondary client.

(4) When administering the ((~~CRQ~~)) assessment, department staff shall take into account the client's:

(a) Risk of being placed in a residential care facility;

(b) Ability to perform activities of daily living;

(c) Living conditions;

(d) Arrangements; and

(e) Availability and use of alternative resources, including immediate family, other relatives, neighbors, friends, community programs, and volunteers.

(5) The series of questions on the ((~~CRQ documents~~)) assessment shall document the client's need for assistance with the tasks available from the chore services program.

(a) The department shall base the scoring on the following to indicate the extent of assistance the client needs from the chore services program for each task:

(i) ((~~N~~)) O = No service needed: The client is either able to perform this task without help or is already receiving or could receive all the help needed from other sources.

(ii) M = Minimal service needed: The client cannot perform this task without help and needs a minimal amount of assistance from the chore services program in addition to whatever help may or may not be received from other sources.

(iii) S = Substantial service needed: The client cannot perform this task without help and needs a substantial amount of assistance from the chore services program in addition to whatever help may or may not be received from other sources.

(iv) T = Total service needed: Client is completely unable to perform this task ((~~and~~)), is not now receiving any help, and needs total assistance from the chore services program.

(b) The department shall award points for each task based on the degree of assistance needed from the chore services program. The number of points available for each task is set forth in subsection (6) of this section. The point total is converted into maximum allowable hours using the table set forth in subsection (7) of this section.

(6) The department shall score the allowable chore services program tasks, as defined by the department, according to the need and frequency of services as follows:

(a) ((~~Escort/transport~~)) Travel to medical services: ((~~N~~)) O = 0, M = 1, S = 2, T = 3;

(b) Essential shopping ((~~and errands~~)) with client: ((~~N~~)) O = 0, M = 5, S = 10, T = 15. When the chore service provider must perform these tasks for the client because the client is unable to go along: ((~~N~~)) O = 0, M = 1, S = 3, and T = 5;

(c) Laundry: ((~~N~~)) O = 0, M = 1, S = 2, and T = 3. If ((~~there are no~~)) laundry facilities ((~~in~~)) are out of the client's own ((~~home~~)) residence, the department shall award additional points: ((~~N~~)) O = 0, M = 3, S = 5, and T = 7;

(d) ((~~Splitting/stacking/carrying~~)) Wood supply: ((~~N~~)) O = 0, M = 3, S = 5, and T = 7. Service to perform ((~~this task~~)) splitting/stacking/carrying wood is available only to clients who use wood as their sole source of fuel for heat and/or cooking;

(e) Housework. Housework is limited to tasks necessary to protect the client's health and safety and to those areas of the home actually used by the client, i.e., kitchen, bathroom, bedroom, living room, and dining room: ((~~N~~)) O = 0, M = 1, S = 2, and T = 3;

(f) ((~~Cooking~~)) Meal preparation. Scoring is based on the preparation of three meals, as follows:

(i) Breakfast ((~~N~~)) O = 0, M = 4, S = 7, T = 10;

(ii) Light meal ((~~N~~)) O = 0, M = 4, S = 7, T = 10;

(iii) Main meal ((~~N~~)) O = 0, M = 5, S = 10, T = 15.

(g) ((~~Feeding~~)) Eating. Scoring is based on feeding three meals, as follows:

(i) Breakfast ((~~N~~)) O = 0, M = 4, S = 7, T = 10;

(ii) Light meal ((~~N~~)) O = 0, M = 4, S = 7, T = 10;

(iii) Main meal ((~~N~~)) O = 0, M = 5, S = 10, T = 15.

(h) Dressing((~~/undressing~~)): ((~~N~~)) O = 0, M = 4, S = 7, and T = 10;

(i) ((~~Care of appearance~~)) Personal hygiene: ((~~N~~)) O = 0, M = 1, S = 3, and T = 5;

(j) Specialized body care: ((~~N~~)) O = 0, M = 5, S = 10, and T = 15;

(k) ((~~Bed~~)) Transfer: ((~~N~~)) O = 0, M = 1, S = 3, and T = 5;

(l) Positioning: O = 0, M = 1, S = 3, and T = 5;

(m) Ambulation: ((~~N~~)) O = 0, M = 4, S = 7, and T = 10;

((~~(m) Wheelchair transfer: N = 0, M = 1, S = 3, and T = 5;~~))

(n) Bathing: ((~~N~~)) O = 0, M = 4, S = 7, and T = 10;

(o) Toileting: ((~~N~~)) O = 0, M = 5, S = 10, and T = 15;

(p) ((~~Remind to take medicines~~)) Self-medication: ((~~N~~)) O = 0, M = ((~~1~~)) 2, S = ((~~2~~)) 4, and T = ((~~3~~)) 6.

(7) The department shall determine the number of hours of chore services to be authorized per month by translating the total number of points awarded on the ((~~CRQ~~)) assessment into a monthly authorization, using the following ((~~CRQ~~)) service authorization ceiling chart:

((~~CRQ~~)) ASSESSED SCORE			CEILING HOURS PER MONTH
1	–	4	5
5	–	9	8
10	–	14	11
15	–	19	14
20	–	24	18
25	–	29	21
30	–	34	24
35	–	39	28
40	–	44	31
45	–	49	34
50	–	54	37
55	–	59	41
60	–	64	44
65	–	69	47
70	–	74	51
75	–	79	54
80	–	84	57
85	–	89	60
90	–	94	64
95	–	99	67
100	–	104	70
105	–	109	74
110	–	114	77
115	–	119	80
120	–	124	83
125	–	129	87
130	–	134	90
135	–	139	93
140	–	144	97
145	–	149	100
150	–	154	103
155	–	159	106
160	–	164	110
165	–	169	113
170	and above		116

The department may authorize fewer hours according to the client's individual circumstances and the provisions under WAC 388-15-215(7).

(8) The client or applicant may request approval from the department to exceed the ceiling hours authorized per month, as determined in subsection (7) of this section. The department shall authorize the number of additional hours not to exceed one hundred sixteen hours per month per client in the hourly program when:

(a) There are circumstances of a demonstrated duration, frequency, or severity which require additional hours of allowable chore services to avoid adverse effects to the client's health or safety; and

(b) The need for additional hours is specific and clearly measurable; and

(c) Funds are available under provisions of WAC 388-15-214.

(9) The department shall inform all clients or applicants in writing of the process as defined in subsection (8) of this section. Clients or applicants shall have the right to request from the department approval to exceed the authorized hours as set forth in subsection (7) of this section.

(10) When the department denies a request for additional hours or approves fewer additional hours than requested, the department shall send the client or applicant a notice of the right to contest the decision pursuant to chapter 388-08 WAC. The department shall approve or deny requests within thirty days.

(11) The department may provide chore services through the individual provider program or through the contracted program, as deemed most appropriate by department policy established by the state office.

WSR 89-13-085
EMERGENCY RULES
DEPARTMENT OF WILDLIFE
(Wildlife Commission)
[Order 400—Filed June 21, 1989]

I, Curt Smitch, director of the Washington Department of Wildlife, do promulgate and adopt at Olympia, Washington, the annexed rules relating to:

Re-Ad	WAC 232-12-177	Vehicles using department lands.
Re-Ad	WAC 232-12-184	Aircraft—Authorized use on department lands.
Re-Ad	WAC 232-12-187	Access areas—Other department lands—Wildlife agent to control traffic thereon.
Re-Ad	WAC 232-12-251	Removal of minerals, wood and artifacts from department lands.
Re-Ad	WAC 232-12-254	Discharge of litter on department lands—Unlawful.

I, Curt Smitch, Director, find that an emergency exists and that this order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting the emergency is land which is owned or controlled by the department receives its heaviest use during the summer months. The readoption of the department's land management regulations is necessary to provide a more specific authority for their enforcement.

These rules are therefore adopted as emergency rules to take effect upon filing with the code reviser.

This rule is promulgated pursuant to RCW 77.12.210 and 77.12.320 and is intended to administratively implement that statute.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED June 21, 1989.

By Ray Ryan
Deputy Director
for Curt Smitch

READOPTED SECTION (Readopting Order 177, filed 1/28/82)

WAC 232-12-177 VEHICLES USING DEPARTMENT LANDS. It is unlawful to operate a motor driven vehicle on lands owned, controlled or managed by the department except on such land or roads as may be authorized by the director.

READOPTED SECTION (Readopting Order 165, filed 6/1/81)

WAC 232-12-184 AIRCRAFT—AUTHORIZED USE ON DEPARTMENT LANDS. Except as authorized by the director or the director of the department of natural resources, it is unlawful to land aircraft on lands owned, leased or controlled by the department, except in the case of a bona fide emergency.

READOPTED SECTION (Readopting Order 177, filed 1/28/82)

WAC 232-12-187 ACCESS AREAS—OTHER DEPARTMENT LANDS—WILDLIFE AGENT TO CONTROL TRAFFIC THEREON. It is unlawful to use department owned or controlled lands or waters in a manner or for a purpose contrary to signs or notices posted on those lands or to refuse or neglect to obey directions regarding use of such property by a wildlife agent. It is unlawful to use department owned or controlled lands or waters for a commercial purpose without a permit issued by the director.

READOPTED SECTION (Readopting Order 165, filed 6/1/81)

WAC 232-12-251 REMOVAL OF MINERALS, WOOD AND ARTIFACTS FROM DEPARTMENT LANDS. It is unlawful to remove petrified wood, minerals, fossils, wood products or artifacts from department lands unless such removal is authorized by a permit issued by the director.

READOPTED SECTION (Readopting Order 165, filed 6/1/81)

WAC 232-12-254 DISCHARGE OF LITTER ON DEPARTMENT LANDS—UNLAWFUL. It is unlawful for any person to throw, to drop, or to leave any discarded object, garbage, debris, or waste upon any of the properties owned, leased or controlled by the department except into a litter or garbage receptacle or container installed for that purpose on such property.

WSR 89-13-086
PROPOSED RULES
DEPARTMENT OF REVENUE
[Filed June 21, 1989]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Department of Revenue intends to adopt, amend, or repeal rules concerning hazardous substance tax and petroleum product tax, amending WAC 458-20-252;

that the agency will at 1:30 p.m., Wednesday, July 26, 1989, in the Revenue Conference Room, #415, 4th Floor, General Administration Building, Olympia, Washington 98504, conduct a public hearing on the proposed rules.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on August 2, 1989.

The authority under which these rules are proposed is RCW 82.32.300.

The specific statute these rules are intended to implement is a new chapter, Title 82 RCW.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before July 26, 1989.

Dated: June 21, 1989
By: Edward L. Faker
Interim Assistant Director

STATEMENT OF PURPOSE

Title: WAC 458-20-252 Hazardous substance tax and petroleum product tax.

Description of Purpose: To implement the provisions of chapter 383, Laws of 1989, (2nd SHB 1180) which established a new chapter in Title 82 RCW imposing a petroleum product tax and providing exemptions and credits. To explain the provisions of the law and the tax reporting and procedural requirements for its administration.

Statutory Authority: RCW 82.32.300.

Specific Statute(s) Rule is Intended to Implement: A new chapter, Title 82 RCW.

Reasons Supporting Proposed Action: Effective July 1, 1989, a new and separate excise tax is imposed in this state upon the privilege of possessing petroleum products. The Department of Revenue is legislatively mandated to promulgate rules covering the proper procedures for reporting tax liability, claiming tax exemptions, and applying for credits under the law. Emergency adoption of the rule is necessary for the preservation of the general welfare of taxpayers upon whom the new tax is imposed July 1, 1989, as a result of the effective date of the legislative action. Permanent adoption will occur only after a public hearing under the APA and full opportunity for all interested persons to be heard.

Agency Personnel Responsible for Drafting: Mark Pree, 415 General Administration Building, Olympia, WA 98504, phone 586-4399; Implementation: Edward L. Faker, 415 General Administration Building, Olympia, WA 98504, phone 753-5579; and Enforcement: Department of Revenue, 415 General Administration Building, Olympia, WA 98504, phone 753-5540.

AMENDATORY SECTION (Amending Order 89-1, filed 5/2/89)

WAC 458-20-252 HAZARDOUS SUBSTANCE TAX AND PETROLEUM PRODUCT TAX. Part 1 - HAZARDOUS SUBSTANCE TAX

(1) Introduction. Under the provisions of chapter 82.22 RCW a hazardous substance tax was imposed, effective January 1, 1988, upon the wholesale value of certain substances and products, with specific credits and exemptions provided. This law is significantly changed, effective on March 1, 1989, because of Initiative 97 (I-97) which was passed by the voters in the November 8, 1988 general election. The tax, which is reimposed by I-97, is an excise tax upon the privilege of possessing hazardous substances or products in this state. It is imposed in addition to all other taxes of an excise or property tax nature and is not in lieu of any other such taxes.

(a) I-97, which will be referred to as chapter 2, Laws of 1989, defines certain specific substances as being hazardous and includes other substances by reference to Federal legislation governing such things. It also provides authority to the director of the State Department of Ecology to designate any substances or products as hazardous which could present a threat to human health or the environment. The Department of Ecology, by duly published rule, defines and enumerates hazardous substances and products and otherwise administers the provisions of the law relating to hazardous and toxic or dangerous materials, waste, disposal, cleanup, remedial actions, and monitoring. (See chapter 173-___ of the Washington Administrative Code.)

(b) Sections 8 through 12 of I-97 consist of the tax provisions relating to hazardous substances and products which are administered exclusively under this section. The tax provisions relate exclusively to the possession of hazardous substances and products. The tax provisions do not relate to waste, releases or spills of any materials, cleanup, compensation, or liability for such things, nor does tax liability under the law depend upon such factors. The incidence or privilege which incurs tax liability is simply the possession of the hazardous substance or product, whether or not such possession actually causes any hazardous or dangerous circumstance.

(c) The hazardous substance tax is imposed upon any possession of a hazardous substance or product in this state by any person who is not expressly exempt of the tax. However, it is the intent of the law that the economic burden of the tax should fall upon the first such possession in this state. Therefor, the law provides that if the tax has not been paid upon any hazardous substance or product the department may collect the tax from any person who has had possession. The amount of tax paid then constitutes a debt owed by the first person having had taxable possession to the person who pays the tax.

(2) Definitions. For purposes of this ((~~section~~)) part the following terms will apply.

(a) "Tax" means the hazardous substance tax imposed under Section 10 of I-97.

(b) "Hazardous substance" means anything designated as such by the provisions of chapter 173- WAC, administered by the State Department of Ecology, as adopted and thereafter amended. In addition, the law defines this term to include:

(i) Any substance that, on March 1, 1989, is a hazardous substance under section 101(14) of the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended by Public Law 99-499. These substances consist of chemicals and elements in their purest form. A CERCLA substance which contains water is still considered pure. Combinations of CERCLA substances as ingredients together with nonhazardous substances will not be taxable unless the end product is specifically designated as a hazardous substance by the Department of Ecology.

(ii) petroleum products (further defined below);

(iii) pesticide products required to be registered under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA); and

(iv) anything else enumerated as a hazardous substance in Chapter 173-___ WAC by the Department of Ecology.

(c) "Product(s)" means any item(s) containing a combination of ingredients, some of which are hazardous substances and some of which are not hazardous substances.

(d) "Petroleum product" means any plant condensate, lubricating oil, crankcase motor oil, gasoline, aviation fuel, kerosene, diesel motor fuel, benzol, fuel oil, residual fuel, asphalt base, liquefied or liquefiable gases, such as butane, ethane and propane, and every other product derived from the refining of crude oil, but the term does not include crude oil.

(i) The term "derived from the refining of crude oil" as used herein, means produced because of and during petroleum processing. "Petroleum processing" includes all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to crude oil or any byproduct of crude oil so that as a result thereof a fuel or lubricant is produced for sale or commercial or industrial use. "Fuel" includes all combustible gases and liquids suitable for the generation of energy. The term "derived from the refining of crude oil" does not mean petroleum products which are manufactured from refined oil derivatives, such as petroleum jellies, cleaning solvents, asphalt paving, etc. Such further manufactured products become hazardous substances only when expressly so designated by the Director of Ecology.

(e) "Possession" means control of a hazardous substance located within this state and includes both actual and constructive possession.

(i) "Control" means the power to sell or use a hazardous substance or to authorize the sale or use by another.

(ii) "Actual possession" occurs when the person with control has physical possession.

(iii) "Constructive possession" occurs when the person with control does not have physical possession.

(f) "Previously taxed hazardous substance" means a hazardous substance upon which the tax has been paid and which has not been remanufactured or reprocessed in any manner.

(i) Remanufacturing or reprocessing does not include the mere repackaging or recycling for beneficial reuse. Rather, these terms embrace activities of a commercial or industrial nature involving the application of skill or labor by hand or machinery so that as a result, a new or different substance or product is produced.

(ii) "Recycling for beneficial reuse" means the recapturing of any used substance or product, for the sole purpose of extending the useful life of the original substance or product in its previously taxed form, without adding any new, different, or additional ingredient or component.

(iii) Example: Used motor oil drained from a crankcase, filtered, and containerized for reuse is not remanufactured or reprocessed. If the tax

was paid on possession of the oil before use, the used oil is a previously taxed substance.

(iv) Possessions of used hazardous substances by persons who merely operate recycling centers or collection stations and who do not reprocess or remanufacture the used substances are not taxable possessions.

(g) "Wholesale value" is the tax measure or base. It means the fair market value determined by the wholesale selling price. In cases where no sale has occurred, wholesale value means the fair market wholesale value, determined as nearly as possible according to the wholesale selling price at the place of use of similar substances of like quality and character. In such cases the wholesale value shall be the "value of the products" as determined under the alternate methods set forth in WAC 458-20-112.

(h) "Selling price" means consideration of any kind expressed in terms of money paid or delivered by a buyer to a seller, without any deductions for any costs whatsoever. Bona fide discounts actually granted to a buyer result in reductions in the selling price rather than deductions.

(i) "State," for purposes of the credit provisions of the hazardous substance tax, means:

(i) the state of Washington,

(ii) states of the United States or any political subdivisions of such other states,

(iii) the District of Columbia,

(iv) territories and possessions of the United States,

(v) any foreign country or political subdivision thereof.

(j) "Person" means any natural or artificial person, including a business organization of any kind, and has the further meaning defined in RCW 82.04.030.

(i) The term "natural person," for purposes of the tax exemption provided by Section 11(2) of I-97 regarding substances used for personal or domestic purposes, means human beings in a private, as opposed to a business sense.

(k) Except as otherwise expressly defined in this section, the definitions of terms provided in chapters 82.04, 82.08, and 82.12 RCW apply equally for this section. Other terms not expressly defined in these chapters or this section are to be given their common and ordinary meanings.

(3) Tax rate and measure. The tax is imposed upon the privilege of possessing hazardous substances in this state. The tax rate is seven tenths of one percent (.007). The tax measure or base is the wholesale value of the substance, as defined herein.

(4) Exemptions. The following are expressly exempt from the tax:

(a) Any successive possessions of any previously taxed hazardous substances are tax exempt.

(i) Any person who possesses a hazardous substance which has been acquired from any other person who is registered with the department of revenue and doing business in this state may take a written statement certifying that the tax has been previously paid. Such certifications must be taken in good faith and must be in the form provided in the last part of this section. Blanket certifications may be taken, as appropriate, which must be renewed at intervals not to exceed four years. These certifications may be used for any single hazardous substance or any broad classification of hazardous substances, e.g., "all chemicals."

(ii) In the absence of taking such certifications, the person who possesses any hazardous substance must retain proofs that it purchased or otherwise acquired the substance from a previous possessor in this state. It is not necessary for subsequent possessors to obtain certificates of previously taxed hazardous substances in order to perfect their tax exemption. Documentation which establishes any evidence of previous tax payment by another person will suffice. This includes invoices or billings from in state suppliers which reflect their payment of the tax or simple bills of lading or delivery documents revealing an in state source of the hazardous substances.

(iii) This exemption for taxes previously paid is available for any person in successive possession of a taxed hazardous substance even though the previous payment may have been satisfied by the use of credits or offsets available to the previous person in possession.

(iv) Example. Company A brings a substance into this state upon which it has paid a similar hazardous substance tax in another state. Company A takes a credit against its Washington tax liability in the amount of the other state's tax paid. It then sells the substance to Company B, and provides Company B with a Certificate of Previously Taxed Substance. Company B's possession is tax exempt even though Company A has not directly paid Washington's tax but has used a credit against its Washington liability.

(b) Any possession of a hazardous substance by a natural person for use of a personal or domestic nature rather than a business nature is tax exempt.

(i) This exemption extends to relatives, as well as other natural persons who reside with the person possessing the substance, and also to regular employees of that person who use the substance for the benefit of that person.

(ii) This exemption does not extend to possessions by any independent contractors hired by natural persons, which contractors themselves provide the hazardous substance.

(iii) Examples: Possessions of spray materials by an employee-gardener or soaps and cleaning solvents by an employee-domestic servant, when such substances are provided by the natural person for whose domestic benefit such things are used, are tax exempt. Also, possessions of fuel by private persons for use in privately owned vehicles are tax exempt.

(c) Any possession of any hazardous substance, other than pesticides or petroleum products, possessed by a retailer for making sales to consumers, in an amount which is determined to be "minimal" by the department of ecology. That department has determined that the term "minimal" means less than $1,000.00 worth of such hazardous substances measured by their wholesale value, possessed during any calendar month.

(d) Possessions of alumina or natural gas are tax exempt.

(e) Persons or activities which the state is prohibited from taxing under the United States Constitution are tax exempt.

(i) This exemption extends to the U.S. government, its agencies and instrumentalities, and to any possession the taxation of which has been expressly reserved or preempted under the laws of the United States.

(ii) The tax will not apply with respect to any possession of any hazardous substance purchased, extracted, produced or manufactured outside this state which is shipped or delivered into this state until the interstate transportation of such substance has finally ended in this state. Thus, out of state sellers or producers need not pay the tax on substances shipped directly to customers in this state. The customers must pay the tax upon their first possession unless otherwise expressly exempt.

(iii) Out of state sellers or producers will be subject to tax upon substances shipped or delivered to warehouses or other in state facilities owned, leased, or otherwise controlled by them.

(iv) However, the tax will not apply with respect to possessions of substances which are only temporarily stored or possessed in this state in connection with through, interstate movement of the substances from points of origin to points of destination both of which are outside of this state.

(f) The former exemption for petroleum products for export sale or use outside this state as fuel was effectively repealed by I-97. There are no exemptions under the law for any possessions of hazardous substances in this state simply because such substances may later be sold or used outside this state.

(g) Though I-97 contains an exemption for persons possessing any hazardous substance where such possession first occurred before March 1, 1989, this exemption applies only to the tax imposed under I-97. It does not apply retroactively to excuse the hazardous substance tax which was imposed under chapter 82.22 RCW in effect from January 1, 1988 until March 1, 1989. However:

(i) TRANSITIONAL RULE: Persons who possess stocks or inventories of petroleum products as of March 1, 1989, which are destined for sale or use outside this state as fuel are not subject to tax upon such possessions of preexisting inventories. For periods before March 1, 1989 the former exemption of RCW 82.22.040(3) for export petroleum products applies. For periods on and after March 1, 1989 the exemption for prepossessed hazardous substances explained in subsection (g) above will apply. Records appropriate to establish that such petroleum products were destined for out of state sale or use as fuel must be retained by any possessor claiming exemption under this transitional rule.

(5) Credits. There are three distinct kinds of tax credits against liability which are available under the law.

(a) A credit may be taken by any manufacturer or processor of a hazardous substance produced from ingredients or components which are themselves hazardous substances, and upon which the hazardous substance tax has been paid by the same person or is due for payment by the same person.

(i) Example. A manufacturer possesses hazardous chemicals which it combines to produce an acid which is also designated as a hazardous substance or product. When it reports the tax upon the wholesale value of the acid it may use a credit to offset the tax by the amount of tax it

has already paid or reported upon the hazardous chemical ingredients or components. In this manner the intent of the law to tax hazardous substances only once is fulfilled.

(ii) Under circumstances where the hazardous ingredient and the hazardous end product are both possessed by the same person during the same tax reporting period, the tax on the respective substances must be computed and the former must be offset against the latter so that the tax return reflects the tax liability after the credit adjustment.

(iii) This credit may be taken only by manufacturers who have the first possession in this state of both the hazardous ingredients and the hazardous end product.

(b) A credit may be taken in the amount of the hazardous substance tax upon the value of fuel which is carried from this state in the fuel tank of any airplane, ship, truck, or other vehicle.

(i) The credit may be claimed only for the amount of tax reported or actually due to be paid on the fuel, not the amount representing the value of the fuel.

(ii) The purpose of this credit is to exclude from taxation any possessions of fuel which remains in the fuel tanks of any carrier vehicles powered by such fuel when they leave this state, regardless of where or from whom such fuel-in-tanks was acquired.

(iii) The nature of this credit is such that it generally has application only for interstate and foreign private or common carriers who carry fuel into this state and/or purchase fuel in this state. The intent is that the tax will apply only to so much of such fuel as is actually consumed by such carriers within this state.

(iv) In order to equitably and efficiently administer this tax credit, any fuel which is brought into this state in carrier vehicle fuel tanks must be accounted for separately from fuel which is purchased in this state for use in such fuel tanks. Formulas approved by the department for reporting the amount of fuel consumed in this state for purposes of this tax or other excise tax purposes will satisfy the separate accounting required under this subsection.

(v) Fuel-in-tanks brought into this state must be fully reported for tax and then the credit must be taken in the amount of such fuel which is taken back out of this state. This is to be done on the same periodic excise tax return so that the net effect is that the tax is actually paid only upon the portion of fuel consumed here.

(vi) The credit for fuel-in-tanks purchased in this state must be accounted for by using a fuel-in-tanks credit certificate in substantially the following form:

CERTIFICATE OF CREDIT FOR FUEL CARRIED FROM THIS STATE IN FUEL TANKS

I hereby certify that the petroleum products specified herein, purchased by or transferred to the undersigned, from (name of seller or transferor), are entitled to the credit for fuel which is carried from this state in the fuel tank of any airplane, ship, truck, or other vehicle operated by a private or common carrier in interstate or foreign commerce. I will become liable for and pay the ((~~hazardous substance~~)) taxes due upon all or any part of such fuel which is not so carried from this state. This certification is given with full knowledge of, and subject to the legally prescribed penalties for fraud and tax evasion.

Registration No. _____
(if applicable)
Type of Business _____
Firm Name _____
Business Address _____
Registered Name _____
(if different)
Tax Reporting Agent _____
(if applicable)
Authorized Signature _____
Title _____
Identity of Fuel _____
(kind and amount by volume)

Date: _____

(vii) This certificate may be executed and provided to any possessor of fuel in this state, throughout the chain of distribution, with respect to fuel which ultimately will be sold and delivered into any carrier's fuel tanks in this state. Thus, refiners or manufacturers will take such certificates directly from carriers or from their wholesale purchasers who will sell to such carriers. Similarly, fuel dealers and distributors will take such certificates from carriers to whom they sell such fuel. These certificates must be retained as a permanent part of such seller's business records.

(viii) Persons who execute and provide these credit certificates to their fuel suppliers must retain suitable purchase and sales records as may be necessary to determine the amount of tax for which such persons may be liable.

(ix) Blanket certificates may be used to cover recurrent purchases of fuel by the same purchaser. Such blanket certificates must be renewed every two years.

(c) A credit may be taken against the tax owed in this state in the amount of any other state's hazardous substance tax which has been paid by the same person measured by the wholesale value of the same hazardous substance.

(i) In order for this credit to apply, the other state's tax must be significantly similar to Washington's tax in all its various respects. The taxable incident must be possessing the substance; the tax purpose must be that the substance is hazardous; and the tax measure must be stated in terms of the wholesale value of the substance, without deductions for costs of doing business, such that the other state's tax does not constitute an income tax or added value tax.

(ii) This credit may be taken for the amount of any other state's qualifying tax which has actually been paid before Washington State's tax is incurred because the substance was previously possessed by the same person in another taxing jurisdiction.

(iii) The amount of credit is limited to the amount of tax paid in this state upon possession of the same hazardous substance in this state. Also, the credit may not be applied against any tax paid or owed in this state other than the hazardous substance tax imposed by Section 10 of I-97.

(iv) Exchange agreements under which hazardous substances or products possessed in this state are exchanged through any accounts crediting system with like substances possessed in other states do not qualify for this credit. The substance taxed in another state, and for which this credit is sought, must be actually, physically possessed in this state.

