

AUGUST 16, 1989

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## CITATION

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

## PUBLIC INSPECTION OF DOCUMENTS

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## REPUBLICATION OF OFFICIAL DOCUMENTS

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## CERTIFICATE

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

DENNIS W. COOPER  
Code Reviser

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## STATE MAXIMUM INTEREST RATE

The maximum allowable interest rate applicable for the month of August 1989 pursuant to RCW 19.52.020 is twelve point zero five percent (12.05%).

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.

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

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# WASHINGTON STATE REGISTER

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## STYLE AND FORMAT OF THE WASHINGTON STATE REGISTER

### 1. ARRANGEMENT OF THE REGISTER

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

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

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

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

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

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

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

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

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

### 5. EFFECTIVE DATE OF RULES

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

### 6. EDITORIAL CORRECTIONS

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

### 7. INDEX AND TABLES

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

1989 – 1990

DATES FOR REGISTER CLOSING, DISTRIBUTION, AND FIRST AGENCY ACTION

Issue No.	Closing Dates <sup>1</sup>			Distribution Date	First Agency Hearing Date <sup>3</sup>
	Non-OTS & 30 p. or more	Non-OTS & 11 to 29 p.	OTS <sup>2</sup> or 10 p. max. Non-OTS		
<i>For Inclusion in—</i>	<i>File no later than—</i>			<i>Count 20 days from—</i>	<i>For hearing on or after</i>
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89-15	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
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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
90-01	Nov 22	Dec 6	Dec 20, 1989	Jan 3, 1990	Jan 23
90-02	Dec 6	Dec 20, 1989	Jan 3, 1990	Jan 17	Feb 6
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90-18	Aug 8	Aug 22	Sep 5	Sep 19	Oct 9
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90-23	Oct 24	Nov 7	Nov 21	Dec 5	Dec 25
90-24	Nov 7	Nov 21	Dec 5	Dec 19	Jan 2, 1991

<sup>1</sup>All documents are due at the code reviser's office by 5:00 p.m. on or before the applicable closing date for inclusion in a particular issue of the Register; see WAC 1-21-040.

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

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



**WSR 89-14-079**  
**PROPOSED RULES**  
**BOARD OF HEALTH**  
 [Filed June 30, 1989]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Washington State Board of Health intends to adopt, amend, or repeal rules concerning public water systems, amending chapter 248-54 WAC;

that the agency will at 9:30 a.m., Wednesday, September 13, 1989, in the Richland City Hall, 505 Swift Boulevard, Richland, WA 99352, 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 43.20 RCW.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before September 13, 1989, Mailstop ET-23, 1112 South Quince Street, Olympia, WA 98504, (206) 586-0399.

Dated: June 28, 1989

By: Paul Trause  
 Deputy Secretary

#### STATEMENT OF PURPOSE

This statement is filed pursuant to RCW 34.04.045.

Re: Amending chapter 248-54 WAC.

Purpose of Rule Change: To clarify the rule and who is subject to it; and incorporate new federal requirements of P.L. 99-339 Safe Drinking Water Act amendments of 1986.

Reasons These Rules are Necessary: To assure provision of potable drinking water to public drinking water consumers; to comply with provisions of the Federal Safe Drinking Water Act; and to comply with provisions of chapter 43.20 RCW.

Statutory Authority: Chapter 43.20 RCW.

Summary: Chapter 248-54 WAC is being amended to be consistent with new federal public notification requirements. An additional section is being added to clarify who is covered by the rule.

Person Responsible for Drafting These Rules: Alan Rowe, Drinking Water Program Manager, Office of Environmental Health Programs, Mailstop LD-11, Olympia, Washington 98504-0095, phone (206) 753-5986.

These rules are proposed by the State Board of Health.

These rules are necessary as a result of the Federal Safe Drinking Water Act of 1974, P.L. 93-523 and the Safe Drinking Water Act Amendments of 1986, P.L. 99-339.

Small Business Economic Impact Statement: This statement pertains to revisions in chapter 248-54 WAC proposed by the State Board of Health to become effective October 15, 1989, and is prepared to conform with the Regulatory Fairness Act, chapter 19.85 RCW.

Chapter 248-54 WAC defines rules pertaining to public drinking water supplies and proposed revisions

will not have a disproportionate economic impact on small businesses.

#### AMENDATORY SECTION (Amending Order 307, filed 2/17/88)

WAC 248-54-005 PURPOSE AND SCOPE. (1) The purpose of these rules is to define basic regulatory requirements and to protect the health of consumers using public drinking water supplies (~~and to provide basic regulatory requirements for~~);

(2) The rules of this chapter are specifically designed to ensure:

(a) Adequate design, construction, sampling, management, and operation practices; and

(b) Provision of high quality drinking water in a reliable manner and in a quantity suitable for intended use.

~~((3))~~ (3) Purveyors shall be responsible for complying with the regulatory requirements of this chapter.

(4) These rules are intended to conform with the intent of P.L. 93-523, the Federal Safe Drinking Water Act of 1974, and the Safe Drinking Water Act Amendments of 1986, (~~Public Law~~) P.L. 99-339.

~~((4))~~ (5) The rules set forth are adopted (~~per~~) under chapter 43.20 RCW. Other statutes relating to this chapter are:

(a) Chapter 43.20A RCW, Department of social and health services;

(b) Chapter 70.05 RCW, Local health department, boards, officers—Regulations;

(c) Chapter 70.116 RCW, Public Water System Coordination Act of 1977;

(d) Chapter 70.119 RCW, Public water supply systems—Certification and regulation of operators; and

(e) Chapter 70.119A RCW, Public water supply systems—Penalties and compliance.

#### NEW SECTION

WAC 248-54-006 APPLICABILITY. (1) Public water system shall mean any system, excluding a system serving only one single-family residence, providing piped water for human consumption, including any:

(a) Collection, treatment, storage, or distribution facilities under control of the purveyor and used primarily in connection with such system; and

(b) Collection or pretreatment storage facilities not under control of the purveyor primarily used in connection with such system.

(2) The rules of this chapter shall apply to all public water systems except public water systems meeting the following conditions:

(a) Consists only of distribution and/or storage facilities and does not have any source or treatment facilities;

(b) Obtains all of its water from, but is not owned by, a public water system where the rules of this chapter apply;

(c) Does not sell water directly to any person;

(d) The water distribution facilities are subject to inspection or regulation by a state or local agency other than the department. Bottled water operations fall under Federal Food and Drug Administration regulations, but must obtain water from a source approved by the department or local health jurisdiction; and

(e) Is not a passenger-conveying carrier in interstate commerce.

(3) Public water systems shall be categorized as follows:

(a) A Group A water system shall be a system:

(i) With fifteen or more service connections, regardless of the number of people; or

(ii) Serving an average of twenty-five or more people per day for sixty or more days within a calendar year, regardless of the number of service connections.

Group A water systems are further defined as community and non-community water systems.

(b) Community (residential) water system means any Group A public water system:

(i) With fifteen or more service connections used by residents for one hundred eighty or more days within a calendar year, regardless of the number of people; or

(ii) Regularly serving twenty-five or more residents for one hundred eighty or more days within the calendar year, regardless of the number of service connections.

Examples of a community (residential) water system might include a municipality, subdivision, mobile home park, apartment complex, college with dormitories, nursing home, or prison.

(c) Noncommunity water system means a Group A public water system which is not a community (residential) water system. Noncommunity water systems are further defined as:

(i) Nontransient (NTNC) (school/business/industry) water system means a noncommunity water system regularly serving twenty-five or more of the same nonresidents for one hundred eighty or more days within a calendar year.

Examples of a NTNC water system might include a school, day care center, or a business, factory, motel, or restaurant with twenty-five or more employees on-site.

(ii) Transient (TNC) (food/lodging/recreation) water system means a noncommunity water system:

(A) Having fifteen or more service connections used less than one hundred eighty days within a calendar year; or

(B) Serving twenty-five or more different nonresidents for sixty or more days within a calendar year; or

(C) Serving twenty-five or more of the same nonresidents for sixty or more days, but less than one hundred eighty days within a calendar year; or

(D) Serving twenty-five or more residents for sixty or more days, but less than one hundred eighty days within a calendar year.

Examples of a TNC water system might include a restaurant, tavern, motel, campground, state or county park, an RV park, vacation cottages, highway rest area, or church.

(d) A Group B water system means a public water system which is not a Group A water system. This would include a water system:

(i) With less than fifteen service connections and serving an average of less than twenty-five people for sixty or more days within a calendar year; or

(ii) Serving people for less than sixty days within a calendar year; or

(iii) With less than fifteen service connections in use for less than sixty days within a calendar year.