(v) Persons claiming this credit must maintain records necessary to verify that the credit taking qualifications have been met. See WAC 458-20-19301, part (9) for record keeping requirements. The department of revenue will publish an Excise Tax Bulletin listing other states' taxes which qualify for this credit.

(6) Newly defined hazardous substances. The Director of Ecology may identify and designate things as being hazardous substances after March 1, 1989. Also, things designated as hazardous substances may be deleted from this definition. Such actions are done by the adoption and subsequent periodic amendments to rules of the Department of Ecology under the Washington Administrative Code.

(a) The law allows the addition or deletion of substances as hazardous by rule amendments, no more often than twice in any calendar year.

(b) When such definitions are changed, they do not take effect for tax purposes until the first day of the following month which is at least thirty days after the effective date of rule action by the Department of Ecology.

(i) Example. The Department of Ecology adopts or amends the rule by adding a new substance and the effective date of the amendment is June 15. Possession of the substance does not become taxable until August 1.

(ii) The tax is owed by any person who has possession of the newly designated hazardous substance upon the tax effective date as explained herein. It is immaterial that the person in possession on that date was not the first person in possession of the substance in this state before it was designated as hazardous.

(7) Recurrent tax liability. It is the intent of the law that all hazardous substances possessed in this state should incur this tax liability only once unless they are expressly exempt. This is true of hazardous ingredients of products as well as the manufactured end product itself, if designated as a hazardous substance. The exemption for previously taxed hazardous substances does not apply to "products" which have been manufactured or remanufactured simply because an ingredient or ingredients of that product may have already been taxed when possessed by the manufacturer. Instead of an exemption, manufacturers in possession of both the hazardous ingredient(s) and end product(s) should use the credit provision explained at Part (5)(a) of this section.

(a) However, the term "product" is defined to mean only an item or items which contain a combination of both hazardous substance(s) and non-hazardous substance(s). The term does not include combinations of only hazardous substances. Thus, possessions of substances produced by combining other hazardous substances upon all of which the tax has previously been paid will not again be taxable.

(b) When any hazardous substance(s) is first produced during and because of any physical combination or chemical reaction which occurs in a manufacturing or processing activity, the intermediate possession of such substance(s) within the manufacturing or processing plant is not considered a taxable possession if the substance(s) becomes a component or ingredient of the product being manufactured or processed or is otherwise consumed during the manufacturing or processing activity.

(i) However, when any intermediate hazardous substance is first produced during a manufacturing or processing activity and is withdrawn for sale or transfer outside of the manufacturing or processing plant, a taxable first possession occurs.

(c) Concentrations or dilutions for shipment or storage. The mere addition or withdrawal of water or other nonhazardous substances to or from hazardous substances designated under CERCLA or FIFRA for the sole purpose of transportation, storage, or the later manufacturing use of such substances does not result in any new hazardous product.

(8) How and when to pay tax. The tax must be reported on a special line of the combined excise tax return designated "hazardous substances." It is due for payment together with the timely filing of the return upon which it is reported, covering the tax reporting period during which the hazardous substance(s) is first possessed within this state. Any person who is not expressly exempt of the tax and who possesses any hazardous substance in this state, without having proof that the tax has previously been paid on that substance, must report and pay the tax.

(a) It may be that the person who purchases a hazardous substance will not have billing information from which to determine the wholesale value of the substance when the tax return for the period of possession is due. In such cases the tax is due for payment no later than the next regular reporting due date following the reporting period in which the substance(s) is first possessed.

(b) The taxable incident or event is the possession of the substance. Tax is due for payment by the purchaser of any hazardous substance whether or not the purchase price has been paid in part or in full.

(c) Special provision for manufacturers, refiners, and processors. Manufacturers, refiners, and processors who possess hazardous substances are required to report the tax and take any available exemptions and credits only at the time that such hazardous substances are withdrawn from storage for purposes of their sale, transfer, remanufacture, or consumption.

(9) How and when to claim credits. Credits should be claimed and offset against tax liability reported on the same excise tax return when possible. The tax return form provides a line for reporting tax on hazardous substances and a line for taking credits as an offset against the tax reported. It is not required that any documents or other evidences of entitlement to credits be submitted with the report. Such proofs must be retained in permanent records for the purpose of verification of credits taken.

(10) Special provision for consumer/first possessors. Under circumstances where the consumer is the first person in possession of any non-exempt hazardous substance (e.g., substances imported by the consumer), or where the consumer is the person who must pay the tax upon substances previously possessed in this state (fuel purchased for export in fuel tanks) the consumer's tax measure will be eighty percent (80%) of its retail purchase price. This provision is intended to achieve a tax measure equivalent to the wholesale value.

(11) Hazardous substances or products on consignment. Consignees who possess hazardous substances or products in this state with the power to sell such things, in their own name or on behalf of a disclosed or undisclosed consignor are liable for payment of the tax. The exemption for previously taxed substances is available for such consignees only if the consignors have paid the tax and the consignee has retained the certification or other proof of previous tax payment referred to in part (4)(i) and (ii) of this section. Possession of consigned hazardous substances by a consignee does not constitute constructive possession by the consignor.

(12) Hazardous substances untraceable to source. Various circumstances may arise whereby a person will possess hazardous substances in this state, some of which have been previously taxed in this or other states and some of which may not. In such cases formulary tax reporting may be used, only upon a special ruling by the department of revenue.

(a) Example. Fungible petroleum products from sources both within and outside this state are commingled in common storage facilities. Formulary reporting is appropriate based upon volume percentages reflecting the ratio of in-state production to out-of-state production or other form of acquisition.

(13) Administrative provisions. The provisions of chapter 82.32 RCW regarding due dates, reporting periods, tax return requirements, interest and penalties, tax audits and limitations, disputes and appeals, and all such general administrative provisions apply equally to the hazardous substance tax. Special requested rulings covering unique circumstances generally will be issued within sixty days from the date upon which complete information is provided to the department of revenue.

(14) Certification of previously taxed hazardous substance. Certification that the hazardous substance tax has already been paid by a person previously in possession of the substance(s) may be taken in substantially the following form:

I hereby certify that this purchase – all purchases of_____
(omit one)

_____ by _____,
(identify substance(s) purchased) (name of purchaser)

who possesses registration no. _____,
(buyer's number, if registered)

consists of the purchase of hazardous substance(s) or product(s) upon which the hazardous substance tax has been paid in full by a person previously in possession of the substance(s) or product(s) in this state. This certificate is given with full knowledge of, and subject to the legally prescribed penalties for fraud and tax evasion, and with the full knowledge and agreement that the undersigned hereby assumes any liability for hazardous substance tax which has not been previously paid because of possession of the hazardous substance(s) or product(s) identified herein.

___ The registered seller named below personally paid the tax upon possession of the hazardous substances.

___ A person in possession of the hazardous substances prior to the possession of the registered seller named below paid the tax.

(Check the appropriate line.)

Name of registered seller _____ Registration No. _____

Firm name _____ Address _____

Type of business _____

Authorized signature _____ Title _____

Date _____

PART II – PETROLEUM PRODUCTS TAX

(1) Under the provisions of Chapter 383, Laws of 1989, (hereinafter referred to as the law), a petroleum product tax was imposed, effective July 1, 1989, upon the wholesale value of petroleum products in this state with specific credits and exemptions provided. The tax is an excise tax upon the privilege of first possessing petroleum products in this state. It is imposed in addition to all other taxes of an excise or property tax nature, including the hazardous substance tax explained earlier in this section, and is not in lieu of any other such taxes.

(a) Sections 14-18 of the law consist of the tax provisions relating to possession of petroleum products which are administered exclusively under this section. The application of the petroleum product tax with the exceptions noted below, is the same as the hazardous substance tax applications explained in subsection (1)(c) of Part I of this section.

(b) The petroleum product tax is imposed upon any possession of petroleum products in this state by any person who is not expressly exempt of the tax. However, it is the intent of the law that the economic burden of the tax should fall only upon the first such possession in this state just like the hazardous substance tax.

(2) Definitions. For purposes of this part the following terms will apply.

(a) "Tax" means the petroleum product tax imposed under section 16 of the law.

(b) "Petroleum product" means any plant condensate, lubricating oil, gasoline, aviation fuel, kerosene, diesel motor fuel, benzol, fuel oil, residual fuel oil, asphalt base, liquefied or liquefiable gases, such as butane, ethane and propane, and every other product derived from the refining of crude oil, but the term does not include crude oil.

(c) "Possession" means control of a petroleum product located within this state and includes both actual and constructive possession.

(i) "Control" means the power to sell or use a petroleum product or to authorize the sale or use by another.

(ii) "Actual possession" occurs when the person with control has physical possession.

(iii) "Constructive possession" occurs when the person with control does not have physical possession.

(d) "Previously taxed petroleum products" means petroleum products upon which the petroleum product tax has been paid and which have not been remanufactured or reprocesssed in any manner (other than mere repackaging or recycling for beneficial reuse) since the tax was paid.

(e) "Wholesale value" is the tax measure or base. It means the fair market value determined by the wholesale selling price at the place of use of similar products of like quality and character. "Wholesale Value" shall be determined in precisely the manner for the petroleum product tax as it is for the hazardous substance tax in Part 1, subsection (2)(g) of this section.

(f) "Selling price". See 2(h) of Part 1 of this section.

(g) "State," for purposes of the credit provisions of the petroleum product tax, means:

(i) a state of the United States other than Washington, or any political subdivision of such other state,

(ii) the District of Columbia,

(iii) any foreign country or political subdivision thereof, and

(iv) territories and possessions of the United States.

(3) Tax rate and measure. The tax is imposed upon the privilege of possession of petroleum products in this state. The tax rate is fifty one-hundredths of one percent (.005). The tax measure or base is the wholesale value of the petroleum products, as defined herein. The tax will apply for first possessions of petroleum products in all periods after its effective date unless the department notifies taxpayers in writing of the department's determination that the pollution liability reinsurance program trust account contains a sufficient balance to cause a moratorium on the tax application. The department will again notify taxpayers in writing if and when the account balance requires reapplication of the tax.

(4) Exemptions. The following are expressly exempt from the tax:

(a) Any successive possessions of any previously taxed petroleum products are exempt in precisely the manner as the same exemption for the hazardous substance tax. (See Part 1, subsection (4)(a) of this section.) If the tax is paid by any person other than the first person having taxable possession of a petroleum product, the amount of tax paid shall constitute a debt owed by the first person having taxable possession to the person who paid the tax.

(b) Any possession of a petroleum product by a natural person for use of a personal or domestic nature rather than a business nature is exempt in precisely the manner as the same exemption for the hazardous substance tax. (See Part 1, subsection (4)(b) of this section.)

(c) Any possessions of the following substances are tax exempt:

(i) Natural gas, or petroleum coke;

(ii) Liquid fuel or fuel gas used in processing petroleum;

(iii) Petroleum products that are exported for use or sale outside this state as fuel.

(iv) The exemption for possessions of petroleum products for export sale or use as fuel may be taken by any person within the chain of distribution of such products in this state. To perfect its entitlement to this exemption the person possessing such product(s) must take from its buyer or transferee of the product(s) a written certification in substantially the following form:

Certificate of Tax Exempt Export Petroleum Products

I hereby certify that the petroleum products specified herein, purchased by or transferred to the undersigned, from (seller or transferor), are for export for use or sale outside Washington state as fuel. I will become liable for and pay any petroleum product tax due upon all or any part of such products which are not so exported outside Washington State. This certificate is given with full knowledge of, and subject to the legally prescribed penalties for fraud and tax evasion.

Registration No. _____
Type of Business _____
(If applicable) Firm Name _____
Registered Name (If different) _____

Authorized Signature _____

Title _____

Identity of Petroleum Product _____
(Kind and amount by volume)

Date: _____

(v) Each successive possessor of such petroleum products must, in turn, take a certification in this form from any other person to whom such petroleum products are sold or transferred in this state. Failure to take and keep such certifications as part of its permanent records will incur petroleum product tax liability by such sellers or transferrers of petroleum products.

(vi) Persons in possession of such petroleum products who themselves export or cause the exportation of such products to persons outside this state for further sale or use as fuel must keep the proofs of actual exportation required by WAC 458-20-193, Parts A or C. Carriers who will purchase fuel in this state to be taken out of state in the fuel tanks of any ship, airplane, truck, or other carrier vehicle will provide their fuel suppliers with this certification. Then such carriers will directly report and pay the tax only upon the portion of such fuel actually consumed by them in this state. (With respect to fuel brought into this state in fuel tanks and partially consumed here, see the credit provisions of Part 1, subsection (5)(b) of this section.

(vii) Blanket export exemption certificates may never be accepted in connection with petroleum products exchanged under exchange agreements.

(d) Any possession of petroleum products packaged for sale to ultimate consumers. This exemption is limited to petroleum products which are prepared and packaged for sale at usual and ordinary retail outlets. Examples are containerized motor oil, lubricants, and aerosol solvents.

(5) Credits. There are two distinct kinds of tax credits against liability which are available under the law.

(a) A credit may be taken in the amount of the petroleum product tax upon the value of fuel which is carried from this state in the fuel tank of any airplane, ship, truck, or other vehicle. The credit is applied in precisely the same manner as the hazardous substance tax in Part 1, subsection (5)(b) of this section.

The same form of certification as used for the fuel-in-tanks hazardous substance tax credit in subsection (5)(b)(vi) of Part 1 of this section may be used.

(b) A credit may be taken against the tax owed in this state in the amount of any other state's petroleum product tax which has been paid by the same person measured by the wholesale value of the same petroleum product tax.

(i) In order for this credit to apply, the other state's tax must be significantly similar to Washington's tax in all its various respects. The taxable incident must be on the act or privilege of possessing petroleum products and the tax must be of a kind that is not generally imposed on other activities or privileges; the tax purpose must be to fund pollution liability insurance; and the tax measure must be stated in terms of the wholesale value of the petroleum products, without deductions for costs of doing business, such that the other state's tax does not constitute an income tax or added value tax.

(ii) The credit is applied in precisely the same manner as the state credit for hazardous substance tax in Part 1, subsection (5)(c) of this section. The amount of the credit shall not exceed the petroleum product tax liability with respect to that petroleum product.

WSR 89-13-087
PROPOSED RULES
DEPARTMENT OF REVENUE
[Filed June 21, 1989]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Department of Revenue intends to adopt, amend, or repeal rules concerning Refuse-solid waste collection business—Core deposits and credits, battery core charges, and tires, amending WAC 458-20-250;

that the agency will at 9:30 a.m., Wednesday, July 26, 1989, in the Revenue Conference Room, #415, 4th Floor, General Administration Building, Olympia, Washington 98504, conduct a public hearing on the proposed rules.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on August 2, 1989.

The authority under which these rules are proposed is RCW 82.32.300.

The specific statute these rules are intended to implement is chapter 431, Laws of 1989.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before July 26, 1989.

Dated: June 21, 1989
By: Edward L. Faker
Interim Assistant Director

STATEMENT OF PURPOSE

Title: WAC 458-20-250 Refuse-solid waste collection business—Core deposits and credits, battery core charges, and tires.

Description of Purpose: To implement various provisions of chapter 431, Laws of 1989, which take effect on July 1, 1989. These provisions include a new tax on solid waste collection in addition to the existing tax on refuse collection; the exclusion from the measure for retail sales tax of core deposits or credits, and battery core charges; the imposition of a core charge of not less than $5.00 on sales of vehicle batteries; and the levying of a $1.00 per tire fee on the retail sale of new replacement tires.

Statutory Authority: RCW 82.32.300.

Specific Statute(s) Rule is Intended to Implement: Chapter 431, Laws of 1989.

Reasons Supporting Proposed Action: The Department of Revenue is mandated to promulgate rules covering the proper procedures for reporting taxes, claiming exemptions, and applying for credits under the law. The enactment of the referenced legislation creates a complex situation for a number of taxpayers. Due to the effective date of July 1, 1989, emergency adoption of this rule is necessary. Permanent adoption will occur only after a public hearing under the APA [and] a full opportunity for all interested persons to be heard.

Agency Personnel Responsible for Drafting: Stephen P. Zagelow, 415 General Administration Building Olympia, WA 98504, phone 586-4291; Implementation: Edward L. Faker, 415 General Administration Building, Olympia, WA 98504, phone 753-5579; and Enforcement: Department of Revenue, 415 General Administration Building, Olympia, WA 98504, phone 753-5540.

AMENDATORY SECTION (Amending Order ET 86-14, filed 7/22/86)

WAC 458-20-250 REFUSE-SOLID WASTE COLLECTION BUSINESS((:)) - CORE DEPOSITS AND CREDITS, BATTERY CORE CHARGES, AND TIRES (1) Introduction. This section administers the taxes on solid waste collection and the special provisions for core deposits and credits, battery core charges, and tires.

((~~(1)~~)) (a) ((~~Introduction.~~)) Chapter 282, Laws of 1986((~~, effective June 11, 1986,~~)) establishe((~~s~~))d ((~~for tax purposes, and defines~~)) the specific business activity of the "refuse collection business((:))" ((~~Under 1985 law (chapter 471, Laws of 1985) this activity had been included as a "public service business" and given a special tax rate under the public utility tax of chapter 82.16 RCW. The 1986 law removes refuse collection activities from the public utility tax on gross receipts~~)) and impose((~~s~~))d a "refuse collection tax" similar in nature to retail sales tax. The burden of this tax is upon the ultimate consumer of the refuse collection service. The tax rate is three and six tenths percent (.036), and the tax measure is the total consideration charged to the consumer-customer for the services. Chapter 431, Laws of 1989 changes the name of this tax from a refuse collection tax to a solid waste collection tax.

(b) Chapter 431, Laws of 1989, imposes, effective July 1, 1989, an additional tax of 1 percent of the consideration charged for the service. Generally, the tax is imposed in addition to and is similar to the refuse collection tax enacted in 1986. However, unlike the refuse collection tax, the measure of the new 1 percent tax is limited to the charges for the actual solid waste collection services that are provided and a maximum tax measure is provided for residential collection service charges.

(c) For ease of administration and accounting, the 3.6 percent tax shall retain its former name and be called for purposes of this section the "refuse collection tax", and, the tax imposed in 1989, the 1 percent tax, shall be called the "solid waste collection tax."

(2) Neither ((~~T~~))the 1986 law or the 1989 law ((~~does not~~)) expressly establishes a specific business tax classification for the gross receipts of persons engaged in the refuse-solid waste collection business. Thus, because of the provisions of RCW 82.04.290, such persons are subject to the service or other activities classification of business and occupation tax.

(3) For purposes of this section the following terms will apply.

(a) "Refuse collection business" - "solid waste collection business" means every person who receives waste for transfer, storage, or disposal including but not limited to all collection services, public or private dumps, transfer stations, and similar operations.

(b) "Person" shall have the meaning given in RCW 82.04.030 or any later, superseding section.

(c) "Waste"-"solid waste" means garbage, trash, rubbish, or other material discarded as worthless or not economically viable for further use. The term does not include hazardous or toxic waste nor does it include material collected primarily for recycling or salvage.

(d) "Taxpayer" means that person upon whom the refuse-solid waste collection tax is imposed, that is, the private or commercial consumer-customer.

(e) "Department" means the department of revenue.

(f) "Consideration charged for the services" means the total amount billed to a taxpayer as compensation for refuse-solid waste collection services, without any deduction for any costs of doing business or any other expense whatsoever, paid or accrued, Provided, that the term does not include any amount included in the charges for materials collected primarily for recycling, nor the refuse-solid waste collection tax itself whether separately itemized or not, nor any similar utility taxes or consumer taxes, imposed by the state or any political subdivision thereof or any municipal corporation, directly upon the consumer-taxpayer and separately itemized on the taxpayer's billing. Also, the term does not include late charges or penalties which may be imposed for non-timely payment by taxpayers.

(4) Refuse and Solid Waste Collection Tax Measure.

(a) The refuse collection tax applies to the consideration paid for refuse-solid waste collection services. The rate of the tax is 3.6 percent of the amount charged for garbage collection and disposal services.

(b) For purposes of the solid waste collection tax, the following terms will apply.

(i) "Standby", "availability", or "base" charges mean those charges to a residential customer who receives no actual garbage pickup service.

(ii) "Residential collection service" has its ordinary meaning and is per can garbage collection service other than commercial or industrial service. For purposes of this section, a residential collection service is that service provided for each housing unit. In the case of multiple housing units in a single structure such as apartments, condominiums, or duplexes, or, an association of housing units such as a mobile home park or retirement village, the service is deemed commercial unless each occupier of a housing unit is individually provided can service and is individually billed for such service.

(iii) "Can" or "can equivalent" has its ordinary meaning and shall include a receptacle for waste collection made of durable, corrosion-resistant material, watertight with a close fitting cover, with two handles, and does not exceed 32 gallons, 4 cubic feet or 65 lbs. (including contents), nor weigh more than 12 lbs. when empty. (This definition comports with the definition of "unit" by the Utilities and Transportation Commission.) For purposes of this section, containers of 60 gallon or more capacity, commonly called "toters", are considered more than 2 cans.

(c) The solid waste collection tax applies to the consideration paid for actual solid waste collection services provided and utilized by the customer and does not apply to amounts charged by a solid waste collection business for "standby", "availability", or "base" charges where no actual garbage collection occurs. Additionally, the tax does not apply to amounts charged for materials primarily collected for recycling.

(d) For a residential customer, the tax measure is the consideration paid, but not more than $8.00 of the monthly charge for garbage pick-up service of less than 2 cans, or, not more than $12.00 of the monthly charge for 2 cans or more.

(i) Example. City X provides residential garbage collection service to a customer and the customer has subscribed to less than two can service. The monthly charge is $11.00 for the service which includes a charge of $2.00 for special pickup of recyclables. After adjustment for the recycling charges of $2.00, the refuse collection tax measure is $9.00 and the solid waste collection tax measure is $8.00. The tax measure for solid waste residential pickup is limited to not more than $8.00 of monthly charge paid. The refuse collection tax is 32 cents ($9.00 x .036), and, the solid waste collection tax is 8 cents ($8.00 x .01), for a total refuse-solid waste collection tax of 40 cents.

(e) For computation of the maximum solid waste collection tax due for residential customers, extra solid waste collected effects the tax base only for a residential customer with less than 2 can service. The tax measure for a customer with 2 or more can service will never exceed $12.00. The tax measure for a customer with less than 2 can service does not exceed $8.00 unless the extras collected are an additional can equivalent sufficient to change the less than 2 can customer to a 2 can or more customer.

(i) Example. Residential customer Z has less than 2 can service for which Z is charge $9.00 per month and results in a refuse tax of 32 cents ($9.00 x .036) and a solid waste tax of 8 cents ($8.00 x .01) for a total tax of 40 cents. One month Z has an extra trash bag picked up which is not the equivalent of a can and the monthly charge is $11.00. The refuse tax for this month is 40 cents ($11.00 x .036) and the solid waste tax is 8 cents ($8.00 x .01) for a total tax of 48 cents. Since Z had less than 2 cans picked up, Z remains a less than 2 can customer. The solid waste tax measure is limited to the consideration paid up to $8.00, while the refuse tax is not so limited.

(ii) Example. Residential customer X has 2 or more can service for which X is charged $9.00 per month resulting in a refuse tax of 32 cents ($9.00 x .036) and a solid waste tax of 9 cents ($9.00 x .01) for a total tax of 41 cents. One month X has several trash bags picked up amounting to an additional can equivalent and the charge for this month is $13.00. The refuse tax is 47 cents ($13.00 x .036) and the solid waste tax is 12 cents ($12.00 x .01) for a total tax of 59 cents. The solid waste tax measure for 2 can or more service is limited to the consideration paid up to $12.00 while the refuse collection tax measure is not so limited.

(iii) Example. A city provides residential garbage collection for which the city charges a $5.00 base fee and a total charge of $9.00 for less than 2 can service and $13.00 for 2 can or more service. A customer chooses to deliver his garbage by his own means to the local disposal site for which the customer is charged $10.00 per month. The city charges the customer on his monthly utility bill the $5.00 base fee. The refuse tax collected at the disposal site is 36 cents ($10.00 x .036) and the solid waste tax collected at the disposal site is 10 cents ($10.00 x .01) for a total collection at the disposal site of 46 cents. The refuse tax collected by the city is 18 cents ($5.00 x .036) and no solid waste tax is collected by the city because no actual garbage collection services were provided the customer. As the per can limitations apply only to residential pick up service, any garbage delivered to disposal site by anyone other than another refuse-solid waste collection business will always incur a combined refuse-solid waste tax of 4.6 per cent of the consideration paid.

((~~(4)~~)) (5) The person who collects the charges for refuse-solid collection services from the taxpayer is responsible for collecting the refuse-solid waste collection tax and remitting it to the state.

((~~(5)~~)) (6) The law provides that if any person charged with collecting the tax fails to bill the taxpayer for it, or to notify the taxpayer in writing that the tax is due, then that person shall be personally liable for the tax. Thus, unlike the retail sales tax, the refuse-solid waste collection tax may be included within the gross refuse fee or charge billed to taxpayers and need not be separately itemized on such billings, but only if such taxpayers are notified in writing that the tax has been imposed and is being collected. Nothing prevents any refuse-solid waste collection business from separately itemizing the tax on customer billings, at its option.

((~~(6)~~)) (7) Furthermore, if any person collects that tax from the taxpayer and fails to pay it to the department in the manner provided in this section, for any reason whatever, that person shall be personally liable for the tax.

((~~(7)~~)) (8) The refuse-solid waste collection tax is due from the taxpayer within twenty-five days from the date the taxpayer is billed for the refuse-solid waste collection services. The refuse collection tax and the solid waste collection tax shall be separately reported upon lines provided on the Combined Excise Tax return.

((~~(8)~~)) (9) The tax is due to be remitted to the department by the person collecting it at the end of the tax reporting period in which the tax is received by that person.

((~~(9)~~)) (10) If a taxpayer makes only a partial payment of the amount billed for the services and tax, the amount paid must first be used to remit the refuse-solid waste collection tax to the department. This tax has first priority over all other claims against the amount paid by the taxpayer.

((~~(10)~~)) (11) The federal government, its agencies and instrumentalities, and all refuse service contracts with such federal entities are not subject to the refuse-solid waste collection tax. There are no other taxpayers expressly exempted from paying the refuse-solid waste collection tax. Any other taxpayer claiming exemption of this tax for any reason whatsoever must provide the refuse-solid waste collection business with proof of its entitlement to exemption. The department will verify such claims upon request.

((~~(11)~~)) (12) To prevent pyramiding or multiple taxation of single transactions, the refuse-solid waste collection tax does not apply to any person other than the taxpayer. It is a tax upon the ultimate consumer-customer of the refuse-solid waste service.

((~~(12)~~)) (13) Persons who collect the refuse-solid waste collection tax and who, themselves, utilize the further services of others for the transfer, storage, or disposal of the waste collected are not required to again pay the tax to such other service providers. However, in order to be exempt of such tax payment a refuse-solid waste collection business must provide other refuse-solid waste service providers with a refuse-solid waste collector's exemption certificate in the following form:

(a) We hereby certify that we are engaged in the refuse-solid waste collection business and are registered with the state department of revenue to collect and report the refuse collection tax imposed under chapter 282, Laws of 1986 and chapter 431, Laws of 1989. We certify further that the refuse-solid waste collection tax due with respect to the refuse-solid waste collection business being performed under this certificate has been or will be collected and paid and that we are exempt for further payment of such tax on charges for any refuse-solid waste collection services being procured by us.

Business Name _____ Authorized Signature _____

Business Address _____ Date _____

Revenue Registration No. _____

U.T.C. Certificate of Public Necessity No. _____

If not regulated by U.T.C., please check here ___

(b) Blanket certificates may be provided in advance by refuse-solid waste collectors or other persons who collect the customer charges for refuse-solid waste collection and who are liable for collecting and remitting the refuse-solid waste collection tax.

(c) Refuse-solid waste collection businesses which provide services for the transfer, storage, or disposal of waste, and who accept completed certifications in good faith are not required to collect and remit the refuse-solid waste collection tax and will not be held personally liable for it.

((~~(13)~~)) (14) Persons engaged in the refuse-solid waste collection business by operating facilities for the transfer, storage, or disposal of waste, including public and private dumps, and who provide such services directly to taxpayers for a charge, are liable for the collection of the refuse collection tax on such charges.

((~~(14)~~)) (15) Examples of taxable and tax exempt transactions are:

(a) A private person or commercial customer hauls its own waste to a dump site for disposal and pays a fee – the fee is subject to the 3.6 percent refuse collection tax((:)) and the 1 percent solid waste collection tax.

(b) A refuse-solid waste collection company picks up and hauls residential or commercial waste to a dump for disposal – this company bills the customer for the tax and need not pay the tax upon any further charge made by the dump site operator, by providing a refuse-solid waste collector's certificate.

(c) A city provides refuse-solid waste collection services to its residents through an independent hauler under a negotiated contract, and uses a county operated land fill. The city bills the residents on their utility bills. The 3.6 percent and 1 percent taxes appl((~~ies~~))y to the refuse-solid waste portion of the utility bill((:)) adjusted as provided in this section. Th((~~is~~))ese taxes do((~~es~~)) not apply to any charge paid by the city to the hauling company, nor to any charge made by the county

to the city for dumping services. The city must provide the hauler and the county with a refuse-solid waste collector's certificate.

((~~(15)~~)) (16) The refuse-solid waste collection tax is imposed in much the same manner as retail sales tax; that is, it is payable by the refuse-solid waste consumer to the refuse-solid waste service provider who does the customer billing. Likewise, other refuse-solid waste service providers up the chain of transactions from the billing provider are treated in the same manner as wholesalers and need not collect the tax if the appropriate certificate is taken.

((~~(16)~~)) (17) Business and occupation tax. There is no exemption from business and occupation tax measured by gross income of any person engaged in the refuse-solid waste collection business. Such persons are subject to the service classification of business and occupation tax measured by their gross receipts. (See RCW 82.04.290.) Also, there is no general provision under the law for the nonpyramiding effect of the business and occupation tax. Thus, each refuse-solid waste collection business is separately liable for this tax on its total gross receipts without any deduction for any costs of doing business or any amounts paid over to other refuse-solid waste service providers. Also, all amounts designated as late charges or penalties are included within this business tax measure.

((~~(17)~~)) (18) The refuse-solid waste collection business is an "enterprise activity," as defined in WAC 458-20-189, when it is funded over fifty percent by user fees. Thus, the amounts derived from this activity are not exempt of business and occupation tax even though they may be charged by governmental entities. (See RCW 82.04.419.)

((~~(18)~~)) (19) The exemption of refuse-solid waste collection tax for the federal government, its agencies and instrumentalities, does not apply for business and occupation tax. Thus, refuse-solid waste collection businesses who charge such federal entities for services, under contract or otherwise, must pay the business and occupation tax upon such gross receipts.

((~~(19)~~)) (20) Persons engaged in the refuse-solid waste collection business may be entitled to certain express deductions or exemptions from business and occupation tax for specific reasons unrelated to the nature of their refuse-solid waste business activity. (See RCW 82.04-.419 and 82.04.4291.)

((~~(20)~~)) (21) Refuse-solid waste collection businesses which provide waste receptacles, containers, dumpsters, and the like to their customers for a charge, separate from any charge for collection of the waste, are engaged in the business of renting tangible personal property taxable separate and apart from the refuse-solid waste collection business. Charges for such rentals, however designated, are subject to retailing business and occupation tax when they are billed separately or are line itemized on customer billings. Such businesses are engaged in more than one taxable kind of business activity and are separately taxable on each. (See RCW 82.04.440.)

((~~(21)~~)) (22) Retail sales tax. Persons who separately charge and bill customers for waste receptacles, as explained earlier, must collect and remit the retail sales tax on the itemized rental price, fee, or other consideration, however designated, charged for the receptacles.

((~~(22)~~)) (23) Refuse-solid waste collection businesses are themselves the consumers of all tangible personal property purchased for their own use in conducting such business, other than items for resale or renting to customers, e.g., rented receptacles. Retail sales tax must be paid to materials suppliers and providers of such tangible consumables. (See RCW 82.04.050.)

((~~(23)~~)) (24) Use tax. The use tax is due upon all tangible personal property used as consumers by refuse-solid waste collection businesses, upon which the retail sales tax has not been paid. (See RCW 82.12.020.)

(25) Core deposits and credits - Battery core charges.

(a) For purposes of this section the following terms apply.

(i) "Core deposits or credits" means the amount representing the value of returnable products such as batteries, starters, brakes, and other products with returnable value added for purposes of recycling or remanufacturing.

(ii) "Battery core charge" means that amount of the retail selling price of a vehicle battery, not less than $5.00, which is retained by the seller when the purchaser has no used battery to exchange or trade-in.

(b) Retail sales tax.

(i) The retail sales tax does not apply to the consideration received as core deposits or credits in a retail or wholesale sale when a purchaser exchanges or trades-in a core to the seller. (RCW 82.08.010, WAC 458-20=247, and chapter 431, Laws of 1989). Therefore, when a purchaser of a vehicle battery, starter, etc., exchanges or trades-in a used battery, starter, etc., to the seller, retail sales tax does not apply to the value of the used property exchanged or traded-in.

(ii) Chapter 431, Laws of 1989, effective July 23, 1989, requires the retail selling price of a vehicle battery to include a core charge of not less than $5.00. The core charge must be omitted from the sales price when the purchaser offers to the seller a used battery of equivalent size. The retail sales tax does apply to the core charge amount included in the sales price of a vehicle battery when the purchaser does not offer to the seller a used battery for exchange or trade-in. The exemption for "core deposits or credits" applies only when an article of tangible personal property is returned by the purchaser to the seller for the purpose of recycling or remanufacturing. Upon the offer by the purchaser to the seller of a used battery of equivalent size for exchange or trade-in within 30 days after the purchase date of the battery, the seller shall refund to the purchaser the core charge amount and the retail sales tax paid on such core charge.

(c) Use tax. The use tax does not apply to the value of core deposits or credits in a retail or wholesale sale.

(d) Business and occupation tax. The core deposit and credit exemptions apply only to the amount of retail sales tax and use tax to be collected and paid. There is no core deposit or credit exclusion for business and occupation tax. Thus, the gross receipts under the appropriate classification of business and occupation tax, retailing, wholesaling, manufacturing, etc., continues to include the value of core deposits and credits. Battery core charges are included as gross receipts in the retailing classification of the business and occupation tax.

(26) Tires. Chapter 431, Laws of 1989 amends RCW 70.95.510 and, effective October 1, 1989, levies a $1 per tire fee on the retail sale of new replacement tires. The $1 per tire fee levied replaces the .012 percent tax imposed in 1985. The fee imposed shall be paid by the buyer and collected by the seller. The fee collected from the buyer by the seller shall be paid to the department in accordance with RCW 82.32.045 less 10 percent retained by the seller.

(a) Retail sales tax - Use tax - Business and Occupation Tax. Chapter 431, Laws of 1989 exempts the fee from retail sales tax and use tax. Neither the fee nor the part of the fee retained by the seller is subject to business and occupation tax. The seller is only the state's collecting and reporting agent for the portion paid to the department. The 10 percent retained portion is expressly authorized for use by the seller to defray costs associated with the proper management of waste tires.

Reviser's note: RCW 34.04.058 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

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

WSR 89-13-088
EMERGENCY RULES
DEPARTMENT OF REVENUE
[Order 89-9—Filed June 21, 1989]

I, Edward L. Faker, interim assistant director of the Department of Revenue, do promulgate and adopt at Olympia, Washington, the annexed rules relating to hazardous substance tax and petroleum product tax, amending WAC 458-20-252.

I, Edward L. Faker, find that an emergency exists and that this order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting the emergency is chapter 383, Laws of 1989, which is implemented and administered under this WAC section takes effect on July 1, 1989, thus necessitating an emergency adoption of the amendatory section. A full public

hearing will be conducted before adopting the permanent rule.

These rules are therefore adopted as emergency rules to take effect upon filing with the code reviser.

This rule is promulgated under the general rule-making authority of the Department of Revenue as authorized in RCW 82.32.200.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED June 21, 1989.

By Edward L. Faker
Interim Assistant Director

AMENDATORY SECTION (Amending Order 89-1, filed 5/2/89)

WAC 458-20-252 HAZARDOUS SUBSTANCE TAX AND PETROLEUM PRODUCT TAX. Part 1 - HAZARDOUS SUBSTANCE TAX

(1) Introduction. Under the provisions of chapter 82-.22 RCW a hazardous substance tax was imposed, effective January 1, 1988, upon the wholesale value of certain substances and products, with specific credits and exemptions provided. This law is significantly changed, effective on March 1, 1989, because of Initiative 97 (I-97) which was passed by the voters in the November 8, 1988 general election. The tax, which is reimposed by I-97, is an excise tax upon the privilege of possessing hazardous substances or products in this state. It is imposed in addition to all other taxes of an excise or property tax nature and is not in lieu of any other such taxes.

(a) I-97, which will be referred to as chapter 2, Laws of 1989, defines certain specific substances as being hazardous and includes other substances by reference to Federal legislation governing such things. It also provides authority to the director of the State Department of Ecology to designate any substances or products as hazardous which could present a threat to human health or the environment. The Department of Ecology, by duly published rule, defines and enumerates hazardous substances and products and otherwise administers the provisions of the law relating to hazardous and toxic or dangerous materials, waste, disposal, cleanup, remedial actions, and monitoring. (See chapter 173-___ of the Washington Administrative Code.)

(b) Sections 8 through 12 of I-97 consist of the tax provisions relating to hazardous substances and products which are administered exclusively under this section. The tax provisions relate exclusively to the possession of hazardous substances and products. The tax provisions do not relate to waste, releases or spills of any materials, cleanup, compensation, or liability for such things, nor does tax liability under the law depend upon such factors. The incidence or privilege which incurs tax liability is simply the possession of the hazardous substance or product, whether or not such possession actually causes any hazardous or dangerous circumstance.

(c) The hazardous substance tax is imposed upon any possession of a hazardous substance or product in this state by any person who is not expressly exempt of the tax. However, it is the intent of the law that the economic burden of the tax should fall upon the first such possession in this state. Therefor, the law provides that if the tax has not been paid upon any hazardous substance or product the department may collect the tax from any person who has had possession. The amount of tax paid then constitutes a debt owed by the first person having had taxable possession to the person who pays the tax.

(2) Definitions. For purposes of this ((~~section~~)) part the following terms will apply.

(a) "Tax" means the hazardous substance tax imposed under Section 10 of I-97.

(b) "Hazardous substance" means anything designated as such by the provisions of chapter 173- WAC, administered by the State Department of Ecology, as adopted and thereafter amended. In addition, the law defines this term to include:

(i) Any substance that, on March 1, 1989, is a hazardous substance under section 101(14) of the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended by Public Law 99-499. These substances consist of chemicals and elements in their purest form. A CERCLA substance which contains water is still considered pure. Combinations of CERCLA substances as ingredients together with nonhazardous substances will not be taxable unless the end product is specifically designated as a hazardous substance by the Department of Ecology.

(ii) petroleum products (further defined below);

(iii) pesticide products required to be registered under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA); and

(iv) anything else enumerated as a hazardous substance in Chapter 173-___ WAC by the Department of Ecology.

(c) "Product(s)" means any item(s) containing a combination of ingredients, some of which are hazardous substances and some of which are not hazardous substances.

(d) "Petroleum product" means any plant condensate, lubricating oil, crankcase motor oil, gasoline, aviation fuel, kerosene, diesel motor fuel, benzol, fuel oil, residual fuel, asphalt base, liquefied or liquefiable gases, such as butane, ethane and propane, and every other product derived from the refining of crude oil, but the term does not include crude oil.

(i) The term "derived from the refining of crude oil" as used herein, means produced because of and during petroleum processing. "Petroleum processing" includes all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to crude oil or any byproduct of crude oil so that as a result thereof a fuel or lubricant is produced for sale or commercial or industrial use. "Fuel" includes all combustible gases and liquids suitable for the generation of energy. The term "derived from the refining of crude oil" does not mean petroleum products which are manufactured from refined oil derivatives, such as petroleum jellies, cleaning solvents, asphalt paving, etc. Such further manufactured products become hazardous substances only when expressly so designated by the Director of Ecology.

(e) "Possession" means control of a hazardous substance located within this state and includes both actual and constructive possession.

(i) "Control" means the power to sell or use a hazardous substance or to authorize the sale or use by another.

(ii) "Actual possession" occurs when the person with control has physical possession.

(iii) "Constructive possession" occurs when the person with control does not have physical possession.

(f) "Previously taxed hazardous substance" means a hazardous substance upon which the tax has been paid and which has not been remanufactured or reprocessed in any manner.

(i) Remanufacturing or reprocessing does not include the mere repackaging or recycling for beneficial reuse. Rather, these terms embrace activities of a commercial or industrial nature involving the application of skill or labor by hand or machinery so that as a result, a new or different substance or product is produced.

(ii) "Recycling for beneficial reuse" means the recapturing of any used substance or product, for the sole purpose of extending the useful life of the original substance or product in its previously taxed form, without adding any new, different, or additional ingredient or component.

(iii) Example: Used motor oil drained from a crankcase, filtered, and containerized for reuse is not remanufactured or reprocessed. If the tax was paid on possession of the oil before use, the used oil is a previously taxed substance.

(iv) Possessions of used hazardous substances by persons who merely operate recycling centers or collection stations and who do not reprocess or remanufacture the used substances are not taxable possessions.

(g) "Wholesale value" is the tax measure or base. It means the fair market value determined by the wholesale selling price. In cases where no sale has occurred, wholesale value means the fair market wholesale value, determined as nearly as possible according to the wholesale selling price at the place of use of similar substances of like quality and character. In such cases the wholesale value shall be the "value of the products" as determined under the alternate methods set forth in WAC 458-20-112.

(h) "Selling price" means consideration of any kind expressed in terms of money paid or delivered by a buyer to a seller, without any deductions for any costs whatsoever. Bona fide discounts actually granted to a buyer result in reductions in the selling price rather than deductions.

(i) "State," for purposes of the credit provisions of the hazardous substance tax, means:

(i) the state of Washington,

(ii) states of the United States or any political subdivisions of such other states,

(iii) the District of Columbia,

(iv) territories and possessions of the United States,

(v) any foreign country or political subdivision thereof.

(j) "Person" means any natural or artificial person, including a business organization of any kind, and has the further meaning defined in RCW 82.04.030.

(i) The term "natural person," for purposes of the tax exemption provided by Section 11(2) of I-97 regarding substances used for personal or domestic purposes, means human beings in a private, as opposed to a business sense.

(k) Except as otherwise expressly defined in this section, the definitions of terms provided in chapters 82.04, 82.08, and 82.12 RCW apply equally for this section. Other terms not expressly defined in these chapters or this section are to be given their common and ordinary meanings.

(3) Tax rate and measure. The tax is imposed upon the privilege of possessing hazardous substances in this state. The tax rate is seven tenths of one percent (.007). The tax measure or base is the wholesale value of the substance, as defined herein.

(4) Exemptions. The following are expressly exempt from the tax:

(a) Any successive possessions of any previously taxed hazardous substances are tax exempt.

(i) Any person who possesses a hazardous substance which has been acquired from any other person who is registered with the department of revenue and doing business in this state may take a written statement certifying that the tax has been previously paid. Such certifications must be taken in good faith and must be in the form provided in the last part of this section. Blanket certifications may be taken, as appropriate, which must be renewed at intervals not to exceed four years. These certifications may be used for any single hazardous substance or any broad classification of hazardous substances, e.g., "all chemicals."

(ii) In the absence of taking such certifications, the person who possesses any hazardous substance must retain proofs that it purchased or otherwise acquired the substance from a previous possessor in this state. It is not necessary for subsequent possessors to obtain certificates of previously taxed hazardous substances in order to perfect their tax exemption. Documentation which establishes any evidence of previous tax payment by another person will suffice. This includes invoices or billings from in state suppliers which reflect their payment of the tax or simple bills of lading or delivery documents revealing an in state source of the hazardous substances.

(iii) This exemption for taxes previously paid is available for any person in successive possession of a taxed hazardous substance even though the previous payment may have been satisfied by the use of credits or offsets available to the previous person in possession.

(iv) Example. Company A brings a substance into this state upon which it has paid a similar hazardous substance tax in another state. Company A takes a credit against its Washington tax liability in the amount of the other state's tax paid. It then sells the substance to Company B, and provides Company B with a Certificate of Previously Taxed Substance. Company B's possession is tax exempt even though Company A has not directly paid Washington's tax but has used a credit against its Washington liability.

(b) Any possession of a hazardous substance by a natural person for use of a personal or domestic nature rather than a business nature is tax exempt.

(i) This exemption extends to relatives, as well as other natural persons who reside with the person possessing the substance, and also to regular employees of that person who use the substance for the benefit of that person.

(ii) This exemption does not extend to possessions by any independent contractors hired by natural persons, which contractors themselves provide the hazardous substance.

(iii) Examples: Possessions of spray materials by an employee-gardener or soaps and cleaning solvents by an employee-domestic servant, when such substances are provided by the natural person for whose domestic benefit such things are used, are tax exempt. Also, possessions of fuel by private persons for use in privately owned vehicles are tax exempt.

(c) Any possession of any hazardous substance, other than pesticides or petroleum products, possessed by a retailer for making sales to consumers, in an amount which is determined to be "minimal" by the department of ecology. That department has determined that the term "minimal" means less than $1,000.00 worth of such hazardous substances measured by their wholesale value, possessed during any calendar month.

(d) Possessions of alumina or natural gas are tax exempt.

(e) Persons or activities which the state is prohibited from taxing under the United States Constitution are tax exempt.

(i) This exemption extends to the U.S. government, its agencies and instrumentalities, and to any possession the taxation of which has been expressly reserved or preempted under the laws of the United States.

(ii) The tax will not apply with respect to any possession of any hazardous substance purchased, extracted, produced or manufactured outside this state which is shipped or delivered into this state until the interstate transportation of such substance has finally ended in this state. Thus, out of state sellers or producers need not pay the tax on substances shipped directly to customers in this state. The customers must pay the tax upon their first possession unless otherwise expressly exempt.

(iii) Out of state sellers or producers will be subject to tax upon substances shipped or delivered to warehouses or other in state facilities owned, leased, or otherwise controlled by them.

(iv) However, the tax will not apply with respect to possessions of substances which are only temporarily stored or possessed in this state in connection with through, interstate movement of the substances from points of origin to points of destination both of which are outside of this state.

(f) The former exemption for petroleum products for export sale or use outside this state as fuel was effectively repealed by I-97. There are no exemptions under the law for any possessions of hazardous substances in this state simply because such substances may later be sold or used outside this state.

(g) Though I-97 contains an exemption for persons possessing any hazardous substance where such possession first occurred before March 1, 1989, this exemption applies only to the tax imposed under I-97. It does not apply retroactively to excuse the hazardous substance tax which was imposed under chapter 82.22 RCW in effect from January 1, 1988 until March 1, 1989. However:

(i) TRANSITIONAL RULE: Persons who possess stocks or inventories of petroleum products as of March 1, 1989, which are destined for sale or use outside this state as fuel are not subject to tax upon such possessions of preexisting inventories. For periods before March 1, 1989 the former exemption of RCW 82.22.040(3) for export petroleum products applies. For periods on and after March 1, 1989 the exemption for prepossessed hazardous substances explained in subsection (g) above will apply. Records appropriate to establish that such petroleum products were destined for out of state sale or use as fuel must be retained by any possessor claiming exemption under this transitional rule.

(5) Credits. There are three distinct kinds of tax credits against liability which are available under the law.

(a) A credit may be taken by any manufacturer or processor of a hazardous substance produced from ingredients or components which are themselves hazardous substances, and upon which the hazardous substance tax has been paid by the same person or is due for payment by the same person.

(i) Example. A manufacturer possesses hazardous chemicals which it combines to produce an acid which is also designated as a hazardous substance or product. When it reports the tax upon the wholesale value of the acid it may use a credit to offset the tax by the amount of tax it has already paid or reported upon the hazardous chemical ingredients or components. In this manner the intent of the law to tax hazardous substances only once is fulfilled.

(ii) Under circumstances where the hazardous ingredient and the hazardous end product are both possessed by the same person during the same tax reporting period, the tax on the respective substances must be computed and the former must be offset against the latter so that the tax return reflects the tax liability after the credit adjustment.

(iii) This credit may be taken only by manufacturers who have the first possession in this state of both the hazardous ingredients and the hazardous end product.

(b) A credit may be taken in the amount of the hazardous substance tax upon the value of fuel which is carried from this state in the fuel tank of any airplane, ship, truck, or other vehicle.

(i) The credit may be claimed only for the amount of tax reported or actually due to be paid on the fuel, not the amount representing the value of the fuel.

(ii) The purpose of this credit is to exclude from taxation any possessions of fuel which remains in the fuel tanks of any carrier vehicles powered by such fuel when they leave this state, regardless of where or from whom such fuel-in-tanks was acquired.

(iii) The nature of this credit is such that it generally has application only for interstate and foreign private or common carriers who carry fuel into this state and/or purchase fuel in this state. The intent is that the tax will apply only to so much of such fuel as is actually consumed by such carriers within this state.

(iv) In order to equitably and efficiently administer this tax credit, any fuel which is brought into this state in carrier vehicle fuel tanks must be accounted for separately from fuel which is purchased in this state for use in such fuel tanks. Formulas approved by the department for reporting the amount of fuel consumed in this state for purposes of this tax or other excise tax purposes will satisfy the separate accounting required under this subsection.

(v) Fuel-in-tanks brought into this state must be fully reported for tax and then the credit must be taken in the amount of such fuel which is taken back out of this state. This is to be done on the same periodic excise tax return so that the net effect is that the tax is actually paid only upon the portion of fuel consumed here.

(vi) The credit for fuel-in-tanks purchased in this state must be accounted for by using a fuel-in-tanks credit certificate in substantially the following form:

CERTIFICATE OF CREDIT FOR FUEL CARRIED FROM THIS STATE IN FUEL TANKS

I hereby certify that the petroleum products specified herein, purchased by or transferred to the undersigned, from (name of seller or transferor), are entitled to the credit for fuel which is carried from this state in the fuel tank of any airplane, ship, truck, or other vehicle operated by a private or common carrier in interstate or foreign commerce. I will become liable for and pay the ((~~hazardous substance~~)) taxes due upon all or any part of such fuel which is not so carried from this state. This certification is given with full knowledge of, and subject to the legally prescribed penalties for fraud and tax evasion.

Registration No. _____
(if applicable)
Type of Business _____
Firm Name _____
Business Address _____
Registered Name _____
(if different)
Tax Reporting Agent _____
(if applicable)
Authorized Signature _____
Title _____
Identity of Fuel _____
(kind and amount by volume)

Date: _____

(vii) This certificate may be executed and provided to any possessor of fuel in this state, throughout the chain of distribution, with respect to fuel which ultimately will be sold and delivered into any carrier's fuel tanks in this state. Thus, refiners or manufacturers will take such certificates directly from carriers or from their wholesale purchasers who will sell to such carriers. Similarly, fuel dealers and distributors will take such certificates from carriers to whom they sell such fuel. These certificates must be retained as a permanent part of such seller's business records.

(viii) Persons who execute and provide these credit certificates to their fuel suppliers must retain suitable purchase and sales records as may be necessary to determine the amount of tax for which such persons may be liable.

(ix) Blanket certificates may be used to cover recurrent purchases of fuel by the same purchaser. Such blanket certificates must be renewed every two years.

(c) A credit may be taken against the tax owed in this state in the amount of any other state's hazardous substance tax which has been paid by the same person measured by the wholesale value of the same hazardous substance.

(i) In order for this credit to apply, the other state's tax must be significantly similar to Washington's tax in all its various respects. The taxable incident must be possessing the substance; the tax purpose must be that the substance is hazardous; and the tax measure must be stated in terms of the wholesale value of the substance, without deductions for costs of doing business, such that the other state's tax does not constitute an income tax or added value tax.

(ii) This credit may be taken for the amount of any other state's qualifying tax which has actually been paid before Washington State's tax is incurred because the substance was previously possessed by the same person in another taxing jurisdiction.

(iii) The amount of credit is limited to the amount of tax paid in this state upon possession of the same hazardous substance in this state. Also, the credit may not be applied against any tax paid or owed in this state other than the hazardous substance tax imposed by Section 10 of I-97.

(iv) Exchange agreements under which hazardous substances or products possessed in this state are exchanged through any accounts crediting system with like substances possessed in other states do not qualify for this credit. The substance taxed in another state, and for which this credit is sought, must be actually, physically possessed in this state.

(v) Persons claiming this credit must maintain records necessary to verify that the credit taking qualifications have been met. See WAC 458-20-19301, part (9) for record keeping requirements. The department of revenue will publish an Excise Tax Bulletin listing other states' taxes which qualify for this credit.

(6) Newly defined hazardous substances. The Director of Ecology may identify and designate things as being hazardous substances after March 1, 1989. Also, things designated as hazardous substances may be deleted from this definition. Such actions are done by the adoption and subsequent periodic amendments to rules of the Department of Ecology under the Washington Administrative Code.

(a) The law allows the addition or deletion of substances as hazardous by rule amendments, no more often than twice in any calendar year.

(b) When such definitions are changed, they do not take effect for tax purposes until the first day of the following month which is at least thirty days after the effective date of rule action by the Department of Ecology.

(i) Example. The Department of Ecology adopts or amends the rule by adding a new substance and the effective date of the amendment is June 15. Possession of the substance does not become taxable until August 1.

(ii) The tax is owed by any person who has possession of the newly designated hazardous substance upon the tax effective date as explained herein. It is immaterial that the person in possession on that date was not the first person in possession of the substance in this state before it was designated as hazardous.

(7) Recurrent tax liability. It is the intent of the law that all hazardous substances possessed in this state should incur this tax liability only once unless they are expressly exempt. This is true of hazardous ingredients of products as well as the manufactured end product itself, if designated as a hazardous substance. The exemption for previously taxed hazardous substances does not apply to "products" which have been manufactured or remanufactured simply because an ingredient or ingredients of that product may have already been taxed when possessed by the manufacturer. Instead of an exemption, manufacturers in possession of both the hazardous ingredient(s) and end product(s) should use the credit provision explained at Part (5)(a) of this section.

(a) However, the term "product" is defined to mean only an item or items which contain a combination of both hazardous substance(s) and non-hazardous substance(s). The term does not include combinations of only hazardous substances. Thus, possessions of substances produced by combining other hazardous substances upon all of which the tax has previously been paid will not again be taxable.

(b) When any hazardous substance(s) is first produced during and because of any physical combination or chemical reaction which occurs in a manufacturing or processing activity, the intermediate possession of such substance(s) within the manufacturing or processing plant is not considered a taxable possession if the substance(s) becomes a component or ingredient of the product being manufactured or processed or is otherwise consumed during the manufacturing or processing activity.

(i) However, when any intermediate hazardous substance is first produced during a manufacturing or processing activity and is withdrawn for sale or transfer outside of the manufacturing or processing plant, a taxable first possession occurs.

(c) Concentrations or dilutions for shipment or storage. The mere addition or withdrawal of water or other nonhazardous substances to or from hazardous substances designated under CERCLA or FIFRA for the sole purpose of transportation, storage, or the later manufacturing use of such substances does not result in any new hazardous product.

(8) How and when to pay tax. The tax must be reported on a special line of the combined excise tax return designated "hazardous substances." It is due for payment together with the timely filing of the return upon which it is reported, covering the tax reporting period during which the hazardous substance(s) is first possessed within this state. Any person who is not expressly exempt of the tax and who possesses any hazardous substance in this state, without having proof that the tax has previously been paid on that substance, must report and pay the tax.

(a) It may be that the person who purchases a hazardous substance will not have billing information from which to determine the wholesale value of the substance when the tax return for the period of possession is due. In such cases the tax is due for payment no later than the next regular reporting due date following the reporting period in which the substance(s) is first possessed.

(b) The taxable incident or event is the possession of the substance. Tax is due for payment by the purchaser of any hazardous substance whether or not the purchase price has been paid in part or in full.

(c) Special provision for manufacturers, refiners, and processors. Manufacturers, refiners, and processors who possess hazardous substances are required to report the tax and take any available exemptions and credits only at the time that such hazardous substances are withdrawn from storage for purposes of their sale, transfer, remanufacture, or consumption.

(9) How and when to claim credits. Credits should be claimed and offset against tax liability reported on the same excise tax return when possible. The tax return form provides a line for reporting tax on hazardous substances and a line for taking credits as an offset against the tax reported. It is not required that any documents or other evidences of entitlement to credits be submitted with the report. Such proofs must be retained in permanent records for the purpose of verification of credits taken.

(10) Special provision for consumer/first possessors. Under circumstances where the consumer is the first person in possession of any non-exempt hazardous substance (e.g., substances imported by the consumer), or where the consumer is the person who must pay the tax upon substances previously possessed in this state (fuel purchased for export in fuel tanks) the consumer's tax measure will be eighty percent (80%) of its retail purchase price. This provision is intended to achieve a tax measure equivalent to the wholesale value.