(4) A public water system meeting more than one of the categories described in this section shall be classified by the department in the following order:

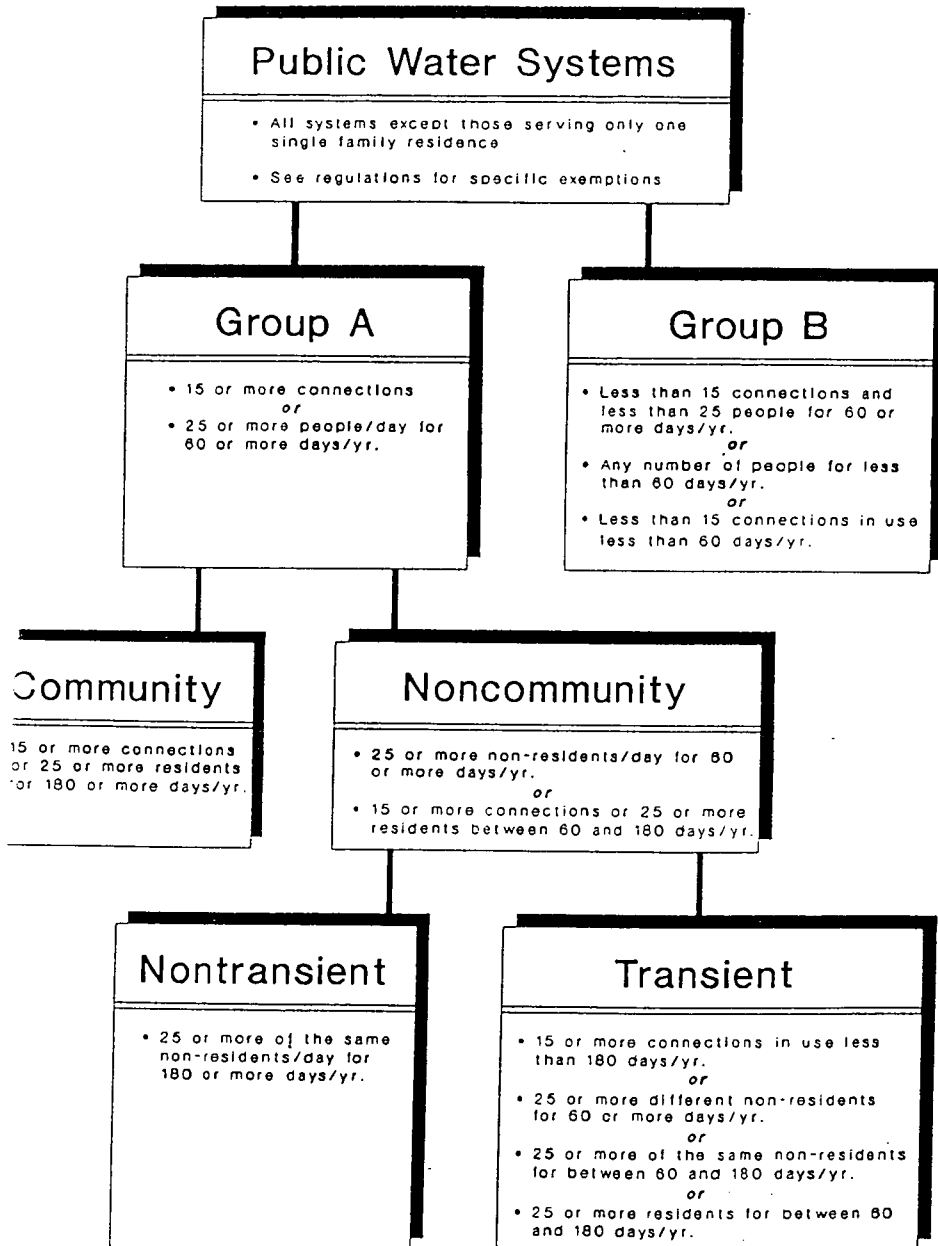
(a) Community water system;

(b) NTNC water system;

(c) TNC water system; and

(d) Group B water system.

TABLE 1



AMENDATORY SECTION (Amending Order 307, filed 2/17/88)

WAC 248-54-015 DEFINITIONS. (1) Abbreviations:

- kPa - kilo pascal (SI units of pressure),
- m - meter,
- MCL - maximum contaminant level,
- ((mL - milliliter,
- mm - millimeter;))
- mg/L - milligrams per liter,
- MID - maximum instantaneous demand,
- mL - milliliter,
- mm - millimeter,
- MPN - most probable number of coliform bacteria per 100 mL,
- NTNC - nontransient noncommunity,
- NTU - nephelometric turbidity unit,

- pCi/L - picocuries per liter,
- psi - pounds per square inch,
- TNC - transient noncommunity,
- ug/L - micrograms per liter,
- umhos/cm - micromhos per centimeter,
- WFI - water facilities inventory and report form,

(2) ((Classes of public water systems:

- (a) "Class 1" - A public water system having 100 or more permanent services.
- (b) "Class 2" - A public water system having 10 through 99 permanent services.
- (c) "Class 3" - A public water system serving a transitory population of 25 or more on any one day.
- (d) "Class 4" - A public water system which is not a class 1, 2, or 3 system.

Note: ~~If the public water system serves both permanent and transitory population, the higher classification will be used (class 1 being the highest, class 4 the lowest))~~

"Acute" means posing an immediate risk to health.

(3) "Contaminant" ((=)) means any substance present in drinking water which may adversely affect the health of the consumer and/or the aesthetic qualities of the water.

(4) "Cross-connection" ((=)) means any physical arrangement connecting a public water system, directly or indirectly, with anything other than another potable water system, capable of contaminating the public water system ((as a result of backflow)).

(5) "Department" ((=)) means the Washington state department of ((social and)) health ((services)).

(6) "Disinfection" ((=)) means the use of chlorine or other agent or process, approved by the department for the purpose of killing or inactivating microbiological organisms, including pathogenic and indicator organisms.

(7) "Distribution system" ((=)) means that portion of a public water supply system which stores, transmits, pumps, and distributes water to consumers.

(8) "Fire flow" ((=)) means the rate of water flow needed to fight fires as defined by applicable codes.

(9) "Guideline" ((=)) means a department document intended to assist the purveyor in meeting a requirement of a rule.

(10) "Health officer" ((=)) means the health officer of the city, county, city-county health department or district, or an authorized representative.

(11) "Hydraulic analysis" ((=)) means the study of the water system network: To evaluate water flows within the distribution system under worst case conditions; such as, maximum hourly flow plus fire flow when required or maximum instantaneous demand (MID) when fire flow is not required. Hydraulic analysis includes consideration of all factors affecting system energy losses.

(12) "Level of health significance" means a concentration of substance the available scientific literature suggests may cause adverse human health effects.

(13) "Maximum contaminant level (MCL)" ((=)) means the maximum permissible level of a contaminant in water delivered to any user of a public water system as measured at the locations identified in WAC 248-54-165, Table 4.

~~((14))~~ (14) "Maximum contaminant level violation" means a confirmed measurement above the MCL and for a duration of time, where applicable, as outlined under WAC 248-54-175.

(15) "Maximum instantaneous demand (MID)" ((=)) means the maximum rate of water use, excluding fire flow, experienced or expected within a defined service area at any instant in time.

~~((14))~~ "Permanent population" — That population served by a public water system for three or more consecutive months.

~~(15)~~ "Permanent service" — A drinking water connection which serves a permanent population.)

(16) ("~~Primary contaminant~~" — Any contaminant present in drinking water which may adversely affect the consumer's health)) "Potable" means suitable for drinking.

(17) "Primary standards" ((=)) means standards based on chronic or acute human health effects.

(18) "Protected ground water source" ((=)) means a ground water source shown to the satisfaction of the department to be protected from any potential sources of contamination on the basis of hydrogeologic data and/or satisfactory water quality history.

(19) "Public water system" (~~(=) Any water supply system intended or used for human consumption or other domestic uses, including source, treatment, storage, transmission, and distribution facilities where water is furnished to any community or group of individuals, or is made available to the public for human consumption or domestic use, but excluding all water supply systems serving one single family residence. It also does not include water systems meeting all of the following requirements:~~

~~(a) Purchase their entire supply of water from another public water system subject to these regulations;~~

~~(b) Do not treat the water (other than softening or corrosion control), and~~

~~(c) Do not sell water. Businesses or systems merely storing and distributing water provided by others are exempt unless that system sells water as a separate item or bills separately for the water provided.~~

Note: Bottled water operations fall under Federal Food and Drug Administration regulations) (refer to WAC 248-54-006).

(20) "Purveyor" ((=)) means any agency or subdivision of the state or any municipal corporation, firm, company, mutual or cooperative association, institution, partnership, or person or any other entity that owns or operates a public water system. It also means the authorized agents of any such entities.

(21) ("~~Secondary contaminant~~" — Any contaminant present in drinking water which ordinarily does not adversely affect the consumer's health. Secondary contaminants include, but are not limited to, those contaminants which adversely affect only the aesthetic qualities of water)) "Regularly" means four hours or more per day for four days or more per week.

(22) "Resident" means an individual living in a dwelling unit served by a public water system.

(23) "Secondary standards" ((=)) means standards based on factors other than health effects.

~~((23))~~ (24) "Service" ((=)) means a connection to a public water system designed to serve a single family residence, dwelling unit, or equivalent use. If the facility has group home or barracks-type accommodations ((allowing three or more persons to occupy the same room)), three persons will be considered equivalent to one service.

~~((24))~~ (25) "Standard methods" ((=)) means the most recently published edition of the book, titled Standard Methods for the Examination of Water and Waste Water, jointly published by the American Public Health Association, American Water Works Association (AWWA), and Water Pollution Control Federation. This book is available through public libraries or may be ordered from AWWA, 6666 West Quincy Avenue, Denver, Colorado 80235.

~~((25))~~ "Transitory population" — That population using a public water system other than the permanent population, if any.)

(26) ("~~Well field~~" — A group of closely spaced wells obtaining water from the same aquifer.