(11) Hazardous substances or products on consignment. Consignees who possess hazardous substances or products in this state with the power to sell such things, in their own name or on behalf of a disclosed or undisclosed consignor are liable for payment of the tax. The exemption for previously taxed substances is available for such consignees only if the consignors have paid the tax and the consignee has retained the certification or other proof of previous tax payment referred to in part (4)(i) and (ii) of this section. Possession of consigned hazardous substances by a consignee does not constitute constructive possession by the consignor.

(12) Hazardous substances untraceable to source. Various circumstances may arise whereby a person will possess hazardous substances in this state, some of which have been previously taxed in this or other states and

some of which may not. In such cases formulary tax reporting may be used, only upon a special ruling by the department of revenue.

(a) Example. Fungible petroleum products from sources both within and outside this state are commingled in common storage facilities. Formulary reporting is appropriate based upon volume percentages reflecting the ratio of in-state production to out-of-state production or other form of acquisition.

(13) Administrative provisions. The provisions of chapter 82.32 RCW regarding due dates, reporting periods, tax return requirements, interest and penalties, tax audits and limitations, disputes and appeals, and all such general administrative provisions apply equally to the hazardous substance tax. Special requested rulings covering unique circumstances generally will be issued within sixty days from the date upon which complete information is provided to the department of revenue.

(14) Certification of previously taxed hazardous substance. Certification that the hazardous substance tax has already been paid by a person previously in possession of the substance(s) may be taken in substantially the following form:

I hereby certify that this purchase - all purchases of_____ (omit one)

_____ by _____, (identify substance(s) purchased) (name of purchaser)

who possesses registration no. _____, (buyer's number, if registered)

consists of the purchase of hazardous substance(s) or product(s) upon which the hazardous substance tax has been paid in full by a person previously in possession of the substance(s) or product(s) in this state. This certificate is given with full knowledge of, and subject to the legally prescribed penalties for fraud and tax evasion, and with the full knowledge and agreement that the undersigned hereby assumes any liability for hazardous substance tax which has not been previously paid because of possession of the hazardous substance(s) or product(s) identified herein.

___ *The registered seller named below personally paid the tax upon possession of the hazardous substances.*

___ *A person in possession of the hazardous substances prior to the possession of the registered seller named below paid the tax.*

(Check the appropriate line.)

Name of registered seller _____ Registration No. _____

Firm name _____ Address _____

Type of business _____

Authorized signature _____ Title _____

Date _____

PART II - PETROLEUM PRODUCTS TAX

(1) Under the provisions of Chapter 383, Laws of 1989, (hereinafter referred to as the law), a petroleum product tax was imposed, effective July 1, 1989, upon the wholesale value of petroleum products in this state with specific credits and exemptions provided. The tax is an excise tax upon the privilege of first possessing petroleum products in this state. It is imposed in addition to all other taxes of an excise or property tax nature, including the hazardous substance tax explained earlier in this section, and is not in lieu of any other such taxes.

(a) Sections 14-18 of the law consist of the tax provisions relating to possession of petroleum products which are administered exclusively under this section. The application of the petroleum product tax with the exceptions noted below, is the same as the hazardous substance tax applications explained in subsection (1)(c) of Part 1 of this section.

(b) The petroleum product tax is imposed upon any possession of petroleum products in this state by any person who is not expressly exempt of the tax. However, it is the intent of the law that the economic burden of the tax should fall only upon the first such possession in this state just like the hazardous substance tax.

(2) Definitions. For purposes of this part the following terms will apply.

(a) "Tax" means the petroleum product tax imposed under section 16 of the law.

(b) "Petroleum product" means any plant condensate, lubricating oil, gasoline, aviation fuel, kerosene, diesel motor fuel, benzol, fuel oil, residual fuel oil, asphalt base, liquefied or liquefiable gases, such as butane, ethane and propane, and every other product derived from the refining of crude oil, but the term does not include crude oil.

(c) "Possession" means control of a petroleum product located within this state and includes both actual and constructive possession.

(i) "Control" means the power to sell or use a petroleum product or to authorize the sale or use by another.

(ii) "Actual possession" occurs when the person with control has physical possession.

(iii) "Constructive possession" occurs when the person with control does not have physical possession.

(d) "Previously taxed petroleum products" means petroleum products upon which the petroleum product tax has been paid and which have not been remanufactured or reprocesssed in any manner (other than mere repackaging or recycling for beneficial reuse) since the tax was paid.

(e) "Wholesale value" is the tax measure or base. It means the fair market value determined by the wholesale selling price at the place of use of similar products of like quality and character. "Wholesale Value" shall be determined in precisely the manner for the petroleum product tax as it is for the hazardous substance tax in Part 1, subsection (2)(g) of this section.

(f) "Selling price". See 2(h) of Part 1 of this section.

(g) "State," for purposes of the credit provisions of the petroleum product tax, means:

(i) a state of the United States other than Washington, or any political subdivision of such other state,

(ii) the District of Columbia,

(iii) any foreign country or political subdivision thereof, and

(iv) territories and possessions of the United States.

(3) Tax rate and measure. The tax is imposed upon the privilege of possession of petroleum products in this state. The tax rate is fifty one-hundredths of one percent

(.005). The tax measure or base is the wholesale value of the petroleum products, as defined herein. The tax will apply for first possessions of petroleum products in all periods after its effective date unless the department notifies taxpayers in writing of the department's determination that the pollution liability reinsurance program trust account contains a sufficient balance to cause a moratorium on the tax application. The department will again notify taxpayers in writing if and when the account balance requires reapplication of the tax.

(4) Exemptions. The following are expressly exempt from the tax:

(a) Any successive possessions of any previously taxed petroleum products are exempt in precisely the manner as the same exemption for the hazardous substance tax. (See Part 1, subsection (4)(a) of this section.) If the tax is paid by any person other than the first person having taxable possession of a petroleum product, the amount of tax paid shall constitute a debt owed by the first person having taxable possession to the person who paid the tax.

(b) Any possession of a petroleum product by a natural person for use of a personal or domestic nature rather than a business nature is exempt in precisely the manner as the same exemption for the hazardous substance tax. (See Part 1, subsection (4)(b) of this section.)

(c) Any possessions of the following substances are tax exempt:

(i) Natural gas, or petroleum coke;

(ii) Liquid fuel or fuel gas used in processing petroleum;

(iii) Petroleum products that are exported for use or sale outside this state as fuel.

(iv) The exemption for possessions of petroleum products for export sale or use as fuel may be taken by any person within the chain of distribution of such products in this state. To perfect its entitlement to this exemption the person possessing such product(s) must take from its buyer or transferee of the product(s) a written certification in substantially the following form:

Certificate of Tax Exempt Export Petroleum Products

I hereby certify that the petroleum products specified herein, purchased by or transferred to the undersigned, from (seller or transferor), are for export for use or sale outside Washington state as fuel. I will become liable for and pay any petroleum product tax due upon all or any part of such products which are not so exported outside Washington State. This certificate is given with full knowledge of, and subject to the legally prescribed penalties for fraud and tax evasion.

Registration No. _____
Type of Business _____
(If applicable) Firm Name _____
Registered Name (If different) _____
Authorized Signature _____
Title _____
Identity of Petroleum Product _____
(Kind and amount by volume)
Date: _____

(v) Each successive possessor of such petroleum products must, in turn, take a certification in this form from any other person to whom such petroleum products are sold or transferred in this state. Failure to take and keep such certifications as part of its permanent records will incur petroleum product tax liability by such sellers or transferrers of petroleum products.

(vi) Persons in possession of such petroleum products who themselves export or cause the exportation of such products to persons outside this state for further sale or use as fuel must keep the proofs of actual exportation required by WAC 458-20-193, Parts A or C. Carriers who will purchase fuel in this state to be taken out of state in the fuel tanks of any ship, airplane, truck, or other carrier vehicle will provide their fuel suppliers with this certification. Then such carriers will directly report and pay the tax only upon the portion of such fuel actually consumed by them in this state. (With respect to fuel brought into this state in fuel tanks and partially consumed here, see the credit provisions of Part 1, subsection (5)(b) of this section.

(vii) Blanket export exemption certificates may never be accepted in connection with petroleum products exchanged under exchange agreements.

(d) Any possession of petroleum products packaged for sale to ultimate consumers. This exemption is limited to petroleum products which are prepared and packaged for sale at usual and ordinary retail outlets. Examples are containerized motor oil, lubricants, and aerosol solvents.

(5) Credits. There are two distinct kinds of tax credits against liability which are available under the law.

(a) A credit may be taken in the amount of the petroleum product tax upon the value of fuel which is carried from this state in the fuel tank of any airplane, ship, truck, or other vehicle. The credit is applied in precisely the same manner as the hazardous substance tax in Part 1, subsection (5)(b) of this section.

The same form of certification as used for the fuel-in-tanks hazardous substance tax credit in subsection (5)(b)(vi) of Part 1 of this section may be used.

(b) A credit may be taken against the tax owed in this state in the amount of any other state's petroleum product tax which has been paid by the same person measured by the wholesale value of the same petroleum product tax.

(i) In order for this credit to apply, the other state's tax must be significantly similar to Washington's tax in all its various respects. The taxable incident must be on the act or privilege of possessing petroleum products and the tax must be of a kind that is not generally imposed on other activities or privileges; the tax purpose must be to fund pollution liability insurance; and the tax measure must be stated in terms of the wholesale value of the petroleum products, without deductions for costs of doing business, such that the other state's tax does not constitute an income tax or added value tax.

(ii) The credit is applied in precisely the same manner as the state credit for hazardous substance tax in Part 1, subsection (5)(c) of this section. The amount of the credit shall not exceed the petroleum product tax liability with respect to that petroleum product.

WSR 89-13-089
EMERGENCY RULES
DEPARTMENT OF REVENUE
[Order 89-8—Filed June 21, 1989]

I, Edward L. Faker, interim assistant director of the Department of Revenue, do promulgate and adopt at Olympia, Washington, the annexed rules relating to Refuse-sold waste collection business—Core deposits and credits, battery core charges, and tires, amending WAC 458-20-250.

I, Edward L. Faker, find that an emergency exists and that this order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting the emergency is chapter 431, Laws of 1989, which is implemented and administered under this WAC section takes effect on July 1, 1989, thus necessitating an emergency adoption of the amendatory section. A full public hearing will be conducted before adopting the permanent rule.

These rules are therefore adopted as emergency rules to take effect upon filing with the code reviser.

This rule is promulgated under the general rule-making authority of the Department of Revenue as authorized in RCW 82.32.300.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED June 21, 1989.

By Edward L. Faker
Interim Assistant Director

AMENDATORY SECTION (Amending Order ET 86-14, filed 7/22/86)

WAC 458-20-250 REFUSE-SOLID WASTE COLLECTION BUSINESS((:)) - CORE DEPOSITS AND CREDITS, BATTERY CORE CHARGES, AND TIRES (1) Introduction. This section administers the taxes on solid waste collection and the special provisions for core deposits and credits, battery core charges, and tires.

((~~(1)~~)) (a) ((~~Introduction.~~)) Chapter 282, Laws of 1986((~~, effective June 11, 1986,~~)) establishe((~~s~~))d ((~~for tax purposes, and defines~~)) the specific business activity of the "refuse collection business((:))" ((~~Under 1985 law (chapter 471, Laws of 1985) this activity had been included as a "public service business" and given a special tax rate under the public utility tax of chapter 82.16 RCW. The 1986 law removes refuse collection activities from the public utility tax on gross receipts~~)) and impose((~~s~~))d a "refuse collection tax" similar in nature to retail sales tax. The burden of this tax is upon the ultimate consumer of the refuse collection service. The tax rate is three and six tenths percent (.036), and the tax measure is the total consideration charged to the consumer-customer for the services. Chapter 431, Laws of 1989 changes the name of this tax from a refuse collection tax to a solid waste collection tax.

(b) Chapter 431, Laws of 1989, imposes, effective July 1, 1989, an additional tax of 1 percent of the consideration charged for the service. Generally, the tax is imposed in addition to and is similar to the refuse collection tax enacted in 1986. However, unlike the refuse collection tax, the measure of the new 1 percent tax is limited to the charges for the actual solid waste collection services that are provided and a maximum tax measure is provided for residential collection service charges.

(c) For ease of administration and accounting, the 3.6 percent tax shall retain its former name and be called for purposes of this section the "refuse collection tax", and, the tax imposed in 1989, the 1 percent tax, shall be called the "solid waste collection tax."

(2) Neither ((~~T~~))the 1986 law or the 1989 law ((~~does not~~)) expressly establishes a specific business tax classification for the gross receipts of persons engaged in the refuse-solid waste collection business. Thus, because of the provisions of RCW 82.04.290, such persons are subject to the service or other activities classification of business and occupation tax.

(3) For purposes of this section the following terms will apply.

(a) "Refuse collection business" - "solid waste collection business" means every person who receives waste for transfer, storage, or disposal including but not limited to all collection services, public or private dumps, transfer stations, and similar operations.

(b) "Person" shall have the meaning given in RCW 82.04.030 or any later, superseding section.

(c) "Waste"-"solid waste" means garbage, trash, rubbish, or other material discarded as worthless or not economically viable for further use. The term does not include hazardous or toxic waste nor does it include material collected primarily for recycling or salvage.

(d) "Taxpayer" means that person upon whom the refuse-solid waste collection tax is imposed, that is, the private or commercial consumer-customer.

(e) "Department" means the department of revenue.

(f) "Consideration charged for the services" means the total amount billed to a taxpayer as compensation for refuse-solid waste collection services, without any deduction for any costs of doing business or any other expense whatsoever, paid or accrued, Provided, that the term does not include any amount included in the charges for materials collected primarily for recycling, nor the refuse-solid waste collection tax itself whether separately itemized or not, nor any similar utility taxes or consumer taxes, imposed by the state or any political subdivision thereof or any municipal corporation, directly upon the consumer-taxpayer and separately itemized on the taxpayer's billing. Also, the term does not include late charges or penalties which may be imposed for non-timely payment by taxpayers.

(4) Refuse and Solid Waste Collection Tax Measure.

(a) The refuse collection tax applies to the consideration paid for refuse-solid waste collection services. The rate of the tax is 3.6 percent of the amount charged for garbage collection and disposal services.

(b) For purposes of the solid waste collection tax, the following terms will apply.

(i) "Standby", "availability", or "base" charges mean those charges to a residential customer who receives no actual garbage pickup service.

(ii) "Residential collection service" has its ordinary meaning and is per can garbage collection service other than commercial or industrial service. For purposes of this section, a residential collection service is that service provided for each housing unit. In the case of multiple housing units in a single structure such as apartments, condominiums, or duplexes, or, an association of housing units such as a mobile home park or retirement village, the service is deemed commercial unless each occupier of a housing unit is individually provided can service and is individually billed for such service.

(iii) "Can" or "can equivalent" has its ordinary meaning and shall include a receptacle for waste collection made of durable, corrosion-resistant material, watertight with a close fitting cover, with two handles, and does not exceed 32 gallons, 4 cubic feet or 65 lbs. (including contents), nor weigh more than 12 lbs. when empty. (This definition comports with the definition of "unit" by the Utilities and Transportation Commission.) For purposes of this section, containers of 60 gallon or more capacity, commonly called "toters", are considered more than 2 cans.

(c) The solid waste collection tax applies to the consideration paid for actual solid waste collection services provided and utilized by the customer and does not apply to amounts charged by a solid waste collection business for "standby", "availability", or "base" charges where no actual garbage collection occurs. Additionally, the tax does not apply to amounts charged for materials primarily collected for recycling.

(d) For a residential customer, the tax measure is the consideration paid, but not more than $8.00 of the monthly charge for garbage pickup service of less than 2 cans, or, not more than $12.00 of the monthly charge for 2 cans or more.

(i) Example. City X provides residential garbage collection service to a customer and the customer has subscribed to less than two can service. The monthly charge is $11.00 for the service which includes a charge of $2.00 for special pickup of recyclables. After adjustment for the recycling charges of $2.00, the refuse collection tax measure is $9.00 and the solid waste collection tax measure is $8.00. The tax measure for solid waste residential pickup is limited to not more than $8.00 of monthly charge paid. The refuse collection tax is 32 cents ($9.00 x .036), and, the solid waste collection tax is 8 cents ($8.00 x .01), for a total refuse-solid waste collection tax of 40 cents.

(e) For computation of the maximum solid waste collection tax due for residential customers, extra solid waste collected effects the tax base only for a residential customer with less than 2 can service. The tax measure for a customer with 2 or more can service will never exceed $12.00. The tax measure for a customer with less than 2 can service does not exceed $8.00 unless the extras collected are an additional can equivalent sufficient to change the less than 2 can customer to a 2 can or more customer.

(i) Example. Residential customer Z has less than 2 can service for which Z is charge $9.00 per month and results in a refuse tax of 32 cents ($9.00 x .036) and a solid waste tax of 8 cents ($8.00 x .01) for a total tax of 40 cents. One month Z has an extra trash bag picked up which is not the equivalent of a can and the monthly charge is $11.00. The refuse tax for this month is 40 cents ($11.00 x .036) and the solid waste tax is 8 cents ($8.00 x .01) for a total tax of 48 cents. Since Z had less than 2 cans picked up, Z remains a less than 2 can customer. The solid waste tax measure is limited to the consideration paid up to $8.00, while the refuse tax is not so limited.

(ii) Example. Residential customer X has 2 or more can service for which X is charged $9.00 per month resulting in a refuse tax of 32 cents ($9.00 x .036) and a solid waste tax of 9 cents ($9.00 x .01) for a total tax of 41 cents. One month X has several trash bags picked up amounting to an additional can equivalent and the charge for this month is $13.00. The refuse tax is 47 cents ($13.00 x .036) and the solid waste tax is 12 cents ($12.00 x .01) for a total tax of 59 cents. The solid waste tax measure for 2 can or more service is limited to the consideration paid up to $12.00 while the refuse collection tax measure is not so limited.

(iii) Example. A city provides residential garbage collection for which the city charges a $5.00 base fee and a total charge of $9.00 for less than 2 can service and $13.00 for 2 can or more service. A customer chooses to deliver his garbage by his own means to the local disposal site for which the customer is charged $10.00 per month. The city charges the customer on his monthly utility bill the $5.00 base fee. The refuse tax collected at the disposal site is 36 cents ($10.00 x .036) and the solid waste tax collected at the disposal site is 10 cents ($10.00 x .01) for a total collection at the disposal site of 46 cents. The refuse tax collected by the city is 18 cents ($5.00 x .036) and no solid waste tax is collected by the city because no actual garbage collection services were provided the customer. As the per can limitations apply only to residential pick up service, any garbage delivered to disposal site by anyone other than another refuse-solid waste collection business will always incur a combined refuse-solid waste tax of 4.6 per cent of the consideration paid.

((~~(4)~~)) (5) The person who collects the charges for refuse-solid collection services from the taxpayer is responsible for collecting the refuse-solid waste collection tax and remitting it to the state.

((~~(5)~~)) (6) The law provides that if any person charged with collecting the tax fails to bill the taxpayer for it, or to notify the taxpayer in writing that the tax is due, then that person shall be personally liable for the tax. Thus, unlike the retail sales tax, the refuse-solid waste collection tax may be included within the gross refuse fee or charge billed to taxpayers and need not be separately itemized on such billings, but only if such taxpayers are notified in writing that the tax has been imposed and is being collected. Nothing prevents any

refuse-solid waste collection business from separately itemizing the tax on customer billings, at its option.

((~~(6)~~)) (7) Furthermore, if any person collects that tax from the taxpayer and fails to pay it to the department in the manner provided in this section, for any reason whatever, that person shall be personally liable for the tax.

((~~(7)~~)) (8) The refuse-solid waste collection tax is due from the taxpayer within twenty-five days from the date the taxpayer is billed for the refuse-solid waste collection services. The refuse collection tax and the solid waste collection tax shall be separately reported upon lines provided on the Combined Excise Tax return.

((~~(8)~~)) (9) The tax is due to be remitted to the department by the person collecting it at the end of the tax reporting period in which the tax is received by that person.

((~~(9)~~)) (10) If a taxpayer makes only a partial payment of the amount billed for the services and tax, the amount paid must first be used to remit the refuse-solid waste collection tax to the department. This tax has first priority over all other claims against the amount paid by the taxpayer.

((~~(10)~~)) (11) The federal government, its agencies and instrumentalities, and all refuse service contracts with such federal entities are not subject to the refuse-solid waste collection tax. There are no other taxpayers expressly exempted from paying the refuse-solid waste collection tax. Any other taxpayer claiming exemption of this tax for any reason whatsoever must provide the refuse-solid waste collection business with proof of its entitlement to exemption. The department will verify such claims upon request.

((~~(11)~~)) (12) To prevent pyramiding or multiple taxation of single transactions, the refuse-solid waste collection tax does not apply to any person other than the taxpayer. It is a tax upon the ultimate consumer-customer of the refuse-solid waste service.

((~~(12)~~)) (13) Persons who collect the refuse-solid waste collection tax and who, themselves, utilize the further services of others for the transfer, storage, or disposal of the waste collected are not required to again pay the tax to such other service providers. However, in order to be exempt of such tax payment a refuse-solid waste collection business must provide other refuse-solid waste service providers with a refuse-solid waste collector's exemption certificate in the following form:

(a) We hereby certify that we are engaged in the refuse-solid waste collection business and are registered with the state department of revenue to collect and report the refuse collection tax imposed under chapter 282, Laws of 1986 and chapter 431, Laws of 1989. We certify further that the refuse-solid waste collection tax due with respect to the refuse-solid waste collection business being performed under this certificate has been or will be collected and paid and that we are exempt for further payment of such tax on charges for any refuse-solid waste collection services being procured by us.

Business Name _____ Authorized Signature _____

Business Address _____ Date _____

Revenue Registration No. _____

U.T.C. Certificate of Public Necessity No. _____

If not regulated by U.T.C., please check here ___

(b) Blanket certificates may be provided in advance by refuse-solid waste collectors or other persons who collect the customer charges for refuse-solid waste collection and who are liable for collecting and remitting the refuse-solid waste collection tax.

(c) Refuse-solid waste collection businesses which provide services for the transfer, storage, or disposal of waste, and who accept completed certifications in good faith are not required to collect and remit the refuse-solid waste collection tax and will not be held personally liable for it.

((~~(13)~~)) (14) Persons engaged in the refuse-solid waste collection business by operating facilities for the transfer, storage, or disposal of waste, including public and private dumps, and who provide such services directly to taxpayers for a charge, are liable for the collection of the refuse collection tax on such charges.

((~~(14)~~)) (15) Examples of taxable and tax exempt transactions are:

(a) A private person or commercial customer hauls its own waste to a dump site for disposal and pays a fee - the fee is subject to the 3.6 percent refuse collection tax((~~:~~)) and the 1 percent solid waste collection tax.

(b) A refuse-solid waste collection company picks up and hauls residential or commercial waste to a dump for disposal - this company bills the customer for the tax and need not pay the tax upon any further charge made by the dump site operator, by providing a refuse-solid waste collector's certificate.

(c) A city provides refuse-solid waste collection services to its residents through an independent hauler under a negotiated contract, and uses a county operated land fill. The city bills the residents on their utility bills. The 3.6 percent and 1 percent taxes appl((~~ies~~))y to the refuse-solid waste portion of the utility bill((~~:~~)) adjusted as provided in this section. Th((~~is~~))ese taxes do((~~es~~)) not apply to any charge paid by the city to the hauling company, nor to any charge made by the county to the city for dumping services. The city must provide the hauler and the county with a refuse-solid waste collector's certificate.

((~~(15)~~)) (16) The refuse-solid waste collection tax is imposed in much the same manner as retail sales tax; that is, it is payable by the refuse-solid waste consumer to the refuse-solid waste service provider who does the customer billing. Likewise, other refuse-solid waste service providers up the chain of transactions from the billing provider are treated in the same manner as wholesalers and need not collect the tax if the appropriate certificate is taken.

((~~(16)~~)) (17) Business and occupation tax. There is no exemption from business and occupation tax measured by gross income of any person engaged in the refuse-solid waste collection business. Such persons are subject to the service classification of business and occupation

tax measured by their gross receipts. (See RCW 82.04-.290.) Also, there is no general provision under the law for the nonpyramiding effect of the business and occupation tax. Thus, each refuse-solid waste collection business is separately liable for this tax on its total gross receipts without any deduction for any costs of doing business or any amounts paid over to other refuse-solid waste service providers. Also, all amounts designated as late charges or penalties are included within this business tax measure.

((~~(17)~~)) (18) The refuse-solid waste collection business is an "enterprise activity," as defined in WAC 458-20-189, when it is funded over fifty percent by user fees. Thus, the amounts derived from this activity are not exempt of business and occupation tax even though they may be charged by governmental entities. (See RCW 82.04.419.)

((~~(18)~~)) (19) The exemption of refuse-solid waste collection tax for the federal government, its agencies and instrumentalities, does not apply for business and occupation tax. Thus, refuse-solid waste collection businesses who charge such federal entities for services, under contract or otherwise, must pay the business and occupation tax upon such gross receipts.

((~~(19)~~)) (20) Persons engaged in the refuse-solid waste collection business may be entitled to certain express deductions or exemptions from business and occupation tax for specific reasons unrelated to the nature of their refuse-solid waste business activity. (See RCW 82.04.419 and 82.04.4291.)

((~~(20)~~)) (21) Refuse-solid waste collection businesses which provide waste receptacles, containers, dumpsters, and the like to their customers for a charge, separate from any charge for collection of the waste, are engaged in the business of renting tangible personal property taxable separate and apart from the refuse-solid waste collection business. Charges for such rentals, however designated, are subject to retailing business and occupation tax when they are billed separately or are line itemized on customer billings. Such businesses are engaged in more than one taxable kind of business activity and are separately taxable on each. (See RCW 82.04.440.)

((~~(21)~~)) (22) Retail sales tax. Persons who separately charge and bill customers for waste receptacles, as explained earlier, must collect and remit the retail sales tax on the itemized rental price, fee, or other consideration, however designated, charged for the receptacles.

((~~(22)~~)) (23) Refuse-solid waste collection businesses are themselves the consumers of all tangible personal property purchased for their own use in conducting such business, other than items for resale or renting to customers, e.g., rented receptacles. Retail sales tax must be paid to materials suppliers and providers of such tangible consumables. (See RCW 82.04.050.)

((~~(23)~~)) (24) Use tax. The use tax is due upon all tangible personal property used as consumers by refuse-solid waste collection businesses, upon which the retail sales tax has not been paid. (See RCW 82.12.020.)

(25) Core deposits and credits - Battery core charges.

(a) For purposes of this section the following terms apply.

(i) "Core deposits or credits" means the amount representing the value of returnable products such as batteries, starters, brakes, and other products with returnable value added for purposes of recycling or remanufacturing.

(ii) "Battery core charge" means that amount of the retail selling price of a vehicle battery, not less than $5.00, which is retained by the seller when the purchaser has no used battery to exchange or trade-in.

(b) Retail sales tax.

(i) The retail sales tax does not apply to the consideration received as core deposits or credits in a retail or wholesale sale when a purchaser exchanges or trades-in a core to the seller. (RCW 82.08.010, WAC 458-20=247, and chapter 431, Laws of 1989). Therefore, when a purchaser of a vehicle battery, starter, etc., exchanges or trades-in a used battery, starter, etc., to the seller, retail sales tax does not apply to the value of the used property exchanged or traded-in.

(ii) Chapter 431, Laws of 1989, effective July 23, 1989, requires the retail selling price of a vehicle battery to include a core charge of not less than $5.00. The core charge must be omitted from the sales price when the purchaser offers to the seller a used battery of equivalent size. The retail sales tax does apply to the core charge amount included in the sales price of a vehicle battery when the purchaser does not offer to the seller a used battery for exchange or trade-in. The exemption for "core deposits or credits" applies only when an article of tangible personal property is returned by the purchaser to the seller for the purpose of recycling or remanufacturing. Upon the offer by the purchaser to the seller of a used battery of equivalent size for exchange or trade-in within 30 days after the purchase date of the battery, the seller shall refund to the purchaser the core charge amount and the retail sales tax paid on such core charge.

(c) Use tax. The use tax does not apply to the value of core deposits or credits in a retail or wholesale sale.

(d) Business and occupation tax. The core deposit and credit exemptions apply only to the amount of retail sales tax and use tax to be collected and paid. There is no core deposit or credit exclusion for business and occupation tax. Thus, the gross receipts under the appropriate classification of business and occupation tax, retailing, wholesaling, manufacturing, etc., continues to include the value of core deposits and credits. Battery core charges are included as gross receipts in the retailing classification of the business and occupation tax.

(26) Tires. Chapter 431, Laws of 1989 amends RCW 70.95.510 and, effective October 1, 1989, levies a $1 per tire fee on the retail sale of new replacement tires. The $1 per tire fee levied replaces the .012 percent tax imposed in 1985. The fee imposed shall be paid by the buyer and collected by the seller. The fee collected from the buyer by the seller shall be paid to the department in accordance with RCW 82.32.045 less 10 percent retained by the seller.

(a) Retail sales tax - Use tax - Business and Occupation Tax. Chapter 431, Laws of 1989 exempts the fee from retail sales tax and use tax. Neither the fee nor the part of the fee retained by the seller is subject to business and occupation tax. The seller is only the state's

collecting and reporting agent for the portion paid to the department. The 10 percent retained portion is expressly authorized for use by the seller to defray costs associated with the proper management of waste tires.

Reviser's note: RCW 34.04.058 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

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

WSR 89-13-090
PROPOSED RULES
UTILITIES AND TRANSPORTATION COMMISSION
[Filed June 21, 1989]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Washington Utilities and Transportation Commission intends to adopt, amend, or repeal rules relating to procedures before the commission, chapter 480-09 WAC. The proposed new chapter is shown below as Appendix A, Docket No. U-89-2966-R. Written and/or oral submissions may also contain data, views, and arguments concerning the effect of the proposed new chapter on economic values, pursuant to chapter 43.21H RCW and WAC 480-08-050(17);

that the agency will at 9:00 a.m., Wednesday, July 26, 1989, in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 South Evergreen Park Drive S.W., Olympia, WA, conduct a public hearing on the proposed rules.

The adoption, amendment, or repeal of the rules will take place immediately following the hearing.

The authority under which these rules are proposed is RCW 80-01.040 and 34.05.220.

The specific statute these rules are intended to implement is chapter 34.05 RCW.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before July 19, 1989.

Dated: June 21, 1989
By: Paul Curl
Acting Secretary

STATEMENT OF PURPOSE

In the matter of adopting chapter 480-09 WAC relating to procedures before the commission.

The rules proposed by the Washington Utilities and Transportation Commission are to be promulgated pursuant to RCW 80.01.040 and 34.05.220 which direct that the commission has authority to adopt procedures necessary to [the] implementation of the provisions of Titles 80 and 81 RCW.

The rules proposed by the Washington Utilities and Transportation Commission are designed to establish rules governing practice and procedure before the agency.

Paul Curl, Acting Secretary, Chandler Plaza Building, 1300 South Evergreen Park Drive S.W., Olympia, WA, phone (206) 753-6451, and members of his staff were responsible for the drafting of the proposed rules and will be responsible for implementation and enforcement of the proposed rules.

The proponent of the rules is the Washington Utilities and Transportation Commission.

There are no comments or recommendations being submitted inasmuch as the proposal is pursuant to legislative authorization reflected in RCW 80.01.040 and 34.05.220.

The rule change is not necessary as the result of federal law, or federal or state court action.

The rule changes proposed will affect no economic values.

This certifies that copies of this statement are on file with the commission, are available for public inspection, and that three copies of this statement are this date being forwarded to the Joint Administrative Rules Review Committee.

APPENDIX "A"

Chapter 480-09 WAC
PROCEDURE

WAC

480-09-750	Rules of evidence.
480-09-760	Interlocutory orders.
480-09-770	Briefs.
480-09-780	Entry of initial and final orders—Administrative review.
480-09-800	Stay.
480-09-810	Reconsideration.
480-09-815	Amendment or rescission.
480-09-820	Rehearing or reopening.
480-09-830	Compliance with orders.

NEW SECTION

WAC 480-09-010 GENERAL APPLICATION—SPECIAL RULES—EXCEPTIONS—CANCELLATION OF FORMER RULES. (1) General rules. These rules of practice and procedure are for general application to proceedings before the commission.

(2) Special rules. When rules apply to certain classes of public service companies or to particular proceedings, those special rules shall govern in the event of conflict with the general rules.

(3) Modifications and exceptions. These rules are subject to such exceptions as may be just and reasonable in individual cases as determined by the commission.

NEW SECTION

WAC 480-09-100 COMMISSION ADDRESS—RECEIPT OF DOCUMENTS. (1) Address; receipt of documents. Except as provided in chapter 480-04 WAC, all written communications and documents should be addressed to: The Office of the Secretary, Washington Utilities and Transportation Commission, 1300 South Evergreen Park Drive S.W., Olympia, Washington 98504, and not to individual members of the commission staff. Except as provided in chapter 480-04 WAC, all communications and documents are deemed to be officially received only when delivered at the office of the secretary.

(2) Identification; one subject in a letter. Letters to the Washington utilities and transportation commission (referred to in these rules as the "commission") should include only one subject.

(a) Each item of pleading or correspondence which relates to a proceeding before the commission shall set forth at the top of the first page the docket number and name of the proceeding, if known to the writer, the title of the pleading, and the identity of the person who submits it.

(b) Communications to the commission from the holder of any permit, license, or certificate shall identify the exact name and the number under which the authority is held and the name and title of the writer.

(3) After business hours, communications with the commission may be made by calling toll-free 1-800-562-6150 and leaving a recorded message.

NEW SECTION

WAC 480-09-110 OFFICE HOURS. Commission offices are open between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday, except on state holidays.

NEW SECTION

WAC 480-09-120 FILING AND SERVICE. (1) Filing. Filing of any document shall be deemed complete only upon receipt by the secretary or, when authorized by the presiding officer of a proceeding before the commission, upon receipt by the presiding officer.

(a) Receipt in the commission's telefax machine, or similar device, does not constitute filing.

(b) Unless in a particular case the commission specifies a different number of copies, every pleading submitted to the commission shall be filed with three copies for transportation matters and twenty copies for all other matters.

(c) Filing a document with the commission does not constitute service upon the office of the attorney general or any other party. Likewise, service on the office of the attorney general does not constitute a filing with the commission.

(2) Service.

(a) Except as otherwise provided, when any party has appeared by attorney or other authorized representative in a proceeding, service upon such attorney or representative will be deemed valid service upon the party of all future pleadings in the proceeding before the commission.

(b) Service by parties. Service by parties shall be made by delivering one copy to each party in person; by mailing, properly addressed with postage prepaid; by commercial parcel delivery company properly tendered with fees prepaid, or by telefacsimile transmission, where originals are mailed simultaneously. Service by mail shall be complete when a true copy of the document is properly addressed and stamped and deposited in the United States mail. Service by commercial parcel delivery company shall be complete when accepted for delivery by the company.

(c) Service by commission. All notices, complaints, petitions, findings of fact, opinions, and orders required to be served by the commission may be served in person, by mail, by commercial parcel delivery company, properly tendered with fees prepaid, or by telefacsimile transmission, when originals are mailed simultaneously. Service thereof shall be complete when a true copy of the document, properly addressed and stamped, is deposited in the United States mail with first class postage affixed, or accepted for delivery by the parcel delivery company.

(d) Certificate of service. There shall appear on the original of every pleading when filed with the commission in accordance with this subsection (2) of this section, either an acknowledgment of service, or the following certificate:

"I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding, by (authorized method of service pursuant to WAC 480-09-120 (2)(a))

Dated at ..... this ..... day of .....

(signature)

Of counsel for .....

NEW SECTION

WAC 480-09-130 COMPUTATION OF TIME. The time for doing an act shall be computed by excluding the first day and including the last, unless the last day is a holiday, Saturday, or Sunday, and then it is excluded from the computation.

NEW SECTION

WAC 480-09-140 EX PARTE COMMUNICATIONS. (1) General. After the commencement of an adjudicative proceeding and prior to the entry of a final order therein, no party to the proceeding, or its counsel, shall discuss the merits of the proceeding with the commissioners, the presiding officer or the commissioners' staff assistants assigned to that proceeding, unless reasonable notice is given to all parties who have appeared therein, to enable them to be present at the conference. When a party initiates correspondence with a presiding or reviewing officer regarding the merits of any pending proceeding, a copy of the correspondence shall be served upon all parties of record and proof of such service furnished to the commission.

(2) The commission may prescribe appropriate sanctions, including default, for any violation of this section.

NEW SECTION

WAC 480-09-150 INFORMAL COMPLAINTS. (1) Informal complaints may be made by letter or other communication. Informal complaints may be taken up by the commission with the affected persons, by correspondence or otherwise, to bring about a resolution of the complaint without formal hearing or order. The commission encourages the informal settlement of disputes whenever possible. (See WAC 480-09-465.)

(2) Contents. An informal complaint should contain all facts essential to a disposition of the complaint, including the dates of acts or omissions complained against. Relevant statutes or rules should be cited if known to the writer.

(3) No mandatory or prohibitory order may result from an informal complaint. Matters instituted by informal complaint shall be without prejudice to the right of any party or the commission to file and prosecute a formal complaint.

NEW SECTION

WAC 480-09-200 INTERPRETIVE AND POLICY STATEMENTS. (1) General. Upon the petition of any interested person subject to its jurisdiction, or upon its own motion, the commission may, when it appears to be in the public interest, make and issue interpretive and policy statements when necessary to terminate a controversy

or to remove a substantial uncertainty as to the application of statutes or rules of the commission.

(2) The commission shall maintain a roster of interested persons, consisting of persons who have requested in writing to be notified of all interpretive and policy statements issued by the commission. The roster shall be updated once each year. Whenever the commission issues an interpretive or policy statement, it shall send a copy of the statement to each person listed on the roster.

NEW SECTION

WAC 480-09-210 RULE MAKING—NOTICE OF PROPOSED RULE—RULES COORDINATOR. (1) In any proposed rule making, the commission may solicit comments from the public on the subject of possible rule making under active consideration within the agency by causing notice to be published in the state register of the subject matter and indicating where, when, and how persons may comment.

(2) At least twenty days before the rule-making hearing at which the agency receives public comment regarding adoption of a rule, the agency shall cause notice of the hearing to be published in the State Register. The publication shall contain information as provided in RCW 34.05.320 and shall constitute the proposal of a rule.

(3) Within a reasonable time after the publication of the notice of a proposed rule in the State Register, any person may request a copy of the notice by writing to the secretary of the commission.

(4) Petitions for adoption, amendment, or repeal of a rule shall be made pursuant to WAC 480-09-220.

(5) Upon filing notice of a proposed rule with the code reviser, the commission shall have copies of the statement on file and available for public inspection.

(6) Inquiries regarding rules being proposed or being prepared within the commission for proposal may be made to Office of the Secretary, Rules Coordinator, Washington Utilities and Transportation Commission, 1300 South Evergreen Park Drive S.W., Olympia, Washington 98504.

(7) Persons may receive notice of proposed rule makings for all commission rules, or for those affecting specific industries, by sending a request in writing to the rules coordinator.

NEW SECTION

WAC 480-09-220 PETITIONS FOR RULE MAKING, AMENDMENT, OR REPEAL. (1) Any interested person may petition the commission requesting the promulgation, amendment, or repeal of any rule.

(2) When the petition requests the promulgation of a rule, the requested or proposed rule must be set out in full. The petition must also include all the reasons for the requested rule. When the petition requests the amendment or repeal of a rule presently in effect, the rule or portion of the rule in question must be set out as well as a suggested amended form, if any. The petition must include all reasons for the requested amendment or repeal of the rule. Any petition for promulgation, amendment, or repeal of a rule shall be accompanied by briefs of any applicable law, and shall contain an assessment of economic values affected by the proposed promulgation, amendment, or repeal.

(3) All petitions shall be considered by the commission which may, in its discretion, order a hearing for the further consideration and discussion of the requested promulgation, amendment, repeal, or modification of any rule.

(4) Within sixty days after submission of a petition, the commission shall:

(a) Deny the petition in writing, stating its reasons for the denial, and serve a copy of the denial upon the petitioner; or

(b) Initiate rule-making proceedings in accordance with chapter 34.05 RCW.

(5) In rule-making proceedings initiated by interested persons on petition, as well as by the commission on its own motion, the commission will include in its order determining the proceedings its assessment of economic values affected by the rule making involved. In addition, the notice of intention to effect any rule making will contain a solicitation of data, views, and arguments from interested persons on the economic values which may be affected by such rule making.

(6) The commission shall submit a small business economic impact statement when required by chapter 19.85 RCW, the Regulatory Fairness Act.

NEW SECTION

WAC 480-09-300 FILING REQUIREMENTS—STATEMENT OF POLICY. Statement of policy. The commission establishes the requirements of WAC 480-09-300 through 480-09-330 for filings relating to general rate increases by electric, natural gas, and telecommunications companies subject to its jurisdiction. Requirements as to the form and content of filings will standardize presentations, clarify issues, and speed and simplify the processing of rate filings.

NEW SECTION

WAC 480-09-310 FILING REQUIREMENTS—DEFINITION. (1) For the purposes of WAC 480-09-300 through 480-09-330 only, a general rate increase filing is the request by any company regulated by the commission under Title 80 RCW for an increase in rates which meets one or more of the following criteria:

(a) The amount requested would increase gross annual revenue of the company from activities regulated by the commission by three percent or more.

(b) Tariffs are restructured such that the gross revenue provided by any class would increase by three percent or more.

(c) The company requests a change in its authorized rate of return on common equity or capital structure.

(2) The following proceedings shall not be considered general rate increases even though the revenue requested may exceed three percent of the company's gross annual revenue from Washington regulated operations: Energy cost adjustment proceedings; natural gas tracking increases; emergency or other short-notice increases caused by disaster or weather-related conditions unexpectedly increasing a public service expense; rate increases designed to recover governmentally-imposed increases in costs of doing business such as changes in tax laws or ordinances; or other increases designed to recover increased expenses arising on short notice and beyond the public service company's control.

NEW SECTION

WAC 480-09-320 FILING REQUIREMENTS—INTERVENOR LIST. (1) The commission will maintain an intervenor list for each of the utilities under its jurisdiction. The list will contain the name and address of each person who intervened in the utility's latest general rate proceeding.

(2) Public counsel designated by the attorney general shall be placed on the intervenor list maintained by the commission for each utility company.

NEW SECTION

WAC 480-09-330 FILING REQUIREMENTS—GENERAL RATE INCREASES. General rate increase filings for utility companies shall include, at a minimum, the following information:

(1) All testimony and exhibits which the company intends to present as its direct case if the filing is suspended and a hearing held. The filing shall also include supporting work papers.

(2) To the extent it is not included in the testimony or exhibits, the following information shall be included in the work papers:

(a) A detailed portrayal of the development of the company's requested rate of return.

(b) A detailed portrayal of restating actual and pro forma adjustments which the company proposes.

(i) Restating actual adjustments are defined as those adjustments which adjust the booked operating results for any defects or infirmities which may exist in actual recorded results which can distort test period earnings. Restating actual adjustments are also used to adjust from an as-recorded basis to a basis which is acceptable for rate making. Examples of restating actual adjustments are adjustments to remove prior period amounts, to eliminate below-the-line items which were recorded as operating expenses in error, to adjust from book estimates to actual amounts, and to eliminate or to normalize extraordinary items which have been recorded during the test period.

(ii) Pro forma adjustments are defined as those adjustments which give effect for the test period to all known and measured changes which are not offset by other factors. The filing shall identify dollar values and underlying reasons for each of the proposed adjustments.

(c) A detailed portrayal of revenue sources during the test year and a parallel portrayal, by source, of the changes in revenue produced by the filing, including an explanation of the derivation of the changes.

(d) If the public service company has not achieved its authorized rate of return, an explanation as a policy statement of why it has not and what the company is doing to improve its earnings in addition to its request for increased rates.

(e) A representation of the actual rate base and results of operation of the company during the test period, calculated in the manner used by the commission to calculate the company's revenue requirement in the commission's most recent order granting the company a general rate increase.

(3) The filing shall also include a summary document which briefly states the following information, as applicable:

(a) The date and amount of the latest prior general rate increase authorized by the commission.

(b) Total revenues at present rates and at requested rates.

(c) Requested revenue increase in percentage, in total and by major customer class.

(d) Requested revenue increase in dollars, in total and by major customer class.

(e) Requested rate increase in dollars, per average customer by customer class, or other representation, if necessary to depict representative effect. Filings shall also state the effect of the proposed rate increase in dollars per month on typical residential customers by usage categories.

(f) Most current customer count, by major customer class.

(g) Current authorized overall rate of return and authorized rate of return on common equity.

(h) Requested overall rate of return and requested rate of return on common equity, and the method or methods used to calculate rate of return on common equity.

(i) Requested capital structure.

(j) Requested net operating income.

(k) Requested rate base and method of calculation, or equivalent, which it contains.

(l) Requested revenue effect of attrition allowance, if any is requested.

(4) All testimony and exhibits filed with the commission shall also be mailed to all persons on the commission's intervenor list.

(5) The most recent annual report to shareholders, if any.

(6) Any cost studies relied upon by the company in support of its filing. In addition, the company shall identify all cost studies conducted in the last five years for any of the company's services, together with a description of the methodology used in such studies.

NEW SECTION

WAC 480-09-340 OBJECTIONS TO CLOSURES OF HIGHWAY-RAILROAD GRADE CROSSINGS. (1) Filing. Objections to closures of highway-railroad grade crossings under RCW 81.53.060 shall be filed in writing within twenty days of publication of notice of the proposed closure, setting forth the full names and mailing addresses of persons objecting to the closure, the particular crossing which is the subject of the objection, the commission cause number, if known, and a statement of the objection. Communications which do not meet these requirements, other than the requirement of stating the commission cause number, will not be treated as objections for the purpose of requiring a hearing upon the proposed closure to be held as provided by RCW 81.53.060.

(2) Party status – appearances – service of final order. No person who fails to enter an appearance as prescribed by WAC 480-09-720, will be entitled to party status to a proceeding under RCW 81.53.060 after the close of the period for the taking of appearances if a hearing is held, even though such person may have filed an objection to a proposed crossing closure under the provisions of subsection (1) of this section, and no such person will be entitled to service of the final order of the commission in the matter unless party status is reestablished through intervention under the provisions of WAC 480-09-430, although such person may be sent a courtesy copy of the proposed or final order.

(3) Interested persons who lack party status, as defined herein, shall be provided an opportunity to be heard and offer evidence as required by RCW 81.53.060. They may not call witnesses, cross-examine witnesses or otherwise participate as a party. Interested persons who lack party status lack standing to file petitions for administrative review of initial orders or to file petitions for reconsideration of final orders.

NEW SECTION

WAC 480-09-400 APPLICATIONS FOR ADJUDICATIVE PROCEEDINGS. (1) Persons involved in an actual case or controversy within the jurisdiction of the commission to resolve may apply to the commission for an adjudicative proceeding to secure an order resolving matters at issue. Each application should specify every issue to be adjudicated in the proceeding.

(2) Petitions, formal complaints, protests, and requests for review of the denial of unprotested authority, when properly and timely filed, constitute applications for adjudicative proceedings.

(3) The commission may, in its discretion, treat unprotested applications for authority as applications for adjudicative proceedings.

(4) Within thirty days after receipt of an application for an adjudicative proceeding, the commission shall notify the applicant of any obvious errors or omissions, request any additional information it requires and is permitted by law to require regarding the application for adjudicative proceeding, and notify the applicant of the name, mailing address, and telephone number that may be contacted regarding the application.

(5) Within ninety days after receipt of the application or receipt of the response to a timely request made under subsection (2) of this section, the commission shall:

(a) Approve or deny the petition or protest on the basis of brief or emergency adjudicative proceedings;

(b) Commence an adjudicative proceeding by serving the parties with a notice of hearing pursuant to RCW 34.05.434 and WAC 480-09-700; or

(c) Decide not to conduct an adjudicative proceeding and furnish the applicant with a copy of its decision in writing, with a brief statement of its reasons for doing so and of any administrative review available.

NEW SECTION

WAC 480-09-410 PARTIES. (1) General. "Person" when used in this chapter means any individual, corporation, partnership, association, or any body politic, agency, or municipal corporation. A "party" is any person which has complied with all requirements for establishing and maintaining party status in any proceeding before the commission.

(2) Classification of parties. Parties to proceedings before the commission shall be styled applicants, complainants, petitioners, respondents, intervenors, or protestants, according to the nature of the proceeding and the relationship of the parties thereto. When an appearance has been entered for the commission and/or for the public counsel division of the attorney general's office, they shall respectively be considered parties to the proceeding for all purposes.

(3) Applicants.

(a) Persons applying for any right or authority which the commission has jurisdiction to grant shall be styled "applicants."

(b) Applicants for adjudicative proceedings under chapter 34.05 RCW shall be styled according to their roles as defined in this section.

(4) Complainants. Persons who complain to the commission of any act or omission by any other person shall be styled "complainants." In any proceeding which the commission brings on its own motion, it shall be styled "complainant."

(5) Petitioners. Persons petitioning for relief shall be styled "petitioners."

(6) Respondents. Persons against whom any complaint is filed shall be styled "respondents."

(7) Intervenors. Persons permitted to intervene pursuant to this chapter shall be styled "intervenors."

(8) Protestants. Persons opposing applications who have complied with the requirements for the filing of protests shall be styled "protestants."

NEW SECTION

WAC 480-09-420 PLEADINGS—APPLICATIONS FOR AUTHORITY—PROTESTS. Pleadings. Pleadings before the commission include formal complaints, petitions, answers, replies, and motions.

(1) Legibility; service. All pleadings shall be legible and, unless otherwise required for a specific pleading, a copy shall be served upon each party to the proceeding.

(2) Errors in pleadings. When it finds a pleading to be defective or insufficient, the commission may return the pleading to the party filing it for correction. Typographical errors or errors in captions or spelling of names of parties may be corrected by the commission.

(3) Form. Every pleading before the commission shall generally conform with the following form.

At the top of the page shall appear the phrase, "Before the Washington Utilities and Transportation Commission." On the left side of the page, next below, the caption of the proceeding shall be set out or, if no caption exists, the following: "In the Matter of the (Petition, Motion, Answer, etc.) of (name of the pleading party) for (identify relief sought)." Opposite the foregoing caption shall appear the word (Petition, Motion, Reply, etc., of [role of party: e.g., petitioner, respondent, protestant, etc., and name the party if more than one party has the same role in the proceeding]).

The body of the pleading shall be set out in numbered paragraphs. The first paragraph shall state the name and address of the pleading party. The second paragraph shall state all rules or statutes that may be brought into issue by the pleading. Succeeding paragraphs shall set out the statement of facts relied upon in form similar to that applicable to complaints in civil actions before the superior courts of this state. The concluding paragraphs shall contain the prayer of the pleading party.

(4) Number of copies; size. Unless, in a particular case, the commission specifies a different number of copies, the original and three legible copies in transportation matters, twenty copies in all other matters, shall be filed with the commission. Copies shall be on three-hole punched white paper, 8-1/2" x 11" in size.

(5) Complaints.

(a) Defined. Formal complaints are those complaints filed in accordance with RCW 80.04.110 and 81.04.110, complaints filed pursuant to RCW 80.54.030, or complaints in proceedings designated by the commission as formal proceedings. Commission final orders on complaints filed pursuant to RCW 80.54.030 shall be entered within three hundred sixty days after the filing of such complaints.

(b) Contents. Formal complaints must be in writing setting forth clearly and concisely the ground of complaint. Facts constituting the basis of the complaint, including relevant dates, should be stated, together with citations of the statutes or rules of the commission involved. The name and address of the person complained against must be stated in full. The name and address of the complainant and the name and address of complainant's attorney, if any, must appear upon the complaint.

In a proceeding under RCW 80.04.110 or 81.04.110, the provisions of the respective statute shall also apply.

(6) Protests. A person whose interests would be adversely affected by the granting of an application or by a rate change may file a protest. Protests to applications must conform to the requirements of any special rules relative to the type of the application being protested. A protestant must serve a copy of the protest upon the applicant or person requesting a rate change. Protestants are not entitled, as a matter of right, to a hearing upon the matter being protested, but a protest may contain a request for a hearing. The commission may, whether or not a protest contains such a request, set the matter in question for hearing.

(7) Petitions.

(a) Defined. All pleadings seeking relief (other than complaints or answers) shall be styled "petitions."

(b) Petitions – contents. A petition shall set forth all facts upon which the request for relief is based, with the dates of all relevant occurrences and a citation of the statutes, rules, and regulations of the commission upon which the petition is based.

(8) Motions. The practice respecting motions shall conform insofar as possible with the practice in the superior court of Washington.

Motions shall be filed separately from any other filing.

(9) Responsive pleadings.

(a) Answer. Except as otherwise provided in WAC 480-09-425, any party who desires to respond to a compliant, motion, or petition shall file with the commission and serve upon all other parties an answer. If an answer is not filed, the complaint or petition shall be deemed to be denied by the respondent. Answers shall fully and completely disclose the nature of the defense and shall admit or deny specifically and in detail all material allegations of the complaint or petition. Matters alleged by way of affirmative defense shall be separately stated and numbered.

(b) Reply. The response to an answer is styled a reply. Unless otherwise specified, replies may not be filed without authorization by the commission upon a showing of cause.

(10) Declaratory orders. As prescribed by RCW 34.05.240, any interested person may petition the commission for a declaratory order. The commission shall consider the petition and within fifteen days after its receipt give notice of the petition to all persons to whom notice is required by law and to any other person it deems desirable. Within thirty days of receipt of a petition for declaratory order, the commission shall:

(a) Issue a nonbinding declaratory order; or

(b) Notify the petitioner that no declaratory order is to be issued and state the reasons for the action; or

(c) Set a reasonable time and place for a hearing to be held no more than ninety days after receipt of the petition, or such later date as may be established upon a finding of good cause, or call for the submission of a statement of fact upon the matter, and, if a hearing is granted, give not less than seven days' notification to the petitioner, all persons to whom notice is required by law and any other person it deems desirable of the time and place for such hearing and of the issues involved.

(d) If a hearing is held or statements of fact are submitted, as provided in (c) of this subsection, the commission shall within a reasonable time:

(i) Enter a binding declaratory order; or

(ii) Enter a nonbinding declaratory order; or

(iii) Notify the petitioner that no declaratory order is to be issued and state the reasons for the action.

The commission shall serve its order upon all persons to whom notice is required by (c) of this subsection.

NEW SECTION

WAC 480-09-425 PLEADINGS—VERIFICATION, RESPONSIVE PLEADINGS, AMENDMENTS. (1) Verification. All pleadings, except motions and complaints brought upon the commission's own motion, shall be dated and signed by at least one attorney of record in his or her individual name, stating his or her address.

A party who is not represented by an attorney shall sign and date his or her pleading and state his or her address. Pleadings shall contain a statement that the pleading is true and correct to the best of the signer's belief.

(2) Time for motion. Any motion directed toward a pleading must be submitted in writing and filed no later than the time the responsive pleading is due. If no responsive pleading is provided for, the motion must be filed within ten days after service of the pleading. Motions shall be filed separately from any other filing.

(3) Time for answer. An answer, if made, must be filed within twenty days, after the service of the pleading against which it is directed: PROVIDED, This section shall not apply to proceedings brought on the commission's own motion for violation of the laws, rules, or regulations governing public service companies. Whenever the commission believes that the public interest so requires, it may alter the time allowed for any answer.

(4) Liberal construction. All pleadings shall be liberally construed with a view to effect justice among the parties. The commission will, at every stage of any proceeding, disregard errors or defects in the pleadings or proceeding which do not affect the substantial rights of the parties.

(5) Amendments. The commission may allow amendments to the pleadings or other relevant documents at any time upon such terms as may be lawful and just.

NEW SECTION

WAC 480-09-430 INTERVENTION. (1) General intervention. Any person, other than the original parties to any proceeding before the commission, who desires to appear and participate, and who does not desire to broaden the issues of the proceeding, may:

(a) Petition in writing for leave to intervene prior to, or at the time, it is called for hearing; or

(b) Petition orally for leave to intervene at the time of the hearing. No such petition shall be filed or made after the proceeding is underway, except for good cause shown. The petition to intervene must disclose the name and address of the person intervening; the name and address of his or her attorney, if any; his or her interest in the proceeding; and his or her position in regard to the matter in controversy. A form petition for intervention is available on request from the secretary of the commission. Use of the form is encouraged to ensure receipt of adequate information.