~~(27))~~ "Water facilities inventory form" (WFI) ((=)) means the department form which summarizes each public water system's characteristics.

(27) "Well field" means a group of wells owned and/or controlled by one purveyor which:

(a) Draw from the same aquifer or aquifers as determined by comparable inorganic chemical analysis; and

(b) Discharge water through a common pipe and the common pipe shall allow for collection of a single sample before the first distribution system connection.

#### AMENDATORY SECTION (Amending Order 307, filed 2/17/88)

WAC 248-54-025 GENERAL ADMINISTRATION. (1) The department and the health officer for each local health jurisdiction shall develop a joint plan of operation listing the roles of each agency for administering these rules. This plan shall:

(a) Specifically designate those systems for which the department and local health officer have primary responsibility(;;);

(b) Provide for a minimum acceptable level of water system supervision(;;);

(c) Be signed by the ((state health officer)) department and the chairperson of the local board of health(;;); and

(d) Be updated as needed ((and at least every five years)).

Wherever in these rules the term "department" is used, the term "health officer" may be substituted based on the terms of this plan of operation.

(2) The department shall, upon request, review and report on the adequacy of water supply supervision to both the state and local boards of health.

(3) The local board of health may adopt rules covering public water systems within its jurisdiction for which the health officer has assumed primary responsibility. The adopted rules shall be ((consistent with)) no less stringent than chapter 248-54 WAC ((and local needs and resources)).

(4) The health officer may waive any or all requirements of these rules for ((class 4)) Group B water systems with two connections where the health officer has assumed primary responsibility for these systems.

(5) For those public water systems where the health officer has assumed primary responsibility, the health officer may approve project reports and construction documents in accordance with engineering criteria approved by the department.

(6) An advisory committee shall be established to provide guidance to the department on drinking water issues. The committee shall be appointed by the department and conform to department policies for

advisory committees. The committee shall be composed of representatives of public water systems, public groups, agencies, and individuals having an interest in drinking water.

(7) The department may develop guidelines to clarify sections of the rules as needed and make these available for distribution.

(8) Fees may be charged by the department as authorized in chapter 43.20A RCW and by local health agencies as authorized in RCW 70.05.060 to recover all or a portion of the costs incurred in administering these rules.

(9) All state and local agencies involved in review, approval, surveillance, testing, and/or operation of public water systems, or issuance of permits for buildings or sewage systems shall be governed by these rules and any decisions of the department.

#### AMENDATORY SECTION (Amending Order 307, filed 2/17/88)

WAC 248-54-035 REQUIREMENTS FOR ENGINEERS. (1) All water system plans, project reports, and construction documents shall be prepared by a professional engineer licensed in the state of Washington (~~(per)~~) under chapter 18.43 RCW and shall bear the engineer's seal and signature. Exceptions to this requirement are:

(a) Minor projects not requiring engineering expertise as determined by the department (~~(per)~~) under WAC 248-54-096(2); and

(b) (~~(Class 4 public)~~) Group B water systems consisting of a simple well and pressure tank system with one pressure zone and not providing treatment. These systems may be designed by a water system designer certified by the local health jurisdiction in those counties having a recognized water system designer program.

(2) 'A Construction Report For Public Water System Projects' shall be submitted to the department on a form provided by the department within (~~(60)~~) sixty days of completion and (~~(prior to)~~) before use of any project approved by the department. The form (~~(must)~~) shall:

(a) Be signed by:

(i) A professional engineer; or

(ii) In the case of projects not requiring engineering expertise as outlined in this section, the certified designer. (~~(The form shall)~~)

(b) State:

(i) The project (~~(has been)~~) is constructed and is substantially completed in accordance with approved construction documents; and(;) )

(ii) In the opinion of the engineer, based on information available, the installation, testing, and disinfection of the system was carried out per department rules.

(3) It shall be the responsibility of the purveyor to assure the requirements of this section (~~(have been)~~) are fulfilled (~~(prior to)~~) before the use of any completed project. When necessary, an updated water facilities inventory shall accompany the 'Construction Report For Public Water System Projects' form.

#### AMENDATORY SECTION (Amending Order 307, filed 2/17/88)

WAC 248-54-045 ENFORCEMENT. When any public water system is out of compliance with these rules, the department may initiate appropriate enforcement actions, regardless of any prior approvals issued by the department. These actions may include any one or combination of the following:

(1) Issuance of letters instructing or requiring appropriate corrective measures;

(2) Issuance of a compliance schedule for specific actions necessary to achieve compliance status;

(3) Issuance of departmental orders requiring purveyors to submit project reports, construction documents, and construction report forms;

(4) Issuance of departmental orders requiring specific actions or ceasing unacceptable activities within a designated time period (~~(-In emergency situations, orders may be issued in the field requiring immediate actions be taken));~~);

(~~(4))~~) (5) Issuance of departmental orders to stop work and/or refrain from using any public water system or improvements thereto until all written approvals required by statute or rule are obtained;

(~~(5))~~) (6) Imposition of civil penalties for failure to comply with departmental orders may be issued for up to 5,000 dollars per day per violation under authority of chapter 70.119A RCW (~~(-The department is authorized to levy penalties only in specific cases where either a public health emergency has been declared or in the case of chronic violators who refuse to correct a health problem after repeated requests from the department. An appeal process is identified in the law));~~); and

(~~(6))~~) (7) Legal action may be taken by the attorney general or local prosecutor. The legal action may be criminal or civil.

#### AMENDATORY SECTION (Amending Order 307, filed 2/17/88)

WAC 248-54-055 VARIANCES, EXEMPTIONS, AND WAIVERS (~~(-AND EXEMPTIONS)~~). (1) Variances. The state board of health may grant (~~(variances, waivers, and exemptions of any portion of these rules per WAC 248-08-596. PROVIDED, That they are consistent with the intent of these rules and no public health hazard will result))~~) a variance to a public water system if the system has applied the best available technology as identified by the environmental protection agency (EPA) and still cannot meet an MCL as specified in Section 1415, P.L. 99-523 as amended by P.L. 99-339. Procedures for obtaining a variance are identified under subsection (4) of this section.

(2) Exemptions. The state board of health may grant an exemption to a public water system if the system cannot meet an MCL or provide the required treatment in a timely manner, or both, as specified under Section 1416, P.L. 93-523 as amended by P.L. 99-339. Procedures for obtaining an exemption are identified under subsection (4) of this section.

(3) Waivers. The state board of health may grant a waiver to a public water system if the system cannot meet the requirements of these regulations pertaining to any subject not covered by EPA regulations. Procedures for obtaining a waiver are identified under subsection (4) of this section.

(4) Procedures.

(a) The state board of health may grant a variance or exemption to a public water system after the purveyor completes the following actions:

(i) The purveyor applies to the department. The application may be in the form of a letter. It must state clearly the reason for the request and what actions the purveyor took to meet the requirement;

(ii) The purveyor provides notice to customers of the purveyor's application for a variance or exemption and provides proof of such notice to the department;

(iii) The department prepares a schedule of compliance and recommendations for the state board of health to condition the granting of a variance or exemption. The schedule must address:

(A) Actions the system must undertake within the time frame specified; and

(B) Implementation of such control measures the department may require in the interim until the purveyor completes the actions required in subsection (4)(a)(ii)(A) of this section.

(iv) The state board of health provides notice for and conducts a public hearing on the purveyor's request and the department's recommendation.

(b) The state board of health may grant a waiver to a public water system after completing the following actions:

(i) The purveyor applies to the department. The application may be in the form of a letter. It must clearly state the reason for the request;

(ii) The purveyor provides notice to customers of the purveyor's application for a waiver and provides proof of such notice to the department;

(iii) The department prepares a recommendation to the state board of health for the granting or denial of the waiver request; and

(iv) The state board of health provides notice for and conducts a public hearing on the purveyor's request.

(c) The state board of health shall not grant a variance, exemption, or waiver unless the state board of health finds:

(i) Due to compelling factors, the public water system is unable to comply with the requirement;

(ii) The schedule of compliance for a variance or exemption will result in the public water system completing the required actions within the stated time frame; and

(iii) The granting of the variance, exemption, or waiver will not result in an unreasonable risk to the health of consumers served by the public water system.

(d) The EPA shall review any variance or exemption granted by the state board of health for concurrence, revocation, or revision provided under sections 1415 and 1416 of P.L. 93-523.

#### AMENDATORY SECTION (Amending Order 307, filed 2/17/88)

WAC 248-54-086 PROJECT REPORT. (1) The purpose of this section is to assure the following factors are taken into account for specific projects prior to construction:

(a) Engineering concepts(;) );

(b) Design criteria(;) );

(c) Planning(;) );

(d) Source protection(;) );

- (e) Water quality(;;);
- (f) Local requirements such as fire flow(;;); and
- (g) Other necessary department-determined considerations (~~as determined by the department~~).

((This)) The project report shall document the reasons for carrying out the project and WAC 248-54-096 shall identify how the project will be constructed.

(2) The purveyor shall submit project reports ((shall be submitted)) to the department for written approval prior to installation of any new water system, water system extension, or improvement with the following exceptions:

- (a) Installation of valves, fittings, and meters;
- (b) Installation of hydrants ((per)) under WAC 248-54-135(3);
- (c) Repair of a system component or replacement with a similar component;
- (d) Maintenance or painting of surfaces not contacting potable water; and
- (e) Distribution mains if approved standard construction specifications are documented in the water system plan approved by the department.

(3) Project reports shall be consistent with the standards identified ((m)) under WAC 248-54-105 and shall include, at a minimum, the following (information contained in a current approved water system plan or current project report need not be duplicated in the new project report. Any planning information in a project report shall be project specific.):

- (a) Project description. Identify what the project is intended to achieve, design considerations, approach, etc.;
- (b) Planning. If the system has an approved water system plan, show the project's relationship to the plan. If a water system plan is not required, include:

- (i) General project background with population and water demand forecasts(;;);
- (ii) Relationship between the project and other system components(;;);
- (iii) Project schedule(;;);
- (iv) ((Operations)) Management program(;;); and
- (v) How the project will impact neighboring water systems.

(c) Alternatives. Describe options, their impacts, and justify the selected alternative;

(d) Legal considerations. Identify legal aspects such as ownership, right-of-way, sanitary control area, and restrictive covenants. Include discussion of the project's relationship with the boundary review board and the utility and transportation commission;

(e) Engineering calculations. Describe how the project complies with the design considerations. Include the hydraulic analysis, sizing justification, and other relevant technical considerations necessary to support the project;

(f) Management. If the system has an approved ((operations)) management program, refer to that document. If not, describe:

- (i) System ownership and management responsibilities(;;);
- (ii) Long-term management considerations(;;);
- (iii) How the project will be operated(;;); and
- (iv) How the project will be maintained over time.

(g) Implementation. Identify the schedule for completion of the project and implementation strategies, if any. Project phasing should also be discussed;

(h) State Environmental Policy Act (SEPA). Include an environmental impact statement, determination of nonsignificance, or justify why SEPA does not apply to the project. Refer to chapter 248-06 WAC and the "DSHS Drinking Water SEPA Guide";

(i) Source development information. If the project involves source, refer to requirements per WAC 248-54-097; and

(j) Type of treatment. If the project involves treatment, refer to WAC 248-54-155.

(k) The information required in this subsection shall be included in a letter addendum to ((a class 4)) the workbook for ((class 4)) Group B water systems.

(4) Approval of project documents shall be in ((m)) effect for two years unless the department determines a need to withdraw the approval. An extension of the approval may be obtained by submitting a status report and a written schedule for completion. Extensions may be subject to additional terms and conditions imposed by the department.

#### AMENDATORY SECTION (Amending Order 307, filed 2/17/88)

WAC 248-54-097 SOURCE APPROVAL. ((Information regarding)) (1) No new, previously unapproved sources, or modification of existing sources ((of supply)) shall be ((provided as follows:

(1) Prior to source development, an on-site inspection and approval made by the department or a local health department representative is required. A copy of the site approval and a map of the site and vicinity shall be included with the construction documents. (2)) used as a public water supply without department approval. A party seeking approval shall provide the department the following:

(a) A copy of the water right permit, if required, obtained from the department of ecology for the source, quantity, type, and place of use(;

(3) A copy of the water well report. (4));

(b) A hydrogeologic assessment of the proposed source along with a general description of the watershed, spring, and/or aquifer recharge area affecting the quantity or quality of flow ((within the watershed or recharge area)). Seasonal variation shall also be included;

((5)) (c) For unfiltered surface water, the watershed control program identified ((m)) under WAC 248-54-225((-6));

(d) Upstream water uses affecting either water quality or quantity((7));

(e) A map showing the project location and vicinity;

(f) A map depicting topography, distances to the surface water intake, well or spring from existing property lines, buildings, potential sources of contamination, ditches, drainage patterns, and any other natural or man-made features affecting the quality or quantity of water((-8));

(g) The dimensions and location of sanitary control area as set forth ((m)) under WAC 248-54-125((-9));

(h) Copies of the recorded legal documents for the sanitary control area necessary to protect the source of supply(;

(10) A hydrogeologic assessment of the proposed source with respect to the probable long-term capacity of the source to meet system needs. Source development data for spring and surface sources shall include seasonal variation. (11));

(i) A copy of the on-site inspection approval made by the department or local health department representative;

(j) A copy of the water well report;

(k) Necessary construction documents;

(l) Well source development data to establish the capacity of the source shall include static water level, yield, the amount of drawdown, recovery rate, and duration of pumping. Interference between existing sources and the source being tested must also be shown. To determine whether the well and aquifer are capable of supplying water at the rate desired and to provide information necessary to determine the proper pump settings in the well, the source shall be pump tested at no less than the maximum design rate. A department guideline on pump testing is available to assist purveyors;

(m) The results of an initial analysis of the raw water quality, including as a minimum a bacteriological and complete inorganic chemical and physical analysis from each source. When source water quality is subject to variation, additional monitoring may be required by the department to define the range of variation. If the source being approved is for a ((class 1 or 2 public water)) community system, a radionuclide analysis shall also be required(;

(12) Well source development data to establish the capacity of the source shall include static water level, yield, the amount of drawdown, recovery rate, and duration of pumping. Interference between existing sources and the source being tested must also be shown. To determine whether the well and aquifer are capable of supplying water at the rate desired and to provide information necessary to determine the proper pump settings in the well, the source shall be pump tested at no less than the maximum design rate. A department guideline on pump testing is available to assist purveyors. (13));

(n) Detailed information regarding all aspects of water quality addressed ((m)) under WAC 248-54-175. If treatment is planned, refer to WAC 248-54-155(2)((-14)); and

(o) Other information as may be required by the department. ((Prior to)) Before initiating source development or modification, the purveyor should contact the department in order to identify any such additional information.

(2) The department shall issue a written approval when:

(a) Necessary information is submitted; and

(b) The developed source provides water complying with chapter 248-54 WAC.

**NEW SECTION**

WAC 248-54-098 EXISTING SYSTEM APPROVAL. (1) When applying for approval, purveyors of existing public water systems without approved construction documents shall provide department-determined information.

(2) Information provided shall be consistent with chapter 248-54 WAC.

(3) Purveyors shall contact the department to obtain a list of specific requirements.

(4) After receipt of the required data, the department shall review the information and either:

- (a) Approve the as-built construction documents; or
- (b) Indicate what additional actions the purveyor needs to complete before approval is granted.

**AMENDATORY SECTION** (Amending Order 307, filed 2/17/88)

WAC 248-54-165 MONITORING REQUIREMENTS. (1) General.

(a) The purveyor shall be responsible for satisfying all requirements of this section. The monitoring requirements in this section are minimums. Additional monitoring may be required by the department:

- (i) When system water quality exceeds an MCL; or
- (ii) When source contamination is suspected; or
- (iii) Under other circumstances as identified in a departmental order.

(b) Samples required ((m)) under this section shall be collected, transported, and analyzed according to methods approved by the department. The analyses shall be done by the state public health laboratory or by any other laboratory certified by the ((state)) department for the analyses to be performed, except turbidity as required ((by)) under WAC 248-54-165(4) may be tested by water utility or health department personnel.

(c) When one public water system receives water from another public water system, the receiving system is only required to take ((only the)) bacteriological samples ((as noted in Table 1 or Table 2)) per WAC 248-54-165(2) and trihalomethane samples as appropriate per WAC 248-54-165(5).

Subject to revision as appropriate, the department may reduce the monitoring requirement of the receiving system provided the receiving system:

- (i) Has had a good water quality history((-);
- (ii) Is operated in a satisfactory manner consistent with these regulations((-);
- (iii) Is included in the supplying system's regular monitoring schedule((-); and
- (iv) Is included in the service and population totals for the supplying system.

Periodic reviews of the system's sampling record may be made to determine if continued reduction is appropriate.

(d) Special purpose samples, such as check samples or samples taken to determine if disinfection following pipe repair has been sufficient, shall not count toward fulfillment of these monitoring requirements.

(e) All monitoring requirements in subsections (2) through ((++)) (8) of this section apply equally to systems serving ((permanent)) resident or ((transitory)) nonresident populations unless otherwise stated.

(2) Bacteriological.

(a) Drinking water samples shall be collected for bacteriological analysis from representative points in the distribution system at regular time intervals.

(b) The frequency for monitoring drinking water shall be determined according to the following:

(i) For community systems ((whose class is determined by the number of permanent connections served)), the minimum number of routine samples to be analyzed is shown ((on)) in Table ((+)) 2;

(ii) For ((class 3)) NTNC and TNC systems, the minimum number of routine samples to be analyzed is shown in Table ((2)) 3. In the case where an activity lasts for one week or less, sampling frequency shall be as directed by the department((-);

(iii) For Group A water systems ((having)) serving both ((permanent connections)) a resident and ((transitory)) a nonresident population, the minimum number of routine samples to be analyzed may vary from month to month. The number of samples required each month will be the higher number of samples from ((Table 1 and)) Table 2 and Table 3; and

(iv) For Group B water systems, the minimum number of routine samples is one every twelve months.

(c) When disinfection is practiced, the purveyor shall collect untreated (raw) water samples from each source for bacteriological analysis of total coliform in addition to the number of treated samples required. The frequency of monitoring untreated water shall be determined according to the following:

(i) For protected ground water sources, one sample every three months shall be analyzed((-);

(ii) For unprotected ground water sources, the number of samples analyzed shall be twenty percent of the distribution samples required each month, and in no case less than one every three months((-);

(iii) For surface sources with treatment including coagulation, filtration, and disinfection or other treatment process, the number of samples analyzed shall be ten percent of the distribution samples required each month, and in no case less than one every three months((-); and

(iv) For surface sources without coagulation and filtration treatment, the number of samples analyzed shall be twenty percent of the distribution samples required each month, and in no case less than one every three months.