(2) Special intervention. Any person other than the parties of record to any proceeding before the commission, who desires to appear and participate in the proceeding and who desires to broaden the issues in

the proceeding, may petition for leave to intervene in the proceeding. The petition must be in writing and filed with the commission, and copies served upon the parties of record to the proceeding, at least ten days prior to the date of the prehearing conference or, if there is no conference, at least ten days prior to the date of the hearing. The commission may, for good cause shown, shorten the ten-day filing period. When there is no prejudice to other parties, the commission may grant an oral petition without the ten-day requirement. The petition must disclose the name and address of the party intervening; the name and address of his or her attorney, if any; his or her interest in the proceeding; and his or her position in regard to the matter in controversy. An affidavit setting forth clearly and concisely the facts supporting the relief sought shall be attached to the petition.

(3) Disposition of petitions to intervene. Petitions to intervene may be considered at hearings and prehearing conferences, or may be set for prior hearing. An opportunity shall be afforded the parties to be heard upon the petition. Intervention may be granted in the absence of appearance by petitioner. A late-filed petition to intervene may be ruled upon without a hearing if all parties have been granted an opportunity to respond. If the petition discloses a substantial interest in the subject matter of the hearing, or if the participation of the petitioner is in the public interest, the commission may grant the petition orally, at the hearing or prehearing conference or in writing. Limitations may be imposed upon interventions in accordance with RCW 34.05.443(2). The petitioner then becomes a party to the proceeding and becomes known as an "intervenor." Whenever it appears, during the course of a proceeding, that an intervenor has no substantial interest in the proceeding, and that the public interest will not be served by the intervention therein, the commission may dismiss the intervenor from the proceeding: PROVIDED, HOWEVER, That a party whose intervention has been allowed shall not be dismissed from a proceeding except upon notice and a reasonable opportunity to be heard. A decision by an administrative law judge regarding a petition to intervene is subject to commission review pursuant to WAC 480-09-760.

(4) Limitation of intervention under certain circumstances. Notwithstanding the provisions of subsections (1) and (2) of this section, if the commission determines that the orderly and prompt conduct of any proceeding so requires, the making or filing of petitions for leave to intervene may be limited to the time of a prehearing conference, for general intervention, or ten days prior to such prehearing conference, for special intervention, where the commission has given not less than twenty days' written notice of the prehearing conference to all parties and caused the same to be published in a newspaper or newspapers of general circulation in the area affected by the proceeding.

NEW SECTION

WAC 480-09-440 CONTINUANCES—EXTENSIONS OF TIME. (1) General. Postponements, continuances and extensions of time, called "continuances" in this section, may be requested by any party, upon notice to all other parties, and may be granted upon a showing of good and sufficient cause. Continuances may be directed by the commission or the presiding officer without the request of any party when doing so is in the public interest or furthers administrative needs of the commission. The date which is sought to be continued is called the "deadline" in this section.

(2) Procedure. Requests for continuances may be made orally on the record during a hearing. Whenever possible, requests shall be made by letter. Requests may be decided orally in hearing, or by letter, by the presiding officer or the commission. Requests may be granted; granted, with modification; or denied.

(3) Timing. Oral requests must be made at least five days prior to the deadline sought to be continued. Written requests must be filed with the commission, and served upon other parties so as to be received, no less than five days prior to the deadline which is sought to be continued. Responses must be filed no less than four days after service of the request, or two days prior to the deadline which is sought to be continued; whichever is earlier. Response shall be made orally when a related hearing is held prior to the stated response deadline. Requests which are made prior to the deadline, but which are not made within the time specified in this subsection, must specify the nature of the circumstances which prevented making a timely request.

(4) Content. A request for continuance must contain the following information:

(a) The name of the requesting party and its role in the proceeding (e.g., applicant, respondent, intervenor, etc.);

(b) Whether the requestor or any other party has previously requested a continuance in the proceeding and whether any continuance has been granted;

(c) Whether the requestor has discussed the request with other parties and whether, upon discussion, all other parties agree;

(d) The proposed new deadline;

(e) The reason for the request and for requesting the proposed new deadline;

(f) What efforts have been made to avoid a continuance and to minimize the length of the delay sought;

(g) If the continuance is to allow time to acquire a transcript, the date the transcript was ordered, when delivery is expected, and the length of the transcript or the length of the hearing;

(h) If the request relates to an application for transportation operating authority, whether the applicant is presently providing all or part of the requested service, and whether an application for temporary authority has been filed and the status of the application; and

(i) Any other factor which may bear upon whether allowing the continuance is consistent with the public interest.

(5) Agreed requests. A request for continuance as to which all parties agree is an "agreed request." Agreed requests for continuances other than hearings may be made orally until the deadline, provided a confirming letter is served and sent for filing on the same day. A first agreed request, timely made, will be granted unless it is inconsistent with the public interest or commission administrative needs.

NEW SECTION

WAC 480-09-450 INTERPRETERS. It is commission policy that limited-English-speaking and hearing-impaired persons have equal access to the administrative process and that they have the opportunity for full and equal participation in adjudicative proceedings. In keeping with this policy, the commission incorporates by reference in its rules WAC 10-08-150 of the office of administrative hearings model rules of procedure governing interpreters.

NEW SECTION

WAC 480-09-460 PREHEARING CONFERENCES. (1) General. When issues are joined in any formal proceeding the commission may, by written notice, request all interested persons to attend a prehearing or other conference for the purpose of determining the feasibility of settlement, or of formulating the issues in the proceeding and determining other matters to aid in its disposition. A commissioner, an administrative law judge, or an employee of the commission designated by the commission, shall preside at such conference, to consider:

(a) Simplification of the issues;

(b) The necessity or desirability of amendments to the pleadings;

(c) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;

(d) Limitations on the number and consolidation of the examination of witnesses;

(e) The procedure at the hearing;

(f) The distribution of written testimony and exhibits to the parties prior to the hearing;

(g) Such other matters as may aid in the disposition of the proceeding, or settlement thereof.

The disposition of petitions for leave to intervene in the proceeding filed pursuant to WAC 480-09-430 may be ruled upon at a prehearing conference.

(2) A statement describing the action taken at the conference and the agreements made by the parties concerning all of the matters considered shall be made orally on the record or in writing, and served upon the parties, for approval. If no objection to the oral statement is made on the record, or no objection to the written statement is filed within ten days after the date the statement is served, it shall be deemed to be approved, subject to commission review. The result of the prehearing conference will control the subsequent course of the proceeding unless rejected by the commission or modified to prevent manifest injustice.

(3) Recessing hearing for conference. In any proceeding the presiding officer may, in his or her discretion, call the parties together for a conference prior to the taking of testimony, or may recess the hearing for such a conference, with a view to carrying out the purpose of this section. The presiding officer shall state on the record the results of such conference.

NEW SECTION

WAC 480-09-465 SETTLEMENT. General. Before or after a formal hearing, parties to a proceeding may enter into discussions leading to a voluntary settlement of the subject matter of the complaint prior or subsequent to a formal hearing; and in furtherance of a voluntary settlement, the commission may, in its discretion, invite the parties to confer among themselves or with a designated person. Such conferences shall be informal and without prejudice to the rights of the parties, and no statement, admission, or offer of settlement made at such informal conference shall be admissible in evidence in any formal hearing before the commission. Any resulting settlement or stipulation shall be stated on the record or submitted in writing and is subject to approval by the commission.

NEW SECTION

WAC 480-09-470 STIPULATION AS TO FACTS. General. Stipulations of fact are encouraged. The parties to any proceeding or investigation before the commission may, by stipulation in writing filed with the commission or entered into the record, agree upon the facts or any portion thereof involved in the controversy. This stipulation, if accepted by the commission, shall be binding upon the parties thereto and may be used by the commission as evidence at the hearing. The commission may reject the stipulation or require proof of the stipulated facts, despite the stipulation.

NEW SECTION

WAC 480-09-475 SUBPOENAS. General. Subpoenas may be issued by a commissioner, an administrative law judge, or the attorney of any party to the proceeding. Witnesses are required to comply with subpoenas in the manner prescribed in Title 80 or 81 RCW and chapter 34.05 RCW. Witnesses shall be paid in the same manner as provided in RCW 34.05.446(7). Each subpoena shall bear the name of the party requesting or issuing the subpoena and the party responsible for paying the witness fees.

NEW SECTION

WAC 480-09-480 DATA REQUESTS. (Reserved.)

NEW SECTION

WAC 480-09-500 BRIEF ADJUDICATIVE PROCEEDINGS. (1) Pursuant to RCW 34.05.482, the commission will use brief adjudicative proceedings where not violative of law and where protection of the public interest does not require the commission to give notice and an opportunity to participate to persons other than the parties. Those circumstances may include:

(a) Review of denials or partial denials of applications that are not protested;

(b) Contested applications for temporary authority; and

(c) Proceedings which could lead to suspension, cancellation, or revision of authority for failure to maintain tariffs, pay fees, or file required documents.

(2) Application may be made for a brief adjudicative proceeding by filing a letter of request and certificate of service with the secretary of the commission or by the filing of a protest in the case of temporary applications. The commission shall designate either a review judge, the director of its transportation division, or the director of its utilities division as a presiding officer in specified brief adjudicative proceedings. Each applicant for a brief adjudicative proceeding shall submit a written explanation of its view of the matter along with its application. Other parties may file a written response within ten days after service of the application for a brief adjudicative proceeding. In the discretion of the presiding officer, oral comments offered by parties may be considered.

(a) If a party to a brief adjudicative proceeding desires an opportunity to make an oral statement, the request should be made in the application or in the response to the application.

(b) A request to make an oral statement may be granted if the presiding officer believes such a statement would benefit him or her in reaching a decision. The presiding officer shall notify the parties within a reasonable time of the decision to grant or deny the request to hear oral comments, and, if the request is granted, shall notify the parties of the time and place for hearing comments.

(3) If the party is present at the time any unfavorable action is taken, the presiding officer shall make a brief statement of the reasons for the decision. The action on the application shall be expressed in a written order which shall be served upon all parties within ten days after entry of the order or the decision.

(4) The brief written statement is an initial order. If no review is taken of the initial order, it shall be the final order.

(5) Service of the initial order shall be made pursuant to WAC 480-09-120.

(6) The commission shall conduct a review of an initial order resulting from a brief adjudicative proceeding upon the written or oral request of a party if the commission receives the request within twenty-one days after service of the initial order. If no request is timely filed, the commission may adopt, modify, or reject the initial order.

(7) A request for review of an initial order shall contain an explanation of the party's view of the matter, with a statement of reasons why the initial order is incorrect, and a certificate of service. Responses to a request for review of an initial order shall be filed with the commission and served upon the other parties within ten days after service of the request for review.

(8) The order on review must be in writing, must include a brief statement of the reasons for the decision, and must be entered within twenty days after the date of the initial order or of the request for review, whichever is later. The order shall include a description of any further available administrative review or, if none is available, a notice that judicial review may be available.

(9) A request for administrative review is deemed to have been denied if the agency does not make a disposition of the matter within twenty days after the request is filed.

(10) The record in a brief adjudicative proceeding shall consist of any documents regarding the matter that were considered or prepared by the presiding officer for the brief adjudicative proceeding or by the reviewing officer for any review.

NEW SECTION

WAC 480-09-510 EMERGENCY ADJUDICATIVE PROCEEDINGS. (1) Pursuant to RCW 34.05.482, the commission shall use emergency adjudicative proceedings for the suspension or cancellation of authority in situations involving an immediate danger to the public health, safety, or welfare requiring immediate action by the commission. Such situations shall include:

(a) Failure to possess insurance;

(b) Safety violations when the violation involves an immediate danger to the public health, safety, or welfare; and

(c) Inadequate service by a gas, water, or electric company when the inadequacy involves an immediate danger to the public health, safety, or welfare.

(2) The commission may designate a review judge, the director of the commission's utilities division, or the director of the commission's transportation division as presiding officer in specified emergency adjudicative proceedings.

(3) The commission's decision shall be based upon the written submissions of the parties and upon oral comments by the parties if the presiding officer has allowed oral comments. The order shall include a brief statement of findings of fact, conclusions of law, and justification for the determination of an immediate danger to the public health, safety, or welfare. The order shall be effective when entered. Service of the order shall be made pursuant to WAC 480-09-120.

NEW SECTION

WAC 480-09-600 CONVERSION PROCEEDINGS. (1) Upon application by any person or upon its own motion, the commission shall consider whether the conversion of a proceeding pursuant to RCW 34.05.070 should be made.

(2) Commencement of the new proceeding shall be determined to be the time of commencement of the original proceeding, provided that all statutory and regulatory requirements for the new proceeding shall be met.

NEW SECTION

WAC 480-09-610 CONSOLIDATION OF PROCEEDINGS. Two or more proceedings in which the facts or principles of law are related may be consolidated for hearing or disposition.

NEW SECTION

WAC 480-09-620 JOINT HEARINGS. General. In any proceeding in which the commission participates jointly with the Interstate Commerce Commission or other federal regulatory agency, the rules of practice and procedure of the federal agency shall govern. In any proceeding in which the commission participates jointly with the administrative body of another state or states, the rules of the state in which the hearing is held shall govern the proceeding, unless otherwise agreed upon by the participating agencies: PROVIDED, That any person entitled to appear in a representative capacity before any of the agencies involved in a joint hearing may appear in the joint hearing.

NEW SECTION

WAC 480-09-700 HEARINGS—NOTICE AND FAILURE TO APPEAR. (1) Notice.

(a) Initial hearing notice. The time and place of hearings will be set by the commission and notice thereof served upon all parties at least twenty days in advance of the initial hearing date, unless the commission finds that good cause exists for the hearing to be held upon shorter notice. An effort will be made to set all hearings sufficiently in advance so that all parties will have a reasonable time to prepare their cases, and so that need for continuances will be minimized.

(b) Continued hearing sessions. The time and place of continued hearing sessions may also be set:

(i) Upon the record without further written notice to the parties; or

(ii) By letter from the secretary of the commission; or

(iii) By letter from the presiding officer. In such instances, twenty days' prior notice is not required.

(2) The initial notice of hearing shall state that, if a limited English-speaking or hearing-impaired party needs an interpreter, a qualified interpreter will be appointed at no cost to the party or witness. The notice shall include a form for a party to indicate whether he or she needs an interpreter and to identify the primary language or hearing impaired status of the party.

(3) Failure to appear – default.

(a) At the time and place set for hearing, if an applicant, petitioner, complainant, or protestant fails to appear, the presiding officer may recess the hearing for a brief period to enable the party to attend the hearing, but if at the time set for the resumption of the hearing or proceeding the applicant, petitioner, complainant, or protestant is not present or represented, the commission may dismiss the petition, application, complaint, or protest. Other parties to a proceeding may be dismissed from the proceeding for failure to appear at the initial hearing session, subject to the provisions of WAC 480-09-720(2).

(b) The dismissal shall be implemented by a default order or by a default provision in the order disposing of the issues in the proceeding, pursuant to RCW 34.05.440.

(4) Sanctions for failure to appear. Except when a hearing is otherwise required by law, an applicant for operating authority or for transfer or acquisition of control, or a protestant to an application, shall appear at any scheduled hearing pursuant to this chapter unless:

(a) The application or protest is withdrawn at least five days prior to the date set; or

(b) Appearance is otherwise excused by the commission or presiding officer in writing.

Failure to comply with this subsection may result in assessment of civil penalties.

NEW SECTION

WAC 480-09-705 NOTICE TO LIMITED-ENGLISH-SPEAKING PARTIES. When the commission has knowledge that a limited-English-speaking person is a party in an adjudicative proceeding, all notices concerning the hearing, including notices of hearing, continuances, and dismissals, shall either be in the primary language of the party or shall include a notice in the primary language of the party that describes the significance of the notice and how the party may receive assistance in understanding and responding to the notice.

NEW SECTION

WAC 480-09-710 APPEARANCE AND PRACTICE BEFORE COMMISSION. (1) General. In all proceedings in which pleadings are filed and a hearing is held involving the taking of testimony on a record subject to review by the courts, the following persons may appear in a representative capacity:

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

(b) Attorneys at law duly qualified and entitled to practice before the highest court of any other state;

(c) Persons not attorneys at law who have been duly authorized to practice before the Interstate Commerce Commission;

(d) Upon permission of the presiding officer at such hearing, an officer or employee of a party or person seeking party status;

(e) Legal interns admitted to limited practice under Rule 9 of the Supreme Court's Admission to Practice Rules. However, no legal intern may appear without the presence of a supervising lawyer unless the legal intern has attended at least ten commission hearing sessions with the presence of a supervising lawyer.

The presiding officer may expel a person who does not have the requisite degree of legal training, experience, or skill to appear in a representative capacity.

(2) Notices of appearance and withdrawal of attorneys. Attorneys or other authorized representatives appearing on behalf of a party or withdrawing from a proceeding shall immediately so notify the commission and all parties to the proceeding.

(3) Unethical conduct. All persons appearing in proceedings before the commission in a representative capacity shall conform to the standards of ethical conduct required of attorneys before the courts of Washington. If any representative fails to conform to these standards, the commission may decline to permit the person to appear in a representative capacity in any proceeding before the commission.

(4) Former employees. Former employees of the commission, office of administrative hearings, and office of the attorney general are subject to the provisions of chapter 42.18 RCW.

NEW SECTION

WAC 480-09-720 APPEARANCES—PARTY STATUS. (1) General. Parties shall enter their appearances at the beginning of the hearing or prehearing conference by giving their names and addresses in writing to the court reporter who will include the same in the record of the hearing or prehearing conference. The presiding officer conducting the hearing or prehearing conference may, in addition, require appearances to be stated orally, so that the identity and interest of all parties present will be known to those in attendance. Appearance may be made on behalf of any party by his or her attorney or other authorized representative, as defined in WAC 480-09-710(1).

(2) Party status may not be accorded as a matter of right after the initial session without a showing of good cause for failing to timely appear.

NEW SECTION

WAC 480-09-730 CONDUCT AT HEARINGS. (1) No smoking. Smoking shall not be permitted at hearings of the commission.

(2) Testimony under oath. Before a witness takes the stand in an adjudicative proceeding held under chapter 34.05 RCW, an oath or affirmation shall be administered as follows: The person who swears or affirms holds up his or her hand, while the person administering the oath or affirmation thus addresses him or her: "Do you solemnly swear or affirm that the evidence you shall give in the matter now pending before the commission shall be the truth, the whole truth and nothing but the truth, so help you God?"

NEW SECTION

WAC 480-09-735 ORDER OF PROCEDURE. (1) General. Evidence will ordinarily be received in the following order:

(a) Upon investigation on motion of the commission:

(i) Commission's staff;

(ii) Respondent; and

(iii) Rebuttal by commission's staff.

(b) In investigation and suspension proceedings:

(i) Respondent;

(ii) Commission's staff;

(iii) Protestants against suspended schedules; and

(iv) Rebuttal by respondent.

(c) Upon applications and petitions:

(i) Applicants or petitioners;

(ii) Commission's staff;

(iii) Protestants; and

(iv) Rebuttal by applicant or petitioner.

(d) Upon formal complaints:

(i) Complainant;
(ii) Respondent;
(iii) Commission's staff; and
(iv) Rebuttal by complainant.
(e) Upon order to show cause:
(i) Commission's staff;
(ii) Respondent; and
(iii) Rebuttal by commission's staff.
(f) In docket hearings: At the discretion of presiding officer or examiner.

(2) Modification of procedure. The order of presentation prescribed above for hearings shall be followed, except when the presiding officer directs otherwise. When hearing several proceedings upon a consolidated record, the presiding officer shall designate who shall open and close. Intervenors shall follow the party in whose behalf the intervention is made. If the intervention is not in support of any original party, the presiding officer shall designate at what stage the intervenor shall be heard. When two causes are set for hearing at the same time and place, the cause having the lowest number shall be heard first, if all parties are ready: PROVIDED, That the presiding officer may direct a different order to suit the convenience of the parties.

NEW SECTION

WAC 480-09-736 HEARING GUIDELINES. These guidelines are of a general nature and are provided to assist the presiding officer in regulating the course of the proceeding. The presiding officer has discretion to suspend or modify the guidelines or to use measures not specified herein when appropriate in the circumstances of the case.

(1) Starting times will be strictly observed. The proceeding will go forward in the absence of counsel who are late.

(2) Motions will be stated and argued at the start of the day, unless they arise from matters emerging during the hearing that are not reasonably foreseeable. This rule does not apply to motions with respect to the admissibility of evidence which may require foundation. In such cases, the presiding officer should be notified that a motion will be presented during the hearing.

(3) All counsel are expected to address comments, objections, and statements to the presiding officer rather than to other counsel. Questions will be addressed to the witnesses rather than to counsel.

(4) There will be no off-the-record discussions at the request of counsel unless counsel asks leave to go off the record and states the purpose for the request.

(5) Extended colloquies regarding procedural issues may be conducted off the record. Each attorney will be given the opportunity to state for the record a summary of his or her view on behalf of his or her client when the record resumes.

(6) When predistribution of evidence is required, one copy should be addressed specifically to the presiding administrative law judge. One copy should be addressed to the commission's accounting adviser, in care of the secretary of the commission. Each party is responsible for having two revised, corrected copies of its exhibits ready for marking and inclusion in the official case file at the hearing itself. One set of copies should also be brought to the hearing for the court reporter. To advise the parties of corrections, an errata sheet may be used to indicate the corrections to copies that have been predistributed. Corrections and revisions should be made to all copies distributed at hearing before the copies are distributed. The presiding officer will advise the parties regarding the number of extra copies to be filed with the commission.

(7) Prefiled testimony may be accompanied by exhibits. Parties should not preassign numbers to their own prefiled testimony and exhibits. Instead the following system should be used, including the witness's initials, and marked serially. For John Q. Witness's prefiled testimony and accompanying exhibits:

Ex ..... (JQW-Testimony)	Ex ..... (JQW-2)
Ex ..... (JQW-1)	Ex ..... (JQW-3)

Counsel unfamiliar with this method of identification should contact the presiding officer for further guidance. The official numbers for the case will be assigned by the administrative law judge at the hearing session.

(8) Each witness should present a short summary of his or her remarks on the opening page or two of prepared testimony. Counsel will be expected to ask as a foundation question the subjects that will be covered by the witness. This foundation question should request only a statement of the subjects to be covered by the witness, e.g., rate of return, and not a summary of the witness's positions on those subjects. Twenty copies of the summary shall be filed with the secretary of the commission unless the presiding officer advises that a different number is required.

(9) All prepared testimony, exhibits, and pleadings shall be 8-1/2 by 11 inches in size or folded to that size and punched for insertion into three-ring binders. Line numbers shall be set out on all prepared testimony to facilitate transcript or exhibit references. Large charts may be used at the hearing so long as a letter-size reduction is provided or so long as the chart is foldable to 8-1/2" by 11" for inclusion in the official record.

(10) Any revised pages for predistributed or previously admitted testimony or exhibits shall be prominently labeled "REVISED" and bear the date of the revision. The revised portions should be indicated for cross-reference to the original submissions. This practice should be followed even as to minor changes that involve only one page of an exhibit.

(11) Cross-examination will be limited to two rounds except upon a showing that good cause exists. Witnesses should not be asked to perform calculations or extract detailed data on the stand. Such questions should be provided to the witness in advance or asked "subject to check." When a witness answers "subject to check," the witness must perform the "check" as soon as possible. A response given "subject to check" will be deemed accurate unless disputed by the witness within ten days of distribution of the transcript or prior to the closing of the record, whichever occurs first.

(12) At the beginning of a hearing session for the purpose of taking testimony from members of the public, public counsel may inform the public of the major contested issues.

(13) All case-related correspondence should be addressed to the secretary of the commission, under existing commission rules. The parties are cautioned that correspondence addressed directly to an individual may not be logged in, may not be inserted in the case file, and may not constitute a part of the official record for appeal or for other purposes. In addition, one copy should be addressed to the presiding administrative law judge at the Office of Administrative Hearings, 1212 Jefferson Street, Suite 200, Mailstop PG-21, Olympia, Washington 98504.

(14) Petitions or motions intended for argument or resolution at previously-scheduled hearing sessions should be received by the commission and all parties at least three business days prior to argument. Oral response will be allowed on the record. (This guideline does not require personal service. Petitions or motions, if mailed, should be served so as to effect actual receipt three business days before argument.)

(15) When the commission is requested to take some action prior to the next hearing session, the petitioner or movant shall effect service upon all other parties. Responses are due in the office of the secretary of the commission no later than the close of the fifth business day following service, except as provided in WAC 480-09-425(3).

(16) The presiding officer will determine whether oral argument, briefs, or both will be required, taking into consideration the desires of the parties. If briefs are required, they shall comply with WAC 480-09-770(1).

(17) Each party will bear its own costs for transcripts including charges for expedited service when requested.

(18) For planning purposes, counsel should be prepared to provide time estimates for cross-examination of witnesses.

(19) Documents provided by or on behalf of members of the public at a public hearing will ordinarily be placed with the hearing file or may be offered as an illustrative exhibit. Letters received by the secretary of the commission and by public counsel from members of the public may be offered into evidence as illustrative of the opinions of the correspondents. Documents which are exceptional in their detail or their probative nature may be offered into evidence separately, provided that a sponsoring witness is available for cross-examination. Only exhibits and testimony offered and received are part of the record and subject to consideration by the commission in its decision.

NEW SECTION

WAC 480-09-740 EVIDENCE. The presiding officer may receive evidence as provided by RCW 34.05.452. WAC 480-09-745 and 480-09-750 provide guidelines for receipt of evidence in proceedings before the commission.

NEW SECTION

WAC 480-09-745 EXHIBITS AND DOCUMENTARY EVIDENCE. (1) Designation of part of document as evidence. When a relevant and material matter offered in evidence by any party is contained in a book, paper, or document which also contains other matter not material or relevant, the party offering the evidence must also designate the portion which is offered. If irrelevant matter would unnecessarily encumber the record, such book, paper, or document will not be received in evidence, but may be marked for identification, and, if properly authenticated, the relevant or material matter may be read into the record, or, if the presiding officer so directs, a true copy may be received as an exhibit. If only a portion is offered or received, other parties shall be afforded an opportunity to examine the book, paper or document, and to offer other portions in evidence in like manner.

(2) Official records. An official rule, report, order, record or other document, prepared and issued by any governmental authority, when admissible for any purpose, may be evidenced by a certified copy. When such official records, otherwise admissible, are contained in official publications or publications by nationally recognized reporting services which are in general circulation and readily accessible to all parties, they may be introduced by reference: PROVIDED, HOWEVER, That proper and definite reference to the record in question is made by the party offering the same. The party offering the evidence may be required to provide a copy to the record and to all parties.

(3) Commission's filed.

(a) Papers and documents on file with the commission, if otherwise admissible, and whether or not the commission has authority to take official notice of them under WAC 480-09-750(2), may be introduced by reference to number, date, or by any other method of identification satisfactory to the presiding officer. If only a portion of such a paper or document is offered in evidence, the part offered shall be clearly designated. The party offering the evidence may be required to provide a copy to the record and to all parties.

(b) Intra-office commission memoranda and reports, to the extent permitted by RCW 42.17.310, are not public records subject to inspection, nor shall such documents be introduced into evidence.

(4) Records in other proceedings. In case any portion of the record in any other proceeding is admissible for any purpose and is offered in evidence, a true copy of such portion shall be presented for the record in the form of an exhibit unless:

(a) The party offering the same agrees to supply such copies later at his or her own expense, if and when required by the commission; and

(b) The portion is specified with particularity in such manner as to be readily identified; and

(c) The parties represented at the hearing stipulate upon the record that such portion may be incorporated by reference, and that any portion offered by any other party may be incorporated by like reference; and

(d) The presiding officer directs such incorporation.

(5) Objections. Any evidence offered, whether in the form of exhibit, introduced by reference or offered in the form of testimony, shall be subject to appropriate and timely objection.

(6) Copies of exhibits to opposing counsel. When documentary exhibits are offered in evidence, copies must be furnished to opposing counsel, the presiding officers and the reporter, unless the presiding officer otherwise directs. Whenever practicable, the parties should exchange copies of exhibits before, or at the commencement of, the hearing.

NEW SECTION

WAC 480-09-750 RULES OF EVIDENCE. (1) General. Subject to the other provisions of this section, all relevant evidence is admissible which, in the opinion of the presiding officer, is the best evidence reasonably obtainable, having due regard to its necessity, availability, and trustworthiness. In ruling upon the admissibility of evidence, the presiding officer shall give consideration to, but shall not be bound to follow, the rules of evidence governing general civil proceedings, in matters not involving trial by jury, in the courts of the state of Washington.