TABLE ((+)) 2

MINIMUM ((NUMBER OF)) ROUTINE BACTERIOLOGICAL ((SAMPLES TO BE TAKEN FROM THE DISTRIBUTION SYSTEM FOR SYSTEMS WHOSE)) SAMPLING REQUIREMENTS ((ARE)) FOR COMMUNITY SYSTEMS BASED ON ((PERMANENT SERVICES)) THE NUMBER OF RESIDENTS

((Number of Permanent Services))	((Permanent Population*)) Number of Residents* Served	Minimum No. of Samples Per Month	((Permanent Population)) Number of Residents Served	Minimum No. of Samples Per Month
((2-9)) ((10-99))	((=)) Less than 251	((+ every 12 months)) 1**	37,001 - 41,000 41,001 - 46,000	45 50
((+100 or more))	Less than 1,001 251 - 1,000 1,001 - 2,500 2,501 - 3,300 3,301 - 4,100 4,101 - 4,900 4,901 - 5,800 5,801 - 6,700 6,701 - 7,600 7,601 - 8,500 8,501 - 9,400 9,401 - 10,300 10,301 - 11,100 11,101 - 12,000	1 2 3 4 5 6 7 8 9 10 11 12 13	46,001 - 50,000 50,001 - 54,000 54,001 - 59,000 59,001 - 64,000 64,001 - 70,000 70,001 - 76,000 76,001 - 83,000 83,001 - 90,000 90,001 - 96,000 96,001 - 111,000 111,001 - 130,000 130,001 - 160,000 160,001 - 190,000	55 60 65 70 75 80 85 90 95 100 110 120 130

((Number of Permanent Services))	((Permanent Population*) Number of Residents Served	Minimum No. of Samples Per Month	((Permanent Population) Number of Residents Served	Minimum No. of Samples Per Month
	12,001 - 12,900	14	190,001 - 220,000	140
	12,901 - 13,700	15	220,001 - 250,000	150
	13,701 - 14,600	16	250,001 - 290,000	160
	14,601 - 15,500	17	290,001 - 320,000	170
	15,501 - 16,300	18	320,001 - 360,000	180
	16,301 - 17,200	19	360,001 - 410,000	190
	17,201 - 18,100	20	410,001 - 450,000	200
	18,101 - 18,900	21	450,001 - 500,000	210
	18,901 - 19,800	22	500,001 - 550,000	220
	19,801 - 20,700	23	550,001 - 600,000	230
	20,701 - 21,500	24	600,001 - 660,000	240
	21,501 - 22,300	25	660,001 - 720,000	250
	22,301 - 23,200	26	720,001 - 780,000	260
	23,201 - 24,000	27	780,001 - 840,000	270
	24,001 - 24,900	28	840,001 - 910,000	280
	24,901 - 25,000	29	910,001 - 970,000	290
	25,001 - 28,000	30	970,001 - 1,050,000	300
	28,001 - 33,000	35	1,050,001 - 1,140,000	310
	33,001 - 37,000	40	(More than 1,140,001	***)

\*Does not include population of utilities wholesaled to, except as provided ((m)) under WAC 248-54-165 (1)(c)

\*\*May be reduced by the department to no less than one every three months for systems with protected ground water sources.

(\*\*\*Sec Federal Regulation 12-24-75, EPA, National Interim Primary Drinking Water Regulations, Section 141.21:)

TABLE ((2)) 3

MINIMUM ((NUMBER OF)) ROUTINE BACTERIOLOGICAL ((SAMPLES TO BE TAKEN FROM THE DISTRIBUTION SYSTEM FOR WATER SYSTEMS WHOSE)) SAMPLING REQUIREMENTS ((ARE DETERMINED)) FOR NTNC AND TNC SYSTEMS BASED ON ((TRANSITORY)) NONRESIDENT POPULATIONS

Maximum Day Population Served in Any One Month	Minimum Number Samples That Month
Less than 25	1 every 12 months
25 - 299	1 every 3 months
300 - 999	1*
1,000 - 2,499	2
2,500 - 3,499	3
3,500 - 4,999	4
5,000 - 9,999	6
10,000 - 14,999	8
15,000 - 19,999	10
20,000 - 29,999	12
30,000 - 39,999	14
40,000 - 49,999	16
50,000 - 74,999	20
75,000 - 99,999	25
100,000 or more	30

\*May be reduced by the department to one every three months for systems with protected ground water sources.

(3) Inorganic chemical and physical.

(a) The complete inorganic chemical and physical analysis consists of the primary and secondary chemical and physical standards.

(i) Primary chemical and physical standards - Arsenic, barium, cadmium, chromium, fluoride, lead, mercury, nitrate (as N), selenium, silver, sodium, and turbidity.

(ii) Secondary chemical and physical standards - Chloride, color, copper, hardness, iron, manganese, specific conductivity, sulfate\*, total dissolved solids\*, and zinc.

\*Required only when specific conductivity exceeds seven hundred micromhos/centimeter.

(b) Samples taken for inorganic chemical analyses shall be collected at the source prior to any treatment.

(c) The frequency for monitoring shall be according to the following:

(i) ((Class 1 and 2)) Community systems shall have one complete analysis from each surface water source every twelve months.

(ii) ((Class 1 and 2)) Community systems shall have one complete analysis from each ground water source or well field every thirty-six months.

(iii) ((Class 3 and 4)) NTNC, TNC, and Group B systems shall have one initial complete analysis from each source or well field. The minimum requirement for the initial complete analysis may be waived or reduced by the department if available information shows to the satisfaction of the department that the aquifer provides water of satisfactory inorganic chemical quality.

(iv) After the initial complete analysis, ((class 3 and 4)) NTNC, TNC, and Group B systems shall have one nitrate sample analyzed from each source or well field every thirty-six months.

(d) When treatment is provided for one or more inorganic chemical or physical contaminants, samples shall be taken for the specific contaminant or contaminants before and after treatment. The frequency shall be determined by the department.

(4) Turbidity.

(a) ((Class 1, 2, and 3)) Group A water systems with surface water sources shall monitor turbidity at least once a day.

(b) Turbidity shall be monitored at or before the entry point to the distribution system and where needed for treatment process control.

(c) The monitoring requirements for ((class 4)) Group B water systems shall be determined by the department.

(d) Turbidimeters shall be designed to meet the criteria listed under standard methods and shall be properly operated, maintained, and calibrated at all times, based on the manufacturer's recommendations.

(5) Trihalomethanes.

(a) ((Class 1 ground water)) Community systems serving a population of 10,000 or more and ((using)) providing water treated with chlorine or other ((oxidants in the treatment process)) halogenated disinfectant shall monitor ((for maximum total trihalomethane potential (MTTP). These)) as follows:

(i) Ground water ((systems)) sources. The purveyor shall collect one sample from each treated spring, well, or well field every ((±)) twelve months. This sample ((should)) shall be taken at the source ((prior to)) before treatment ((if this is not possible, the sample should be taken)) or at the extreme end of the distribution system. ((This)) The sample shall be analyzed for maximum total trihalomethane potential (MTTP); or

(ii) Surface water sources. The purveyor shall collect four samples per treated source every three months. The samples shall be taken within a twenty-four-hour period. One of the samples collected shall be taken from the extreme end of the distribution system and three



samples collected shall be taken from representative locations in the distribution system. The samples shall be analyzed for total trihalomethanes (TTHM), the sum of trichloromethane, bromodichloromethane, dibromochloromethane, and tribromomethane. After one year of monitoring, the department may reduce the monitoring frequency to one sample every three months per treatment plant if the TTHM levels are less than 0.10 mg/L. The sample shall be taken at the extreme end of the distribution system; or

(iii) Purchased surface water sources. The purveyor shall collect one water sample per each purchased surface source every three months. The sample shall be taken at the extreme end of the distribution system and analyzed for TTHM.

(b) ((Class 1 surface water)) Community systems serving a population ((of 10,000 or more)) less than ten thousand and ((using)) providing surface water treated with chlorine or other ((oxidants in the treatment process,)) halogenated disinfectant shall monitor for ((total trihalomethanes (TTHM)) according to the following schedule:

(i) Four samples shall be collected for each treatment plant every three months. The samples shall be taken within a twenty-four hour period. Twenty-five percent of the samples shall be taken from the extreme end of the distribution system and seventy-five percent from locations representing the population distribution. The samples shall be analyzed for total trihalomethanes (TTHM).

(ii) The monitoring requirement may be reduced after one year if the TTHM levels are less than 0.10 mg/L. The reduced frequency will be a minimum of one sample every three months for each treatment plant, taken at a point representative of the extreme end of the distribution system). The purveyor shall collect one water sample per treated source every three months for one year. The sample shall be taken at the extreme end of the distribution system and analyzed for TTHM. After the first year, surface water sources shall be monitored every thirty-six months.

(c) Community systems serving less than ten thousand people that purchase surface water treated with chlorine or other halogenated disinfectant or add a halogenated disinfectant after purchasing, shall monitor for TTHM. The purveyor shall collect one water sample every three months at the extreme end of the distribution system or at a location acceptable to the department. The sample shall be analyzed for TTHM. After the first year, monitoring shall be every thirty-six months.

(6) ((Corrosivity:

(a) Class 1 and 2 systems shall monitor for corrosion characteristics as follows:

(i) Systems with surface water sources shall take two sets of three samples during a consecutive twelve-month period. One set shall be taken during the winter and one during the summer. One of the samples in each set shall be taken from the source (prior to treatment) and two samples shall be collected from free-flowing outlets at different locations within the distribution system representing worst case locations for corrosion. Additional samples may be required from larger systems using several pipe materials:

(ii) Systems with ground water sources shall take one set of samples during a twelve-month period in the same manner as required for surface water sources.

(b) The analysis shall be for the corrosion byproducts including cadmium, copper, iron, lead, and zinc. In addition, alkalinity, pH, hardness, temperature, total dissolved solids (TDS), and the Langelier index value shall be determined for the source samples.

(c) Monitoring of corrosion characteristics after the initial sampling has been completed shall be as required by the department.

(7)) Pesticides.

((Class 1 and 2)) Community systems with surface water sources shall monitor for pesticides for which MCLs are established every thirty-six months ((or as directed by the department)). The water sample shall be collected during the time of year designated by the department as the time when pesticide contamination is most likely to occur.

((8)) (7) Radionuclides.

(a) Monitoring requirements for gross alpha particle activity, radium-226 and radium-228 are:

(i) ((Class 1 and 2)) Community systems shall monitor once every forty-eight months ((or as directed by the department)). Compliance shall be based on the analysis of an annual composite of four consecutive quarterly samples or the average of the analyses of four samples obtained at quarterly intervals.

(ii) Analysis for radium-226 and radium-228 may be omitted if the gross alpha particle activity is less than five pCi/L.

(iii) If the results of the initial analysis are less than half of the established MCL, the department may allow compliance with the monitoring requirements to be based on analysis of a single sample collected every forty-eight months.

(b) Monitoring requirements for man-made radioactivity:

(i) ((Class 1)) Community systems using surface water sources and serving more than one hundred thousand persons and other water systems designated by the department shall monitor for man-made radioactivity (beta particle and photon) every forty-eight months ((or as required by the department)). Compliance shall be based on the analysis of a composite of four consecutive quarterly samples or the analysis of four quarterly samples.

(ii) Any water system, as directed by the department, downstream from a nuclear facility shall monitor once every three months for gross beta and iodine-131, and monitor once every twelve months for strontium-90 and tritium. The department may allow the substitution of environmental surveillance data taken in conjunction with a nuclear facility for direct monitoring of man-made radioactivity after a determination that such data is applicable to a particular public water system.

((9)) Other organic compounds with established MCLs shall be monitored as directed by the department.

(10) Organic compounds with no established MCL shall be monitored as directed by the department.

((11)) (8) Other substances.

On the basis of public health concerns, monitoring of additional substances may be required by the department.

((TABLE 3

MINIMUM MONITORING REQUIREMENTS

System Class	Sample Type	Number of Samples Required*
1 and 2	Bacteriological	Refer to Table 1
	Inorganic Chemical and Physical (Primary and Secondary)	Surface water sources = one complete analysis per source every 12 months Ground water sources = one complete analysis per source or well field every 36 months
	Turbidity	Surface water sources = daily
	Trihalomethanes	Systems with 10,000 or more population and using chlorine: Surface water sources = 4 per treated source every 3 months. After one year may be reduced to 1 per source every 3 months Ground water sources = 1 per treated source every 12 months

System Class	Sample Type	Number of Samples Required*
	Corrosivity	Surface water sources = 2 sets per source during a 12-month period Ground water sources = 1 set per source or well field during a 12-month period
	Pesticides	Once every 36 months for surface water sources
	Radionuclides	Once every 48 months
	Other Organics	As directed by the department
3	Bacteriological	Refer to Table 2
	Inorganic Chemical and Physical (Primary and Secondary)	An initial complete analysis per source or well field unless waived by the department per WAC 248-54-165 (3)(c)(iii). After initial sample, one nitrate per source every 36 months
	Turbidity	Surface water sources = daily
	Trihalomethanes, Corrosivity, Pesticides, Radionuclides, and Other Organics	As required by the department
4	Bacteriological	One every 12 months
	Inorganic Chemical and Physical (Primary and Secondary)	An initial complete analysis per source or well field unless waived by the department per WAC 248-54-165 (3)(c)(iii). After initial sample, one nitrate per source every 36 months
	Turbidity, Trihalomethanes, Corrosivity, Pesticides, Radionuclides, and Other Organics	As required by the department

\*These are the minimum requirements. Additional monitoring may be required by the department.)

TABLE 4  
MONITORING LOCATION

Sample Type	Sample Location
Bacteriological	From representative points in distribution system.
Complete Inorganic Chemical and Physical	From a sample point as close to the source as possible.
Nitrate	From a sample point as close to the source as possible.
Turbidity - Surface Water	From a location at or before the entry point to the distribution system ((and where needed for treatment process control)).
Trihalomethanes - Surface Water	From representative points in the distribution system.
- Ground Water	From the source prior to treatment.
((Corrosivity	From the source and at locations in the distribution system.))
Pesticides - Surface Water	From the source.
Radionuclides	From the source.
Other ((Organics)) Substances	As directed by the department.

AMENDATORY SECTION (Amending Order 307, filed 2/17/88)

WAC 248-54-175 MAXIMUM CONTAMINANT LEVELS (MCLS). (1) The purveyor shall be responsible for complying with the standards of water quality identified in this section.

If any substance exceeds its maximum contaminant level (MCL), the purveyor shall take follow-up action as outlined ((m)) under WAC 248-54-185.

(2) In enforcing the standards set out in this section, the department shall seek to enforce compliance with the primary standards as its first priority. ((Secondary standards shall be enforced based on department discretion as the public interest warrants:))

(3) Bacteriological.

(a) Standards ((set forth in this)) under subsection (3) of this section shall be considered primary standards.

(b) If any coliform bacteria are present in any sample, follow-up action as described ((m)) under WAC 248-54-185(2) shall be taken.

(c) The MCL for coliform bacteria is as follows:

(i) When the membrane filter test is used, the number of coliform bacteria shall not be greater than:

(A) One per one hundred milliliters as the average of all samples tested each month; or

(B) Four per one hundred milliliters in two or more samples when less than twenty samples are tested each month; or

(C) Four per one hundred milliliters in more than five percent of the samples when twenty or more samples are tested each month.

(ii) When the five-tube MPN method is used, coliform bacteria shall not be present in:

(A) More than ten percent of the tubes tested each month; or

(B) Three or more tubes in two or more samples when less than twenty samples are tested each month; or

(C) Three or more tubes in more than five percent of the samples when twenty or more samples are tested each month.

(iii) The department may allow systems required to take less than four samples each month to base compliance with this section on the samples taken during the three-month period consisting of the month in question and the previous two months.

(iv) Special purpose samples, such as those taken to determine if disinfection following pipe repair or replacement has been sufficient, or check samples shall not be used to determine compliance with the MCL.

(v) Samples with unsuitable test results, i.e., confluent growth, TNTC (too numerous to count), excess debris, etc., will not qualify as routine samples and will not count toward fulfillment of the monitoring requirement.

(4) Inorganic chemical and physical.

The primary and secondary MCLs are as listed in Table 5 and 6:

TABLE 5

INORGANIC CHEMICAL CHARACTERISTICS

Substance	Primary ((Maximum Contaminant) Level) MCLs (mg/L)
Arsenic (As)	0.05
Barium (Ba)	1.0
Cadmium (Cd)	0.01
Chromium (Cr)	0.05
Fluoride (F)	4.0
Lead (Pb)	0.05
Mercury (Hg)	0.002
Nitrate (as N)	10.0
Selenium (Se)	0.01
Silver (Ag)	0.05
Sodium (Na)	((None established))*

Substance	Secondary ((Maximum Contaminant) Level) MCLs (mg/L)
Chloride (Cl)	250.0
Copper (Cu)	1.0
Fluoride (F)	2.0
Iron (Fe)	0.3
Manganese (Mn)	0.05
Sulfate (SO <sub>4</sub> )	250.0
Zinc (Zn)	5.0

Note: Although there has not been an MCL established for sodium, there is enough public health significance connected with sodium levels to require inclusion in inorganic chemical and physical monitoring.

TABLE 6

PHYSICAL CHARACTERISTICS

Substance	Primary ((Maximum Contaminant Level (mg/L)) MCL
Turbidity	1 ((Turbidity Unit) NTU
Substance	Secondary ((Maximum Contaminant Level (mg/L)) MCLs
Color	15 Color Units
Hardness	None established
Specific Conductivity	700 ((umhos) umhos/cm
Total Dissolved Solids (TDS)	500 mg/L

((Note: Although there has not been an MCL established for sodium, there is enough public health significance connected with sodium levels to require inclusion in inorganic chemical and physical monitoring.))

(5) Turbidity.

(a) Standards under subsection (5) of this section shall be considered primary standards.

(b) The MCLs for turbidity are as follows:

((a)) (i) One ((nephelometric turbidity unit (NTU))) based on a monthly average of the maximum daily turbidity, where the maximum daily turbidity is defined as:

((b)) (A) The average of the highest two hourly readings over a twenty-four hour period when continuous monitoring is used; or ((b)) (B) The average of ((two)) the daily grab samples taken within one hour when daily monitoring is used.