The presiding officer may, in his or her discretion, either with or without objection, exclude inadmissible evidence or order cumulative evidence discontinued. Parties objecting to the introduction of evidence shall state the grounds of such objection at the time such evidence is offered. The party offering rejected evidence may be permitted to describe briefly for the record its nature and purpose.

(2) Official notice.

(a) Official notice may be taken of:

(i) Any judicially cognizable fact. Examples of judicially cognizable facts are:

(A) Rules, regulations, administrative rulings and orders, exclusive of findings of fact, of the commission and other governmental agencies;

(B) Contents of certificates, permits, and licenses issued by the commission; and

(C) Tariffs, classifications, and schedules regularly established by or filed with the commission as required or authorized by law.

(ii) Technical or scientific facts within the commission's specialized knowledge; and

(iii) Codes or standards that have been adopted by an agency of the United States, or this state or of another state, or by a nationally recognized organization or association.

(b) In addition, the commission may, in its discretion, upon the request of all parties to a proceeding, take official notice of the results of its own inspection of the physical conditions at issue.

(c) Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material so noticed and the sources thereof, including any staff memoranda and data, and they shall be afforded an opportunity to contest the facts and material so noticed. A party proposing that official notice be taken may be required to provide copies of officially noted matter to the record and to all other parties.

(3) Resolutions. Properly authenticated resolutions of the governing bodies of cities, towns, counties, and other municipal corporations and of chambers of commerce, boards of trade, commercial, mercantile, agricultural, or manufacturing societies and other civic organizations may be received in evidence. Recitals of facts contained in resolutions shall not be deemed proof of those facts.

NEW SECTION

WAC 480-09-760 INTERLOCUTORY ORDERS. The commission has discretion to accept or decline review of interim or interlocutory orders entered by an administrative law judge. Except where otherwise provided, the commission may review such orders when it finds that:

(1) A party's participation is terminated by the ruling and the party's inability to participate thereafter could cause it substantial and irreparable harm; or

(2) A review is necessary to prevent substantial prejudice to a party that would not be remediable by post-hearing reviewing; or

(3) A review could save the commission and the parties substantial effort or expense, or some other factor is present that outweighs the costs in time and delay of exercising review.

NEW SECTION

WAC 480-09-770 BRIEFS. General. The commission may require the parties to present their arguments and authority orally at the close of the hearing, by written brief, or both. Briefs should set out the leading facts and conclusions which the evidence tends to prove, and point out the particular evidence relied upon to support the conclusions urged. Briefs may be printed, or typewritten (size 8-1/2 inches by 11 inches on three-hole punched paper). All copies shall be clearly legible. Unless a different number is specified by the commission, three copies of each brief for transportation matters and twenty copies for all other matters shall be filed with the secretary of the commission and one copy shall be served on each party before the due date set for filing. Proof of service shall be furnished to the commission as provided in WAC 480-09-120(2).

NEW SECTION

WAC 480-09-780 ENTRY OF INITIAL AND FINAL ORDERS—ADMINISTRATIVE REVIEW. (1) General. Whenever the presiding officer enters an order in accordance with the provisions of RCW 34.05.461, each party of record, the party's attorney, or other authorized representative shall be served with a copy of the order pursuant to the provisions of WAC 480-09-120(2).

(2) Petitions for administrative review - time for filing. Unless a different number is directed by the commission, three copies of petitions for administrative review of an initial order in transportation matters and twenty copies in all other matters must be filed with the secretary of the commission and one copy served upon each other party and the party's attorney within twenty days after the entry of the initial order. The commission may designate a different time for filing

petitions for administrative review of initial orders. Proof of service must be made in accordance with WAC 480-09-120(2).

(3) Petitions for administrative review - who may file. Any party to an adjudicative proceeding may file a petition for administrative review of an initial order.

(4) Petitions for administrative review - contents. Petitions must clearly identify the nature of the challenge to the initial order, the evidence relied upon to support the challenge, and the nature of the remedy urged by the petition. Petitions for review of initial orders shall be specific and separate contentions must be separately stated and numbered. Petitions for review of findings of fact must be supported by a reference to the pertinent page or part of the record or by a statement of the evidence relied upon to support the petition, and should be accompanied by a recommended finding of fact. Petitions for review of conclusions of law should be supported by reference to the appropriate statute, rule, or case involved and should be accompanied by a recommended conclusion of law. When a petition challenges the summary portion of an initial order, the petition shall include a statement showing the legal or factual justification for the challenge, together with a statement of how the alleged defect in the summary affects the findings of fact, the conclusions of law, or the ultimate decision.

(5) Answers.

(a) Answers to a petition for administrative review may be filed by any party.

(b) Unless a different number is required, three copies of answers to petitions for review in transportation matters and twenty copies in all other matters must be filed with the secretary of the commission, and a copy served upon each other party to the proceeding within ten days after the service of the petition. The commission may designate a different time for filing answers to petitions.

(c) A party who did not file a petition for administrative review of an initial order may challenge the order or portions thereof in its answer to the petition of another party.

(6) Oral argument. The commission may in its discretion hear oral argument upon a petition for review at a time and place to be designated by it upon notice to all parties to the proceeding. A party who desires to present oral argument may move for argument, stating why the oral argument will assist the commission in making its decision and why written presentations will be insufficient.

(7) Final order. After reviewing the initial order and any petitions for review, answers, replies, briefs, and oral arguments, and the record or such portions thereof as may be cited by the parties, the commission may by final order adopt, modify, or reject an initial order. The statutory time for judicial review proceedings shall not commence until the date of the commission's final order or, if a petition for reconsideration has been filed, the date the petition is deemed denied or is otherwise disposed of.

NEW SECTION

WAC 480-09-800 STAY. A party may file with the commission a petition for stay of effectiveness of a final order within ten days after its service unless otherwise provided by statute or stated in the final order.

NEW SECTION

WAC 480-09-810 RECONSIDERATION. (1) General. Any party to an adjudicative proceeding may file a petition for reconsideration of a final order of the commission within ten days after the date the order is served.

(2) Number of copies - filing - service. Unless a different number has been ordered by the commission, an original and three copies of the petition in transportation matters and twenty copies in all other matters shall be filed with the commission and a copy of the petition shall be served by petitioner upon each party of record.

(3) Contents. The petition shall state with particularity each portion or portions of the challenged order contended to be erroneous or incomplete, and shall cite those portions of the record and the laws or rules of the commission relied upon to support the petition, together with brief argument.

(4) Answers. No party shall file an answer unless requested by the commission: PROVIDED, That if the commission determines that reconsideration may be appropriate, involving more than the correction of obvious error and involving a possible change in a significant term of the order, it shall request answers from the other affected parties.

(5) Except upon specific direction of the commission, no oral argument shall be permitted on petitions for reconsideration.

(6) Disposition. The petition is deemed denied if, within twenty days from the date the petition is filed, the commission does not either:

(a) Dispose of the petition; or

(b) Serve the parties with a written notice specifying the date by which it will act on the petition.

If the petition is granted, the commission may modify its prior order or take such other action as it may deem appropriate. No petition for reconsideration of an order on reconsideration will be accepted by the commission. No petition for reconsideration may stay the effectiveness of an order.

NEW SECTION

WAC 480-09-815 AMENDMENT OR RESCISSION. Pursuant to RCW 80.04.210 and 81.04.210, the commission may amend or rescind any order or rule which it has made, entered, issued or promulgated, upon notice to the public service company or companies affected, and after allowing an opportunity for hearing as in the case of complaints.

NEW SECTION

WAC 480-09-820 REHEARING OR REOPENING. (1) Rehearing. A petition for rehearing may be filed with the commission by any person affected by any order of the commission, pursuant to RCW 80.04.200 and 81.04.200. The commission will grant the petition:

(a) If there are changed circumstances injurious to the petitioner since the entry of the final order which were not considered by the commission; or

(b) To correct defects in the order; or

(c) For any good and sufficient cause which, for any reason, was not considered and determined in the original order.

The commission may, in its discretion, permit the filing of a petition for rehearing at any time.

(2) Reopening. A petition for reopening may be filed with the commission by any party to a proceeding at any time after the close of the record and before entry of the final order.

(a) In uncontested proceedings, a petition may be granted to correct failure to allow receipt of written evidence when otherwise permissible.

(b) In contested proceedings, a petition may be granted to permit receipt of evidence which is essential to a decision and which was unavailable and not reasonably discoverable at the time of the hearing with due diligence, or for any other good and sufficient cause.

NEW SECTION

WAC 480-09-830 COMPLIANCE WITH ORDERS. Any party who is required by commission order to do or refrain from doing any act shall notify the commission, on or before the date upon which compliance is required, whether or not the party has complied. If the order requires a change in rates, the notification shall be accomplished by filing the proper tariffs. The tariffs being filed shall specify the commission's corresponding order number.

WSR 89-13-091
EMERGENCY RULES
DEPARTMENT OF LICENSING
[Order PM 851—Filed June 21, 1989]

I, Mary G. Faulk, director of the Department of Licensing, do promulgate and adopt the annexed rules relating to podiatry fees, amending WAC 308-31-055.

I, Mary G. Faulk, find that an emergency exists and that this order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting the emergency is a fee study indicates that the current fee for license renewals is in excess of the amount indicated in the fee study and continuing to charge said fee

would constitute unnecessary prejudice and expense to licensees.

These rules are therefore adopted as emergency rules to take effect upon filing with the code reviser.

This rule is promulgated pursuant to RCW 43.24.086 which directs that the director of the Department of Licensing has authority to implement the provisions of RCW 18.22.060.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED June 21, 1989.

By Mary G. Faulk
Director

AMENDATORY SECTION (Amending Order PM 667, filed 8/27/87)

WAC 308-31-055 PODIATRY FEES. The following fees shall be charged by the professional licensing division of the department of licensing:

Title of Fee	*Fee*
Application (examination and reexamination)	*$500.00*
Reciprocity application	*400.00*
License renewal	*((~~650.00~~))* *500.00*
Late renewal penalty	*10.00*
Duplicate license	*15.00*
Certification	*25.00*

KEY TO TABLE

Symbols:

AMD = Amendment of existing section
NEW = New section not previously codified
OBJEC = Notice of objection by Joint Administrative Rules Review Committee
RE-AD = Readoption of existing section
REP = Repeal of existing section
REAFF = Order assuming and reaffirming rules
REMOV = Removal of rule pursuant to RCW 34.04.050(5)
RESCIND = Rescind previous emergency rule
REVIEW = Review of previously adopted rule
STMT = Statement regarding previously adopted rule

Suffixes:

-P = Proposed action
-C = Continuance of previous proposal
-E = Emergency action
-W = Withdrawal of proposed action
No suffix means permanent action

This table covers the current calendar year through this issue of the Register and should be used to locate rules amended, adopted, or repealed subsequent to the publication date of the latest WAC or Supplement.

WAC # shows the section number under which an agency rule is or will be codified in the Washington Administrative Code.

WSR # shows the issue of the Washington State Register where the document may be found; the last three digits show the sequence of the document within the issue.

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132D-10-228	REP-P	89-07-069
132D-10-228	REP	89-11-022
132D-10-231	REP-P	89-07-069
132D-10-231	REP	89-11-022
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132D-10-273	REP	89-11-022
132D-10-276	REP-P	89-07-069
132D-10-276	REP	89-11-022
132D-10-279	REP-P	89-07-069
132D-10-279	REP	89-11-022
132D-10-281	REP-P	89-07-069
132D-10-281	REP	89-11-022
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132D-12-010	REP-P	89-05-047
132D-12-010	REP	89-09-038
132D-12-015	REP-P	89-05-012
132D-12-015	REP-W	89-05-046
132D-12-015	REP-P	89-05-047
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132D-20-020	REP-P	89-05-012
132D-20-020	REP-W	89-05-046
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132D-20-020	REP	89-11-025
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132D-20-030	REP	89-11-025
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132D-20-040	REP	89-11-025
132D-20-050	REP-P	89-05-012
132D-20-050	REP-W	89-05-046
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132D-20-070	REP-P	89-07-070
132D-20-070	REP	89-11-025
132D-20-080	REP-P	89-05-012
132D-20-080	REP-W	89-05-046
132D-20-080	REP-P	89-07-070
132D-20-080	REP	89-11-025
132D-20-090	REP-P	89-05-012
132D-20-090	REP-W	89-05-046
132D-20-090	REP-P	89-07-070
132D-20-090	REP	89-11-025
132D-20-100	REP-P	89-05-012
132D-20-100	REP-W	89-05-046
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132D-20-100	REP	89-11-025
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132D-20-120	REP-P	89-05-012
132D-20-120	REP-W	89-05-046
132D-20-120	REP-P	89-07-070
132D-20-120	REP	89-11-025
132D-20-130	REP-P	89-05-012
132D-20-130	REP-W	89-05-046
132D-20-130	REP-P	89-07-070
132D-20-130	REP	89-11-025
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132D-20-150	REP	89-11-025
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132D-20-160	REP-P	89-07-070
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132D-20-170	REP-P	89-05-012
132D-20-170	REP-W	89-05-046
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132D-20-170	REP	89-11-025
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132D-20-180	REP	89-11-025
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132D-20-210	REP-P	89-07-070
132D-20-210	REP	89-11-025
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132D-20-220	REP	89-11-025
132D-20-230	REP-P	89-05-012
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132D-20-230	REP-P	89-07-070
132D-20-230	REP	89-11-025
132D-20-240	REP-P	89-05-012
132D-20-240	REP-W	89-05-046
132D-20-240	REP-P	89-07-070
132D-20-240	REP	89-11-025
132D-20-250	REP-P	89-05-012
132D-20-250	REP-W	89-05-046
132D-20-250	REP-P	89-07-070
132D-20-250	REP	89-11-025
132D-20-260	REP-P	89-05-012
132D-20-260	REP-W	89-05-046
132D-20-260	REP-P	89-07-070
132D-20-260	REP	89-11-025
132D-20-270	REP-P	89-05-012
132D-20-270	REP-W	89-05-046
132D-20-270	REP-P	89-07-070
132D-20-270	REP	89-11-025
132D-20-280	REP-P	89-05-012
132D-20-280	REP-W	89-05-046
132D-20-280	REP-P	89-07-070
132D-20-280	REP	89-11-025
132D-20-290	REP-P	89-05-012
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132D-20-290	REP-P	89-07-070
132D-20-290	REP	89-11-025
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132D-104-030	NEW	89-11-023
132D-104-040	NEW-P	89-07-061
132D-104-040	NEW	89-11-023
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132D-122-010	NEW	89-09-039
132D-122-020	NEW-P	89-05-006
132D-122-020	NEW	89-09-039
132D-122-030	NEW-P	89-05-006
132D-122-030	NEW	89-09-039
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132D-140-020	NEW	89-06-012
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132D-140-040	NEW	89-06-012
132D-140-050	NEW	89-06-012
132D-140-060	NEW	89-06-012
132D-140-070	NEW	89-06-012
132D-140-080	NEW	89-06-012
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132D-276-040	NEW-P	89-07-062
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132D-300-020	NEW	89-11-038
132D-300-030	NEW-P	89-07-058
132D-300-030	NEW	89-11-038
132D-325-010	NEW-P	89-05-048
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132D-350-010	NEW	89-11-026
132D-350-020	NEW-P	89-07-064
132D-350-020	NEW	89-11-026
132D-350-030	NEW-P	89-07-064
132D-350-030	NEW	89-11-026
132D-350-040	NEW-P	89-07-064
132D-350-040	NEW	89-11-026
132D-350-050	NEW-P	89-07-064
132D-350-050	NEW	89-11-026
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132I-120-315	AMD	89-08-016
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132I-120-400	AMD	89-08-016
132I-120-405	AMD-P	89-04-039
132I-120-405	AMD	89-08-016
132I-120-410	AMD-P	89-04-039
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132I-136-030	REP-P	89-08-015
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132I-136-050	REP-P	89-08-015
132I-136-050	REP	89-11-091
132I-136-060	REP-P	89-08-015
132I-136-060	REP	89-11-091
132I-136-070	REP-P	89-08-015
132I-136-070	REP	89-11-091
132I-136-080	REP-P	89-08-015
132I-136-080	REP	89-11-091
132I-136-100	NEW-P	89-08-015
132I-136-100	NEW	89-11-091
132I-136-110	NEW-P	89-08-015
132I-136-110	NEW	89-11-091
132I-136-120	NEW-P	89-08-015
132I-136-120	NEW	89-11-091
132I-136-130	NEW-P	89-08-015
132I-136-130	NEW	89-11-091
132I-136-140	NEW-P	89-08-015
132I-136-140	NEW	89-11-091
132I-136-150	NEW-P	89-08-015
132I-136-150	NEW	89-11-091
132I-136-160	NEW-P	89-08-015
132I-136-160	NEW	89-11-091
132I-136-170	NEW-P	89-08-015
132I-136-170	NEW	89-11-091
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132N-276-070	AMD	89-12-024
132N-276-080	AMD-P	89-04-035
132N-276-080	AMD	89-12-024
132N-276-110	AMD-P	89-04-035
132N-276-110	AMD	89-12-024
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132V-15-030	NEW-P	89-13-072
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132V-15-050	NEW-P	89-13-072
132V-15-060	NEW-P	89-13-072
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132V-15-080	NEW-P	89-13-072
132V-15-090	NEW-P	89-13-072
132V-15-100	NEW-P	89-13-072
132V-15-110	NEW-P	89-13-072
132V-15-120	NEW-P	89-13-072
132Y-300-001	NEW	89-04-008
132Y-300-002	NEW	89-04-008
132Y-300-003	NEW	89-04-008
132Y-300-004	NEW	89-04-008
132Y-310-010	NEW-P	89-08-023
132Y-310-010	NEW	89-12-056
132Y-310-020	NEW-P	89-08-023
132Y-310-020	NEW	89-12-056
132Y-310-030	NEW-P	89-08-023
132Y-310-030	NEW	89-12-056
132Y-310-040	NEW-P	89-08-023
132Y-310-040	NEW	89-12-056
132Y-320-010	NEW-P	89-08-022
132Y-320-010	NEW	89-12-057
132Y-320-020	NEW-P	89-08-022
132Y-320-020	NEW	89-12-057
132Y-320-030	NEW-P	89-08-022
132Y-320-030	NEW	89-12-057
132Y-320-040	NEW-P	89-08-022
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132Y-320-990	NEW	89-12-057
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248-31-125	NEW-P	89-07-023
248-31-125	NEW	89-12-077
248-31-130	REP-P	89-07-023
248-31-130	REP	89-12-077
248-31-135	NEW-P	89-07-023
248-31-135	NEW	89-12-077
248-31-140	REP-P	89-07-023
248-31-140	REP	89-12-077
248-31-150	REP-P	89-07-023
248-31-150	REP	89-12-077
248-31-155	NEW-P	89-07-023
248-31-155	NEW	89-12-077
248-31-160	REP-P	89-07-023
248-31-160	REP	89-12-077
248-31-165	NEW-P	89-07-023
248-31-165	NEW	89-12-077
248-31-175	NEW-P	89-07-023
248-31-175	NEW	89-12-077
248-31-185	NEW-P	89-07-023
248-31-185	NEW	89-12-077
248-36-005	NEW-P	89-07-023
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248-100-011	AMD	89-07-095
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248-100-207	AMD-E	89-10-022
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248-105-020	AMD-P	89-13-079
248-105-030	AMD-P	89-13-079
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251-19-040	REP-P	89-06-045
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251-19-100	AMD	89-13-075
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251-19-120	AMD-P	89-06-045
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296-17-895	AMD-E	89-11-074
296-17-895	AMD-P	89-11-088
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296-21-035	AMD	89-08-001
296-21-037	NEW-P	89-03-064
296-21-037	NEW	89-08-001
296-21-040	AMD-P	89-03-064
296-21-040	AMD	89-08-001
296-21-045	AMD-P	89-03-064
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308-25-160	NEW-P	89-10-077
308-25-170	NEW-P	89-13-048
308-26-055	NEW-P	89-10-077
308-26-065	NEW-P	89-10-077
308-26-075	NEW-P	89-10-077
308-26-085	NEW-P	89-10-077
308-26-095	NEW-P	89-10-077
308-26-105	NEW-P	89-10-077
308-26-115	NEW-P	89-10-077
308-26-125	NEW-P	89-10-077
308-26-135	NEW-P	89-10-077
308-31-055	AMD-E	89-13-091
308-34-010	REP	89-02-051
308-34-020	REP	89-02-051
308-34-030	REP	89-02-051
308-34-040	REP	89-02-051
308-34-050	REP	89-02-051
308-34-060	REP	89-02-051
308-34-070	REP	89-02-051
308-34-080	REP	89-02-051
308-34-090	REP	89-02-051
308-34-310	NEW	89-02-051
308-34-320	NEW	89-02-051
308-34-330	NEW	89-02-051
308-34-410	NEW	89-02-051
308-34-420	NEW	89-02-051
308-34-430	NEW	89-02-051
308-34-440	NEW	89-02-051
308-34-450	NEW	89-02-051
308-34-460	NEW	89-02-051
308-34-470	NEW	89-02-051
308-34-480	NEW	89-02-051
308-37-190	AMD-P	89-02-064
308-37-190	AMD-C	89-05-020
308-37-190	REP-P	89-07-092
308-37-190	AMD	89-08-095
308-40-102	AMD	89-06-075
308-40-105	AMD-P	89-10-072
308-40-105	AMD-E	89-10-074
308-40-105	AMD	89-13-052
308-40-106	NEW-P	89-10-072
308-40-106	NEW-E	89-10-074
308-40-106	NEW	89-13-052
308-40-140	NEW-P	89-06-068
308-40-140	NEW	89-11-053
308-42-010	AMD-P	89-06-069
308-42-010	AMD-C	89-10-073
308-42-121	NEW-P	89-09-066
308-42-145	AMD-P	89-09-066
308-48-350	NEW	89-04-002
308-50-010	AMD-P	89-05-055
308-50-010	AMD	89-08-096
308-50-020	AMD	89-04-017
308-50-035	AMD	89-04-017
308-50-035	AMD-P	89-09-026
308-50-130	AMD	89-04-017
308-50-350	AMD	89-04-017
308-50-420	AMD	89-04-017
308-51-230	NEW-P	89-10-077
308-51-240	NEW-P	89-10-077
308-51-250	NEW-P	89-10-077
308-51-260	NEW-P	89-10-077
308-51-270	NEW-P	89-10-077
308-51-280	NEW-P	89-10-077
308-51-290	NEW-P	89-10-077

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308-52-139	AMD	89-06-077
308-52-190	NEW-P	89-05-056
308-52-190	NEW	89-08-063
308-52-255	AMD-P	89-09-067
308-52-255	AMD	89-12-053
308-52-260	AMD	89-06-077
308-52-265	NEW-P	89-09-067
308-52-265	NEW	89-12-053
308-52-405	AMD-P	89-09-067
308-52-405	AMD	89-12-053
308-52-415	AMD-P	89-09-067
308-52-415	AMD	89-12-053
308-52-620	NEW	89-06-076
308-52-630	NEW-P	89-09-067
308-52-630	NEW	89-13-002
308-52-640	NEW-P	89-09-067
308-52-640	NEW	89-13-002
308-52-650	NEW-P	89-09-067
308-52-650	NEW	89-13-002
308-52-660	NEW-P	89-09-067
308-52-660	NEW	89-13-002
308-52-670	NEW-P	89-09-067
308-52-670	NEW	89-13-002
308-53-120	AMD-P	89-06-070
308-53-120	AMD	89-10-030
308-53-123	NEW-P	89-06-070
308-53-123	NEW	89-10-030
308-53-125	AMD-P	89-06-070
308-53-125	AMD	89-10-030
308-53-130	REP-P	89-06-070
308-53-130	REP	89-10-030
308-53-135	AMD-P	89-06-070
308-53-135	AMD	89-10-030
308-53-145	AMD-P	89-06-070
308-53-145	AMD	89-10-030
308-53-146	AMD-P	89-06-070
308-53-146	AMD	89-10-030
308-53-150	AMD-P	89-06-070
308-53-150	AMD	89-10-030
308-53-151	AMD-P	89-06-070
308-53-151	AMD	89-10-030
308-53-165	AMD-P	89-06-070
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308-53-170	AMD	89-10-030
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308-53-175	NEW	89-10-030
308-53-180	AMD-P	89-06-070
308-53-180	AMD	89-10-030
308-53-330	NEW-P	89-13-062
308-53-340	NEW-P	89-13-062
308-53-400	NEW-C	89-06-066
308-53-400	NEW	89-09-027
308-55-035	NEW-P	89-10-077
308-55-045	NEW-P	89-10-077
308-55-055	NEW-P	89-10-077
308-55-065	NEW-P	89-10-077
308-55-075	NEW-P	89-10-077
308-55-085	NEW-P	89-10-077
308-55-095	NEW-P	89-10-077
308-55-105	NEW-P	89-10-077
308-55-115	NEW-P	89-10-077
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308-56A-610	NEW-P	89-11-019
308-56A-620	NEW-E	89-10-045
308-56A-620	NEW-P	89-11-019
308-56A-630	NEW-E	89-10-045
308-56A-630	NEW-P	89-11-019
308-56A-640	NEW-E	89-10-045
308-56A-640	NEW-P	89-11-019
308-56A-650	NEW-E	89-10-045
308-56A-650	NEW-P	89-11-019
308-56A-660	NEW-E	89-10-045
308-56A-660	NEW-P	89-11-019
308-56A-670	NEW-E	89-10-045
308-56A-670	NEW-P	89-11-019
308-56A-680	NEW-E	89-10-045
308-56A-680	NEW-P	89-11-019
308-56A-690	NEW-E	89-10-045
308-56A-690	NEW-P	89-11-019
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308-77-034	AMD	89-03-005
308-77-040	AMD	89-03-005
308-77-042	NEW	89-03-034
308-77-044	NEW	89-03-034
308-77-060	AMD	89-03-005
308-89-040	AMD-P	89-08-091
308-89-040	AMD-E	89-08-094
308-91	AMD-P	89-02-063
308-91	AMD	89-07-035
308-91-030	AMD-P	89-02-062
308-91-030	AMD	89-07-036
308-91-040	AMD-P	89-02-063
308-91-040	AMD	89-07-035
308-91-050	AMD-P	89-02-063
308-91-050	AMD	89-07-035
308-91-140	AMD-P	89-02-063
308-91-140	AMD	89-07-035
308-96A-260	AMD-P	89-08-091
308-96A-260	AMD-E	89-08-094
308-115-260	NEW-P	89-10-077
308-115-270	NEW-P	89-10-077
308-115-280	NEW-P	89-10-077
308-115-290	NEW-P	89-10-077
308-115-310	NEW-P	89-10-077
308-115-320	NEW-P	89-10-077
308-115-330	NEW-P	89-10-077
308-115-340	NEW-P	89-10-077
308-115-350	NEW-P	89-10-077
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308-117-460	NEW	89-07-005
308-117-470	NEW-P	89-02-065
308-117-470	NEW	89-07-005
308-117-480	NEW-P	89-02-065
308-117-480	NEW	89-07-005
308-120-168	AMD-P	89-08-093
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308-120-170	AMD-P	89-06-072
308-120-170	AMD	89-12-033
308-120-305	AMD-P	89-06-072
308-120-305	AMD	89-12-033
308-120-810	NEW-P	89-06-072
308-120-810	NEW	89-12-033
308-122-211	NEW-P	89-08-092
308-122-211	NEW	89-11-054
308-124A-025	AMD-P	89-05-057
308-124A-025	AMD-E	89-07-004
308-124A-025	AMD	89-08-009
308-124A-460	AMD-P	89-05-057
308-124A-460	AMD-E	89-07-004
308-124A-460	AMD	89-08-009
308-124D-060	REP-P	89-07-091
308-124D-060	REP	89-11-032
308-124D-065	REP-P	89-07-091
308-124D-065	REP	89-11-032
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308-124H-030	AMD	89-11-032
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308-128E-011	NEW	89-07-077
308-130-320	NEW-P	89-10-077
308-130-330	NEW-P	89-10-077
308-130-340	NEW-P	89-10-077
308-130-350	NEW-P	89-10-077
308-130-360	NEW-P	89-10-077
308-130-370	NEW-P	89-10-077
308-130-380	NEW-P	89-10-077
308-130-390	NEW-P	89-10-077
308-130-400	NEW-P	89-10-077
308-138A-020	AMD-P	89-13-051
308-138A-070	NEW-P	89-13-051
308-138A-080	NEW-P	89-13-051
308-138A-090	NEW-P	89-13-051
308-150-014	AMD-P	89-06-073
308-150-014	AMD	89-10-076
308-154-085	NEW-P	89-06-073
308-154-085	NEW	89-10-076
308-156-200	NEW-P	89-06-073
308-156-200	NEW	89-10-076
308-173-010	NEW-P	89-10-077
308-173-020	NEW-P	89-10-077
308-173-070	NEW-P	89-10-077
308-173-080	NEW-P	89-10-077
308-173-090	NEW-P	89-10-077
308-177-010	NEW-P	89-10-077
308-177-020	NEW-P	89-10-077
308-177-030	NEW-P	89-10-077
308-177-040	NEW-P	89-10-077
308-177-050	NEW-P	89-10-077
308-177-060	NEW-P	89-10-077
308-177-070	NEW-P	89-10-077
308-177-080	NEW-P	89-10-077
308-177-090	NEW-P	89-10-077
308-177-110	NEW	89-03-035
308-177-120	NEW	89-03-035
308-177-130	NEW	89-03-035
308-177-140	NEW	89-03-035
308-177-150	NEW	89-03-035
308-180-290	NEW-P	89-10-077
308-180-300	NEW-P	89-10-077
308-180-310	NEW-P	89-10-077
308-180-320	NEW-P	89-10-077
308-180-330	NEW-P	89-10-077
308-180-340	NEW-P	89-10-077
308-180-350	NEW-P	89-10-077
308-180-360	NEW-P	89-10-077
308-180-370	NEW-P	89-10-077
308-183-010	NEW-P	89-10-077
308-183-020	NEW-P	89-10-077
308-183-030	NEW-P	89-10-077
308-183-040	NEW-P	89-10-077
308-183-050	NEW-P	89-10-077
308-183-060	NEW-P	89-10-077
308-183-070	NEW-P	89-10-077
308-183-080	NEW-P	89-10-077
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308-190-040	AMD-P	89-07-081
308-190-041	NEW-P	89-07-081
308-190-042	NEW-P	89-07-081
308-190-060	NEW-P	89-10-077
308-190-070	NEW-P	89-10-077
308-190-080	NEW-P	89-10-077
308-190-090	NEW-P	89-10-077
308-190-100	NEW-P	89-10-077
308-190-110	NEW-P	89-10-077
308-190-120	NEW-P	89-10-077
308-190-130	NEW-P	89-10-077
308-190-140	NEW-P	89-10-077
308-195-030	AMD-P	89-05-058
308-195-030	AMD	89-09-006
308-195-120	NEW-P	89-10-077
308-195-130	NEW-P	89-10-077
308-195-140	NEW-P	89-10-077
308-195-150	NEW-P	89-10-077
308-195-160	NEW-P	89-10-077
308-195-170	NEW-P	89-10-077
308-195-180	NEW-P	89-10-077
308-195-190	NEW-P	89-10-077
308-195-210	NEW-P	89-05-058
308-195-210	NEW	89-09-006
308-195-220	NEW-P	89-05-058
308-195-220	NEW	89-09-006
308-195-230	NEW-P	89-05-058