The limit may be increased to five NTUs if the purveyor can show the source is within a controlled watershed and meets all the requirements ((of)) under WAC 248-54-125 and 248-54-225.

((b)) (ii) Five NTUs based on an average of the maximum daily turbidity for two consecutive days.

(6) Trihalomethanes.

(a) Standards ((set forth in this)) under subsection (6) of this section shall be considered primary standards.

(b) The MCL for total trihalomethanes (TTHM) is 0.10 mg/L. The concentrations of each of the trihalomethane compounds ((f)) (trichloromethane ((chloroform)), dibromo(=)chloromethane, bromodichloromethane, and tribromomethane ((bromoform))) ((f)) are added together to determine the TTHM level.

(c) There is no MCL for maximum total trihalomethane potential (MTTP). If the MTTP value exceeds 0.10 mg/L, the purveyor shall follow up ((per)) as outlined under WAC 248-54-185(5).

(7) ((Corrosivity:

Follow-up action as outlined in WAC 248-54-185 shall be taken if any corrosion byproduct exceeds the MCL or the increase in levels between source and distribution sampling points is significant.

The corrosivity characteristics as generalized by the Langelier index are as follows: Highly aggressive is less than -2, moderately aggressive is -2 to 0, nonaggressive is greater than 0.

((b)) Pesticides.

(a) Standards ((set forth in this)) under subsection (7) of this section shall be considered primary standards.

(b) The MCLs for pesticides are as follows:

(i) Chlorinated hydrocarbons:

Endrin	0.0002 mg/L
Lindane	0.004 mg/L
Methoxychlor	0.1 mg/L
Toxaphene	0.005 mg/L

(ii) Chlorophenoxys:

2, 4-D	0.1 mg/L
2, 4, 5-TP Silvex	0.01 mg/L

((b)) (8) Radionuclides.

(a) Standards ((set forth in this)) under subsection (8) of this section shall be considered primary standards.

(b) The MCLs for radium-226, radium-228, and gross alpha particle radioactivity are as follows:

Radium-226	3 pCi/L
Combined Radium-226 and Radium-228	5 pCi/L
Gross alpha particle activity (excluding uranium)	15 pCi/L

(c) The MCL for beta particle and photon radioactivity from man-made radionuclides is that the average annual concentration shall not produce an annual dose equivalent to the total body or any internal organ greater than four millirem/year.

Compliance with the four millirem/year dose limitation may be assumed if the average annual concentration for gross beta activity, tritium, and strontium-90 are less than 50 pCi/L, 20,000 pCi/L, and 8 pCi/L respectively, provided that if both radionuclides are present, the sum of their annual dose equivalents to bone marrow shall not exceed four millirem/year.

((b)) (9) The maximum levels allowable for any additional substances monitored shall be determined by the ((department)) state board of health.

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

AMENDATORY SECTION (Amending Order 307, filed 2/17/88)

WAC 248-54-185 FOLLOW-UP ACTION. (1) General.

(a) If water quality exceeds any MCLs listed in WAC 248-54-175, the purveyor shall notify the department and take follow-up action as described in this section ((shall be taken)).

(b) When a primary MCL (~~has been exceeded~~) violation occurs, the purveyor shall:

(i) Notify the department within forty-eight hours;  
 (ii) Notify the public according to the procedures outlined ((m)) under WAC (~~248-54-255~~) 248-54-187;

(iii) Determine the cause of the contamination; and

(iv) Take corrective action as required by the department.

(c) (~~When a primary MCL violation has been confirmed, the purveyor shall determine the cause of the contamination and take corrective action as required by the department. The purveyor shall also notify the department within forty-eight hours.~~)

(~~d~~) When a secondary MCL violation (~~has been confirmed~~) occurs, the purveyor shall notify the department and take corrective action as directed by the department.

(2) Bacteriological.

(a) When (~~any~~) coliform bacteria (~~is~~) are present in any sample analyzed by the membrane filter method, the purveyor shall take action as follows:

(i) When the sample result is one through four per one hundred milliliters, the sample is unsatisfactory and an additional drinking water sample shall be taken to confirm the presence of (~~contamination~~) coliform bacteria; or

(ii) When the sample result is greater than four per one hundred milliliters, the sample is unsatisfactory and nonconforming. The purveyor shall take action to determine and correct the cause of the contamination. Daily check samples shall continue to be collected until at least two consecutive daily check samples show less than one coliform per one hundred milliliters (~~coliform bacteria~~).

(b) When (~~any~~) coliform bacteria (~~is~~) are present in any sample analyzed by the five-tube MPN method, the purveyor shall take action as follows:

(i) When the sample result is one or two tubes positive, the sample is unsatisfactory and an additional drinking water sample shall be taken to confirm the presence of contamination(~~:~~); or

(ii) When the sample result is three or more tubes positive, the sample is unsatisfactory and nonconforming. The purveyor shall take action to determine and correct the cause of the contamination. Daily check samples shall continue to be collected until at least two consecutive daily check samples show no coliform bacteria (~~is~~) are present.

(c) All additional samples required by this section shall be collected from the same location where the unsatisfactory or unsuitable sample was taken, except as specified by the department.

(d) All additional samples shall be submitted for analyses as soon as possible after the unsatisfactory or unsuitable results are known.

(e) When the presence of coliform bacteria in water has been confirmed by check samples, the purveyor shall notify the department within forty-eight hours.

(f) When the sample result is marked unsuitable, an additional drinking water sample shall then be submitted for analysis for each unsuitable result immediately upon notification of the unsuitable result. The additional sample shall be analyzed by the MPN testing method.

(g) The location where the daily check samples were taken to fulfill the requirements of this section shall not be eliminated from future sampling without the department's approval.

(3) Inorganic chemical and physical. (~~(a) Confirming an MCL violation:~~)

(i) ~~The method for confirming an MCL violation for all inorganic chemical and physical substances except nitrate is as follows:~~) When an initial analysis of any substance exceeds the MCL, the purveyor shall take (~~three additional samples for analysis of that substance within one month of the initial sample and from the same sampling point:~~)

If the average of the initial analysis and the three additional analyses exceeds the MCL, a violation has been confirmed. The purveyor shall report the confirmed violation to the department.

(ii) ~~The method for confirming an MCL violation for nitrate is as follows:~~ When an initial analysis for nitrate exceeds the MCL, the purveyor shall immediately take one additional sample from the same sampling point. If the average of the two samples exceeds the MCL, a violation has been confirmed.) the following action:

(a) For nitrate, immediately take one additional sample from the same sampling point. If the average of the two samples exceeds the MCL, a violation is confirmed; or

(b) (~~Since an MCL for sodium has not yet been established, the purveyor shall make analytical results available to the public on request. (This will allow physicians and persons on sodium-restricted diets to obtain results as needed.)~~) For all other inorganic chemical and physical substances, within thirty days take three additional samples from the same sample point. If the average of all four samples exceeds the MCL, a violation is confirmed.

(4) Turbidity. (~~(a)~~) When the turbidity exceeds the maximum allowable limit identified ((m)) under WAC 248-54-175 for longer than one hour monitored continuously, the purveyor shall report to the department within forty-eight hours. When the results of a manual turbidity analysis exceeds the maximum allowable limit, another sample shall be collected within one hour. When the repeat sample confirms the maximum allowable limit has been exceeded, the purveyor shall notify the department(:

(~~b) When the MCL is exceeded, the purveyor shall notify the department within forty-eight hours~~).

(5) Trihalomethanes. When the average of all samples taken during any twelve-month period exceeds the MCL for total trihalomethanes, the violation is confirmed and the purveyor shall take (~~correction~~) corrective action as required by the department. If the maximum trihalomethane potential result is equal to or greater than 0.10 mg/L and the result is confirmed by a check sample, the system shall monitor according to WAC 248-54-165 (5)(~~(b)(i)~~) for (~~at least~~) one year or more.

(6) (~~Corrosivity. When a comparison of the byproduct level shows a substantial increase from source to distribution system, the purveyor shall take action as directed by the department.~~)

(7) Follow-up action shall be determined by the department when the MCL for any additional substance is exceeded.

#### NEW SECTION

WAC 248-54-187 PUBLIC NOTIFICATION. (1) Responsibility. The purveyor of a Group A water system shall notify the water system users and the department when the following violations occur within the Group A system:

(a) A primary MCL violation under WAC 248-54-175;

(b) Failure to comply with a:

(i) Prescribed treatment technique;

(ii) Monitoring requirement under WAC 248-54-165; and

(iii) Testing procedure.

(c) Operating under a variance or exemption; and

(d) Failure to meet a variance or exemption schedule.

The department may also require the purveyor of a Group B water system to notify users when violations occur within the Group B system.

(2) Content. Notices shall provide:

(a) A clear, concise, and simple explanation of the violation;

(b) Discussion of any potential adverse health effects and what population is at risk;

(c) Mandatory health effects information where required;

(d) A list of steps the purveyor took or is planning to take to correct the violation;

(e) A list of steps the consumer should take until the violation is corrected, including advice on seeking an alternative water supply if necessary; and

(f) The purveyor's name and phone number.

Additional information may be provided by the purveyor to further explain the violation.

(3) Distribution.