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308-210-030	AMD-P	89-07-082
308-210-040	AMD-P	89-07-082
308-210-045	NEW-P	89-07-082
308-210-046	NEW-P	89-07-082
308-210-050	AMD-P	89-07-082
308-210-060	REP-P	89-07-082
308-210-080	NEW-P	89-10-077
308-210-090	NEW-P	89-10-077
308-210-100	NEW-P	89-10-077
308-210-110	NEW-P	89-10-077
308-210-120	NEW-P	89-10-077
308-210-130	NEW-P	89-10-077
308-210-140	NEW-P	89-10-077
308-210-150	NEW-P	89-10-077
308-210-160	NEW-P	89-10-077
308-220-010	AMD	89-04-003
308-220-030	AMD	89-04-003
308-220-090	NEW-P	89-10-077
308-220-100	NEW-P	89-10-077
308-220-110	NEW-P	89-10-077
308-220-120	NEW-P	89-10-077
308-220-130	NEW-P	89-10-077
308-220-140	NEW-P	89-10-077
308-220-150	NEW-P	89-10-077
308-220-160	NEW-P	89-10-077
308-220-170	NEW-P	89-10-077
308-230-060	NEW-P	89-10-077
308-230-070	NEW-P	89-10-077
308-230-080	NEW-P	89-10-077
308-230-090	NEW-P	89-10-077
308-230-100	NEW-P	89-10-077
308-230-110	NEW-P	89-10-077
308-230-120	NEW-P	89-10-077
308-230-130	NEW-P	89-10-077
308-230-140	NEW-P	89-10-077
308-310-020	NEW	89-05-019
308-310-030	NEW	89-05-019
308-310-040	NEW	89-05-019
308-400	AMD	89-06-078
308-400-010	AMD	89-06-078
308-400-020	AMD	89-06-078
308-400-025	AMD	89-06-078
308-400-030	AMD	89-06-078
308-400-040	AMD	89-06-078
308-400-044	REP	89-06-078
308-400-046	AMD	89-06-078
308-400-047	AMD	89-06-078
308-400-048	AMD	89-06-078
308-400-050	AMD	89-06-078
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308-400-058	AMD	89-06-078
308-400-059	AMD	89-06-078
308-400-095	AMD	89-06-078
308-400-100	AMD	89-06-078
308-400-120	NEW	89-06-078
314-12-037	NEW-W	89-07-015
314-12-038	NEW-W	89-07-015
314-12-175	NEW-C	89-11-033
314-12-175	NEW-C	89-13-050
314-16-075	AMD-P	89-04-025
314-16-075	AMD	89-08-014
314-16-120	AMD	89-03-045
314-20-030	AMD-P	89-03-040
314-20-030	AMD	89-06-013
315-06-020	AMD-P	89-09-079
315-06-020	AMD	89-12-042
315-06-035	AMD	89-05-015
315-06-115	NEW-P	89-13-061
315-06-120	AMD-P	89-09-079
315-06-120	AMD	89-12-042
315-10-060	AMD-C	89-05-014
315-10-060	AMD	89-09-008
315-11-400	NEW	89-05-015
315-11-401	NEW	89-05-015
315-11-402	NEW	89-05-015
315-11-410	NEW-P	89-06-084
315-11-410	NEW	89-09-009
315-11-411	NEW-P	89-06-084
315-11-411	NEW	89-09-009
315-11-412	NEW-P	89-06-084
315-11-412	NEW	89-09-009
315-11-420	NEW-P	89-06-084
315-11-420	NEW	89-09-009
315-11-421	NEW-P	89-06-084
315-11-421	NEW	89-09-009
315-11-422	NEW-P	89-06-084
315-11-422	NEW	89-09-009
315-11-430	NEW-P	89-06-084
315-11-430	NEW	89-09-009
315-11-431	NEW-P	89-06-084
315-11-431	NEW	89-09-009
315-11-432	NEW-P	89-06-084
315-11-432	NEW	89-09-009
315-11-440	NEW-P	89-09-079
315-11-440	NEW	89-12-042
315-11-441	NEW-P	89-09-079
315-11-441	NEW	89-12-042
315-11-442	NEW-P	89-09-079
315-11-442	NEW	89-12-042
315-11-450	NEW-P	89-09-079
315-11-450	NEW	89-12-042
315-11-451	NEW-P	89-09-079
315-11-451	NEW	89-12-042
315-11-452	NEW-P	89-09-079
315-11-452	NEW	89-12-042
315-11-460	NEW-P	89-13-061
315-11-461	NEW-P	89-13-061
315-11-462	NEW-P	89-13-061
315-12-030	AMD-P	89-09-079
315-12-030	AMD	89-12-042
315-30-040	AMD-P	89-09-079
315-30-040	AMD	89-12-042
315-30-050	AMD-P	89-09-079
315-30-050	AMD	89-12-042
315-30-070	AMD-P	89-09-079
315-30-070	AMD	89-12-042
315-30-075	NEW-P	89-06-084
315-30-075	NEW	89-09-009
315-30-080	AMD-P	89-06-084
315-30-080	AMD	89-09-009
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315-31-020	AMD	89-12-042
315-31-030	AMD-P	89-09-079
315-31-030	AMD	89-12-042
315-31-040	AMD-P	89-09-079
315-31-040	AMD	89-12-042
315-31-050	AMD-P	89-09-079
315-31-050	AMD	89-12-042
315-31-060	AMD-P	89-09-079
315-31-060	AMD	89-12-042
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332-26-095	NEW-E	89-05-023
332-26-095	REP-E	89-06-004
332-130	AMD-C	89-08-021
332-130	AMD	89-11-028
332-130-010	AMD-C	89-08-021
332-130-010	AMD	89-11-028
332-130-020	AMD-C	89-08-021
332-130-020	AMD	89-11-028
332-130-030	AMD-C	89-08-021
332-130-030	AMD	89-11-028
332-130-040	AMD-C	89-08-021
332-130-040	AMD	89-11-028
332-130-050	AMD-C	89-08-021
332-130-050	AMD	89-11-028
332-130-060	AMD-C	89-08-021
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332-130-070	AMD-C	89-08-021
332-130-070	AMD	89-11-028
332-130-080	AMD-C	89-08-021
332-130-080	AMD	89-11-028
332-130-090	NEW-C	89-08-021
332-130-090	NEW	89-11-028
332-130-100	NEW-C	89-08-021
332-130-100	NEW	89-11-028
332-140-400	NEW-P	89-13-065
352-32-010	AMD-P	89-03-067
352-32-010	AMD	89-07-020
352-32-047	NEW-P	89-03-067
352-32-047	NEW	89-07-020
352-32-047	NEW	89-07-098
352-32-250	AMD-P	89-03-067
352-32-250	AMD	89-07-020
356-05-238	NEW-C	89-03-056
356-05-238	NEW	89-06-028
356-05-390	AMD-P	89-08-059
356-05-390	AMD-C	89-11-042
356-05-390	AMD-C	89-13-039
356-14-062	AMD-C	89-03-057
356-14-062	AMD-C	89-07-055
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356-15-090	AMD-W	89-06-039
356-15-090	AMD-P	89-06-040
356-15-090	AMD	89-10-040
356-15-090	AMD-P	89-11-090
356-15-110	AMD-P	89-10-037
356-15-130	AMD-P	89-10-038
356-15-140	NEW-P	89-04-024
356-15-140	NEW	89-07-056
356-18-020	AMD-C	89-03-056
356-18-020	AMD	89-06-028
356-18-025	AMD-C	89-03-056
356-18-025	AMD	89-06-028
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456-08-630	REP-P	89-06-062
456-08-630	REP	89-10-055
456-08-635	REP-P	89-06-062
456-08-635	REP	89-10-055
456-08-640	REP-P	89-06-062
456-08-640	REP	89-10-055
456-08-650	REP-P	89-06-062
456-08-650	REP	89-10-055
456-08-660	REP-P	89-06-062
456-08-660	REP	89-10-055
456-08-670	REP-P	89-06-062
456-08-670	REP	89-10-055
456-08-700	REP-P	89-06-062
456-08-700	REP	89-10-055
456-08-705	REP-P	89-06-062
456-08-705	REP	89-10-055
456-08-710	REP-P	89-06-062
456-08-710	REP	89-10-055
456-08-715	REP-P	89-06-062
456-08-715	REP	89-10-055
456-08-720	REP-P	89-06-062
456-08-720	REP	89-10-055
456-08-725	REP-P	89-06-062
456-08-725	REP	89-10-055
456-08-730	REP-P	89-06-062
456-08-730	REP	89-10-055
456-08-735	REP-P	89-06-062
456-08-735	REP	89-10-055
456-08-740	REP-P	89-06-062
456-08-740	REP	89-10-055
456-09-010	NEW-P	89-06-063
456-09-010	NEW	89-10-056
456-09-110	NEW-P	89-06-063
456-09-110	NEW	89-10-056
456-09-120	NEW-P	89-06-063
456-09-120	NEW	89-10-056
456-09-130	NEW-P	89-06-063
456-09-130	NEW	89-10-056
456-09-140	NEW-P	89-06-063
456-09-140	NEW	89-10-056
456-09-150	NEW-P	89-06-063
456-09-150	NEW	89-10-056
456-09-160	NEW-P	89-06-063
456-09-160	NEW	89-10-056
456-09-170	NEW-P	89-06-063
456-09-170	NEW	89-10-056
456-09-210	NEW-P	89-06-063
456-09-210	NEW	89-10-056
456-09-220	NEW-P	89-06-063
456-09-220	NEW	89-10-056
456-09-230	NEW-P	89-06-063
456-09-230	NEW	89-10-056
456-09-310	NEW-P	89-06-063
456-09-310	NEW	89-10-056
456-09-315	NEW-P	89-06-063
456-09-315	NEW	89-10-056
456-09-320	NEW-P	89-06-063
456-09-320	NEW	89-10-056
456-09-325	NEW-P	89-06-063
456-09-325	NEW	89-10-056
456-09-330	NEW-P	89-06-063
456-09-330	NEW	89-10-056
456-09-335	NEW-P	89-06-063
456-09-335	NEW	89-10-056
456-09-340	NEW-P	89-06-063
456-09-340	NEW	89-10-056
456-09-345	NEW-P	89-06-063
456-09-345	NEW	89-10-056
456-09-350	NEW-P	89-06-063
456-09-350	NEW	89-10-056
456-09-355	NEW-P	89-06-063
456-09-355	NEW	89-10-056
456-09-360	NEW-P	89-06-063
456-09-360	NEW	89-10-056
456-09-365	NEW-P	89-06-063
456-09-365	NEW	89-10-056
456-09-410	NEW-P	89-06-063
456-09-410	NEW	89-10-056
456-09-420	NEW-P	89-06-063
456-09-420	NEW	89-10-056
456-09-430	NEW-P	89-06-063
456-09-430	NEW	89-10-056
456-09-440	NEW-P	89-06-063
456-09-440	NEW	89-10-056
456-09-510	NEW-P	89-06-063
456-09-510	NEW	89-10-056
456-09-520	NEW-P	89-06-063
456-09-520	NEW	89-10-056
456-09-530	NEW-P	89-06-063
456-09-530	NEW	89-10-056
456-09-540	NEW-P	89-06-063
456-09-540	NEW	89-10-056
456-09-550	NEW-P	89-06-063
456-09-550	NEW	89-10-056
456-09-560	NEW-P	89-06-063
456-09-560	NEW	89-10-056
456-09-570	NEW-P	89-06-063
456-09-570	NEW	89-10-056
456-09-610	NEW-P	89-06-063
456-09-610	NEW	89-10-056
456-09-615	NEW-P	89-06-063
456-09-615	NEW	89-10-056
456-09-620	NEW-P	89-06-063
456-09-620	NEW	89-10-056
456-09-625	NEW-P	89-06-063
456-09-625	NEW	89-10-056
456-09-630	NEW-P	89-06-063
456-09-630	NEW	89-10-056
456-09-635	NEW-P	89-06-063
456-09-635	NEW	89-10-056
456-09-640	NEW-P	89-06-063
456-09-640	NEW	89-10-056
456-09-645	NEW-P	89-06-063
456-09-645	NEW	89-10-056
456-09-650	NEW-P	89-06-063
456-09-650	NEW	89-10-056
456-09-655	NEW-P	89-06-063
456-09-655	NEW	89-10-056
456-09-705	NEW-P	89-06-063
456-09-705	NEW	89-10-056
456-09-710	NEW-P	89-06-063
456-09-710	NEW	89-10-056
456-09-715	NEW-P	89-06-063
456-09-715	NEW	89-10-056
456-09-720	NEW-P	89-06-063
456-09-720	NEW	89-10-056
456-09-725	NEW-P	89-06-063
456-09-725	NEW	89-10-056
456-09-730	NEW-P	89-06-063
456-09-730	NEW	89-10-056
456-09-735	NEW-P	89-06-063
456-09-735	NEW	89-10-056
456-09-740	NEW-P	89-06-063
456-09-740	NEW	89-10-056
456-09-745	NEW-P	89-06-063
456-09-745	NEW	89-10-056
456-09-750	NEW-P	89-06-063
456-09-750	NEW	89-10-056
456-09-755	NEW-P	89-06-063
456-09-755	NEW	89-10-056
456-09-760	NEW-P	89-06-063
456-09-760	NEW	89-10-056
456-09-765	NEW-P	89-06-063
456-09-765	NEW	89-10-056
456-09-770	NEW-P	89-06-063
456-09-770	NEW	89-10-056
456-09-775	NEW-P	89-06-063
456-09-775	NEW	89-10-056
456-09-910	NEW-P	89-06-063
456-09-910	NEW	89-10-056
456-09-915	NEW-P	89-06-063
456-09-915	NEW	89-10-056
456-09-920	NEW-P	89-06-063
456-09-920	NEW	89-10-056
456-09-925	NEW-P	89-06-063
456-09-925	NEW	89-10-056
456-09-930	NEW-P	89-06-063
456-09-930	NEW	89-10-056
456-09-935	NEW-P	89-06-063
456-09-935	NEW	89-10-056
456-09-940	NEW-P	89-06-063
456-09-940	NEW	89-10-056
456-09-945	NEW-P	89-06-063
456-09-945	NEW	89-10-056
456-09-950	NEW-P	89-06-063
456-09-950	NEW	89-10-056
456-09-955	NEW-P	89-06-063
456-09-955	NEW	89-10-056
456-09-970	NEW-P	89-06-063
456-09-970	NEW	89-10-056
456-10-010	NEW-P	89-06-064
456-10-010	NEW	89-10-057
456-10-110	NEW-P	89-06-064
456-10-110	NEW	89-10-057
456-10-120	NEW-P	89-06-064
456-10-120	NEW	89-10-057
456-10-130	NEW-P	89-06-064
456-10-130	NEW	89-10-057
456-10-140	NEW-P	89-06-064
456-10-140	NEW	89-10-057
456-10-150	NEW-P	89-06-064
456-10-150	NEW	89-10-057
456-10-160	NEW-P	89-06-064
456-10-160	NEW	89-10-057
456-10-170	NEW-P	89-06-064
456-10-170	NEW	89-10-057
456-10-180	NEW-P	89-06-064
456-10-180	NEW	89-10-057
456-10-210	NEW-P	89-06-064
456-10-210	NEW	89-10-057
456-10-220	NEW-P	89-06-064
456-10-220	NEW	89-10-057
456-10-230	NEW-P	89-06-064
456-10-230	NEW	89-10-057
456-10-310	NEW-P	89-06-064
456-10-310	NEW	89-10-057
456-10-315	NEW-P	89-06-064
456-10-315	NEW	89-10-057
456-10-320	NEW-P	89-06-064
456-10-320	NEW	89-10-057
456-10-325	NEW-P	89-06-064
456-10-325	NEW	89-10-057
456-10-330	NEW-P	89-06-064
456-10-330	NEW	89-10-057
456-10-335	NEW-P	89-06-064
456-10-335	NEW	89-10-057
456-10-340	NEW-P	89-06-064
456-10-340	NEW	89-10-057
456-10-345	NEW-P	89-06-064
456-10-345	NEW	89-10-057
456-10-350	NEW-P	89-06-064
456-10-355	NEW-P	89-06-064
456-10-355	NEW	89-10-057
456-10-360	NEW-P	89-06-064
456-10-360	NEW	89-10-057
456-10-410	NEW-P	89-06-064
456-10-410	NEW	89-10-057
456-10-420	NEW-P	89-06-064
456-10-420	NEW	89-10-057
456-10-430	NEW-P	89-06-064
456-10-430	NEW	89-10-057
456-10-440	NEW-P	89-06-064
456-10-440	NEW	89-10-057
456-10-505	NEW-P	89-06-064
456-10-505	NEW	89-10-057
456-10-510	NEW-P	89-06-064
456-10-510	NEW	89-10-057
456-10-515	NEW-P	89-06-064
456-10-515	NEW	89-10-057
456-10-520	NEW-P	89-06-064

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456-10-530	NEW-P	89-06-064
456-10-530	NEW	89-10-057
456-10-535	NEW-P	89-06-064
456-10-535	NEW	89-10-057
456-10-540	NEW-P	89-06-064
456-10-540	NEW	89-10-057
456-10-545	NEW-P	89-06-064
456-10-545	NEW	89-10-057
456-10-550	NEW-P	89-06-064
456-10-550	NEW	89-10-057
456-10-555	NEW-P	89-06-064
456-10-555	NEW	89-10-057
456-10-560	NEW-P	89-06-064
456-10-560	NEW	89-10-057
456-10-565	NEW-P	89-06-064
456-10-565	NEW	89-10-057
456-10-570	NEW-P	89-06-064
456-10-570	NEW	89-10-057
456-10-710	NEW-P	89-06-064
456-10-710	NEW	89-10-057
456-10-715	NEW-P	89-06-064
456-10-715	NEW	89-10-057
456-10-720	NEW-P	89-06-064
456-10-720	NEW	89-10-057
456-10-725	NEW-P	89-06-064
456-10-725	NEW	89-10-057
456-10-730	NEW-P	89-06-064
456-10-730	NEW	89-10-057
456-10-735	NEW-P	89-06-064
456-10-735	NEW	89-10-057
456-10-740	NEW-P	89-06-064
456-10-740	NEW	89-10-057
456-10-745	NEW-P	89-06-064
456-10-745	NEW	89-10-057
456-10-750	NEW-P	89-06-064
456-10-750	NEW	89-10-057
456-10-755	NEW-P	89-06-064
456-10-755	NEW	89-10-057
456-10-970	NEW-P	89-06-064
456-10-970	NEW	89-10-057
456-12-010	NEW-P	89-06-065
456-12-010	NEW	89-10-058
456-12-020	NEW-P	89-06-065
456-12-020	NEW	89-10-058
456-12-030	NEW-P	89-06-065
456-12-030	NEW	89-10-058
456-12-040	NEW-P	89-06-065
456-12-040	NEW	89-10-058
456-12-050	NEW-P	89-06-065
456-12-050	NEW	89-10-058
456-12-060	NEW-P	89-06-065
456-12-060	NEW	89-10-058
456-12-070	NEW-P	89-06-065
456-12-070	NEW	89-10-058
456-12-080	NEW-P	89-06-065
456-12-080	NEW	89-10-058
456-12-090	NEW-P	89-06-065
456-12-090	NEW	89-10-058
456-12-100	NEW-P	89-06-065
456-12-100	NEW	89-10-058
456-12-110	NEW-P	89-06-065
456-12-110	NEW	89-10-058
456-12-120	NEW-P	89-06-065
456-12-120	NEW	89-10-058
456-12-130	NEW-P	89-06-065
456-12-130	NEW	89-10-058
456-12-140	NEW-P	89-06-065
456-12-140	NEW	89-10-058
458-14-005	NEW-P	89-07-087
458-14-009	NEW-P	89-07-087
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458-14-015	NEW-P	89-07-087
458-14-016	NEW-P	89-07-087
458-14-017	NEW-P	89-07-087
458-14-019	NEW-P	89-07-087
458-14-020	REP-P	89-07-087
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458-14-023	NEW-P	89-07-087
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458-14-027	NEW-P	89-07-087
458-14-029	NEW-P	89-07-087
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458-14-031	NEW-P	89-07-087
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458-14-050	REP-P	89-07-087
458-14-052	REP-P	89-07-087
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458-14-070	REP-P	89-07-087
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458-14-080	REP-P	89-07-087
458-14-085	REP-P	89-07-087
458-14-086	REP-P	89-07-087
458-14-090	REP-P	89-07-087
458-14-091	REP-P	89-07-087
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458-14-115	REP-P	89-07-087
458-14-120	REP-P	89-07-087
458-14-121	REP-P	89-07-087
458-14-122	REP-P	89-07-087
458-14-125	REP-P	89-07-087
458-14-126	REP-P	89-07-087
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458-14-135	REP-P	89-07-087
458-14-140	REP-P	89-07-087
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458-14-155	REP-P	89-07-087
458-14-160	NEW-P	89-07-087
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458-16-115	NEW	89-12-013
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458-20-105	AMD-P	89-13-043
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458-20-193B	AMD	89-06-015
458-20-221	AMD-C	89-02-052
458-20-221	AMD	89-06-016
458-20-250	AMD-P	89-13-087
458-20-250	AMD-E	89-13-089
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458-20-252	AMD-P	89-07-085
458-20-252	AMD	89-10-051
458-20-252	AMD-E	89-10-052
458-20-252	AMD-P	89-13-086
458-20-252	AMD-E	89-13-088
458-20-254	NEW-P	89-08-089
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458-20-255	NEW-E	89-13-042
458-30-260	AMD	89-05-009
458-30-261	NEW	89-05-008
458-30-590	AMD	89-05-010
458-40-660	AMD-P	89-10-061
458-40-670	AMD-P	89-10-061
458-53-020	AMD-P	89-05-053
458-53-020	AMD	89-09-021
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458-53-030	AMD	89-09-021
458-53-070	AMD-P	89-05-053
458-53-070	AMD	89-09-021
458-53-100	AMD-P	89-05-053
458-53-100	AMD	89-09-021
458-53-110	AMD-P	89-05-053
458-53-110	AMD	89-09-021
458-53-150	AMD-P	89-05-053
458-53-150	AMD	89-09-021
458-53-163	AMD-P	89-05-053
458-53-163	AMD	89-09-021
460-10A-160	AMD-P	89-13-066
460-20A-008	NEW-P	89-13-066
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460-20A-220	AMD-P	89-13-068
460-20A-230	AMD-P	89-13-068
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460-20A-425	AMD-P	89-13-066
460-24A-050	AMD-P	89-13-067
460-33A-010	AMD-P	89-13-068
460-33A-015	AMD-P	89-13-068
460-33A-017	AMD-P	89-13-068
460-33A-031	AMD-P	89-13-068
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460-33A-105	AMD-P	89-13-068
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460-42A-030	NEW-P	89-13-069
460-42A-081	AMD-P	89-13-066
460-44A-500	AMD-P	89-13-070
460-44A-501	AMD-P	89-13-070
460-44A-502	AMD-P	89-13-070
460-44A-503	AMD-P	89-13-070
460-44A-505	AMD-P	89-13-070
460-44A-506	AMD-P	89-13-070
460-44A-508	NEW-P	89-13-070
460-46A-010	AMD-P	89-03-044
460-46A-010	AMD	89-07-042
460-46A-050	AMD-P	89-03-044
460-46A-050	AMD	89-07-042
460-46A-060	REP-P	89-03-044
460-46A-060	REP	89-07-042
460-46A-070	REP-P	89-03-044
460-46A-070	REP	89-07-042
460-46A-080	REP-P	89-03-044
460-46A-080	REP	89-07-042
460-46A-085	REP-P	89-03-044
460-46A-085	REP	89-07-042
460-46A-090	AMD-P	89-03-044
460-46A-090	AMD	89-07-042
460-46A-092	NEW-P	89-03-044
460-46A-092	NEW	89-07-042
460-46A-095	AMD-P	89-03-044
460-46A-095	AMD	89-07-042
460-46A-105	AMD-P	89-03-044
460-46A-105	AMD	89-07-042
460-46A-110	AMD-P	89-03-044
460-46A-110	AMD	89-07-042
460-46A-120	REP-P	89-03-044
460-46A-120	REP	89-07-042
460-46A-145	AMD-P	89-03-044
460-46A-145	AMD	89-07-042
460-46A-150	AMD-P	89-03-044
460-46A-150	AMD	89-07-042
460-46A-155	AMD-P	89-03-044
460-46A-155	AMD	89-07-042
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468-10	REVIEW	89-06-038
468-12	REVIEW	89-06-038
468-14	REVIEW	89-08-061
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468-16-020	NEW-W	89-08-064

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468-16-040	NEW-W	89-08-064
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468-16-050	NEW-W	89-08-064
468-16-060	NEW-P	89-07-034
468-16-060	NEW-W	89-08-064
468-16-070	NEW-P	89-07-034
468-16-070	NEW-W	89-08-064
468-16-080	NEW-P	89-07-034
468-16-080	NEW-W	89-08-064
468-16-090	NEW-P	89-07-034
468-16-090	NEW-W	89-08-064
468-16-100	NEW-P	89-07-034
468-16-100	NEW-W	89-08-064
468-16-110	NEW-P	89-07-034
468-16-110	NEW-W	89-08-064
468-16-120	NEW-P	89-07-034
468-16-120	NEW-W	89-08-064
468-16-130	NEW-P	89-07-034
468-16-130	NEW-W	89-08-064
468-16-140	NEW-P	89-07-034
468-16-140	NEW-W	89-08-064
468-16-150	NEW-P	89-07-034
468-16-150	NEW-W	89-08-064
468-16-160	NEW-P	89-07-034
468-16-160	NEW-W	89-08-064
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