(a) Community systems in violation of a primary MCL, treatment technique or variance or exemption schedule shall provide:

(i) Newspaper notice within fourteen days of violation;

(ii) Direct mail notice or hand delivery to all permanent residences served by the system within forty-five days of the violation. The department may waive mail or hand delivery if the violation is corrected within forty-five days;

(iii) Notice to radio and television stations serving the area within seventy-two hours of violation of a nitrate MCL or other acute violation as determined by the department; and

(iv) Repeat mail or hand delivery every three months until violation is corrected.

(b) Community systems in violation of a monitoring requirement, testing procedure, or operating under a variance or exemption schedule shall provide newspaper notice within three months of the violation or granting of a variance or exemption. The systems shall also provide

repeat notice by mail or hand delivery every three months until the violation is corrected or for as long as the variance or exemption remains in effect.

(c) NTNC and TNC systems in violation of a primary MCL, treatment technique, variance, or exemption schedule shall post a notice within fourteen days of the violation. The notice shall remain posted while the violation exists. If the violation is acute, posting shall be required within seventy-two hours.

(d) NTNC and TNC systems in violation of a monitoring requirement, testing procedure, or operating under a variance or exemption schedule shall post a notice within three months of the violation or granting of a variance or exemption.

(e) Where there is mention of a newspaper notice in this section, posting may be substituted in the absence of a newspaper of general circulation.

(f) Posted notices shall be placed in conspicuous locations and presented in a manner making the posted notices easy to read. Notices shall remain posted until the violation is corrected or for as long as the variance or exemption remains in effect. When appropriate, notices shall be multi-lingual.

(g) Notice to new billing units. The purveyor of a community water system shall give a copy of the most recent public notice for an outstanding violation to all new billing units or new hookups before or at the time water service begins.

(4) Fluoride.

(a) When a secondary MCL violation occurs, the purveyor of a community water system shall send notice to:

- (i) The department annually;
- (ii) Consumers served by the system annually; and
- (iii) New billing units added while the violation exists.

(b) The notice shall include specific mandatory language available in a department guideline titled Health Effects Language For Drinking Water Public Notification.

(5) When circumstances dictate a broader and/or more immediate notice be given to protect public health, the department may require notification by whatever means necessary.

(6) When a substance does not exceed an MCL, but is measured at a department-determined level of health significance, the department may require the purveyor to notify the water system users.

(7) When a public water system is granted a waiver by the state board of health, the purveyor shall notify customers and new billing units or new hookups before water service begins. Notice shall be provided annually with a copy going to the department.

(8) The department may give notice to the water system users required by this section on behalf of the water purveyor. However, the purveyor remains responsible for ensuring the requirements are met.

#### AMENDATORY SECTION (Amending Order 307, filed 2/17/88)

WAC 248-54-196 SMALL WATER SYSTEM MANAGEMENT PROGRAM. (1) The purpose of a small water system management program is to assure the water system:

- (a) Is properly and reliably managed and operated, and
- (b) Continues to exist as a functional and viable entity.

(2) A small water system management program shall be developed and implemented for all systems not required to complete a water system plan as described ((m)) under WAC 248-54-065.

(3) The department shall have the authority to require submission of this program for review and comment when:

- (a) A new water system is proposed;
- (b) A new project is proposed for an existing system;
- (c) An existing system has problems associated with inadequate or improper management or operations;

(d) Requested by the department for an existing system not having approved engineering documents, such as, or similar to, those described ((m)) under WAC 248-54-086 and 248-54-096; ((and)) or

- (e) There is a change in ownership of the system.

(4) A department guideline titled Planning Handbook is available to assist the purveyor in establishing the level of detail and content of the management program. Content and detail shall be consistent with the size, complexity, past performance, and use of the public water system. General content topics shall include, but not be limited to, the following elements:

- (a) Ownership and decision-making issues((:));
- (b) ((Financing;)) Financial capability; and
- (c) Operations.

(5) The department may require changes be made to a small water system management program if necessary to effectively accomplish the program's purpose.

#### AMENDATORY SECTION (Amending Order 307, filed 2/17/88)

WAC 248-54-201 RELIABILITY. (1) Any ((proposed)) public water system ((facility)) or expansion or modification of an existing system shall provide an adequate quantity and quality of water in a reliable manner at all times.

(a) In determining whether a proposed public water system or an expansion or modification of an existing system is capable of providing an adequate quantity of water, the department shall consider the immediate as well as the reasonably anticipated future needs of the system's consumers.

(b) In determining whether an existing public water system is providing an adequate quantity of water, the department shall consider the needs of the system's existing consumers exclusively, unless, in the department's discretion, consideration of the needs of potential consumers is in the public interest.

(2) The purveyor shall ensure the system ((shall be)) is constructed, operated, and maintained to protect against failures of the power supply, treatment process, equipment, or structure with appropriate back-up facilities. Security measures shall be employed to assure the water source, water treatment processes, water storage facilities, and the distribution system are under the strict control of the purveyor.

(3) Where fire flow is required, a positive pressure at the water meter or property line shall be maintained throughout the system under fire flow conditions.

(4) Water pressure at the customer's service meter or property line if a meter is not used shall be maintained at the approved design pressure under MID conditions. In no case shall the pressure be less than twenty psi under MID conditions.

(5) Water use restrictions as a designed operation practice shall not be allowed. However, water use restrictions may be allowed in times of drought.

(6) No intake or other connection shall be maintained between a public water system and a source of water not approved by the department.

(7) ((Every)) A purveyor shall maintain twenty-four-hour phone availability and shall respond to customer concerns and service complaints in a timely manner.

#### AMENDATORY SECTION (Amending Order 307, filed 2/17/88)

WAC 248-54-265 ANALYSES AND RECORDS, REPORTING. (1) The purveyor shall keep the following records of operation and water quality analyses:

(a) Records of bacteriological and turbidity analyses shall be kept for five years. Records of chemical analyses shall be kept for as long as the system is in operation. Other records of operation and analyses required by the department shall be kept for three years. All records shall bear the signature of the operator in responsible charge of the water system or his or her representative. ((Class 1 and 2)) Group A systems shall keep these records available for inspection by the department and shall send the records to the department if requested. Actual laboratory reports may be kept or data may be transferred to tabular summaries, provided the following information is included:

- (i) The date, place, and time of sampling, and the name of the person collecting the sample;
- (ii) Identification of the sample as to whether it was a routine distribution system sample, check sample, raw or drinking water sample, or other special purpose sample;
- (iii) Date of analysis;
- (iv) Laboratory and person responsible for performing analysis;
- (v) The analytical technique/method used; and
- (vi) The results of the analysis.

(b) Records of action taken by the system to correct violations of primary drinking water regulations and copies of public notifications shall be kept for three years after the last action taken with respect to the particular violation involved.

(c) Copies of any written reports, summaries, or communications, relating to sanitary surveys of the system conducted by system personnel, by a consultant or by any local, state, or federal agency, shall be kept for ten years after completion of the sanitary survey involved.

(d) Where applicable, daily records of operation and analyses shall include the following:

- (i) Chlorine residual;

- (ii) Fluoride level;
- (iii) Water treatment plant performance including, but not limited to:

- (A) Type of chemicals used and quantity,
- (B) Amount of water treated, and
- (C) Results of analyses.
- (iv) Turbidity; and
- (v) Other information as specified by the department.

(2) Reporting.

(a) Except where a shorter reporting period is specified, the purveyor shall report monthly to the department. Reports shall be submitted prior to the tenth of the following month and include all tests, measurements, or analyses.

(b) Water facilities inventory and report form (WFI).

(i) ~~((Every class 1 and 2))~~ Purveyors of community systems shall submit an annual WFI update to the department.

(ii) Purveyors of ~~((class 3 and 4 water))~~ NTNC, TNC, and Group B systems shall submit an updated WFI to the department ~~((as requested))~~ every three years.

(iii) The purveyor shall also submit an updated WFI to the department within thirty days of any change in name, ~~((class))~~ category, ownership, or responsibility for management of the water system.

#### AMENDATORY SECTION (Amending Order 307, filed 2/17/88)

WAC 248-54-285 CROSS-CONNECTION CONTROL. (1) General.

(a) The purveyor has the responsibility to protect water system customers from contamination due to cross-connections. Cross-connections which can be eliminated shall be eliminated. The purveyor shall work cooperatively with local authorities to eliminate or control potential cross-connections.

(b) The purveyor shall develop and implement a cross-connection control program acceptable to the department. The scope and complexity of the program shall be directly related to the size of the system and the potential public health risk. A department guideline titled Planning Handbook is available to assist the utility in developing this program. ~~((The cross-connection control program shall be included in the water system's plan per WAC 248-54-065 or small water system management program as outlined in WAC 248-54-196, whichever is appropriate.))~~ The most recently published edition of the manual titled Accepted Procedure and Practice in Cross Connection Control - Pacific Northwest Section - American Waterworks Association shall be used as a resource to establish:

- (i) Minimum cross-connection control operating policies;
- (ii) Backflow prevention assembly installation practices;
- (iii) Backflow prevention assembly testing procedures; and
- (iv) Enforcement authority.

Purveyors and local authorities shall have the option of establishing more stringent requirements.

(c) The purpose of a cross-connection control program is to protect the health of water consumers and the potability of the public water system by assuring:

- (i) The inspection and regulation of plumbing in existing and proposed piping networks; and
- (ii) The proper installation and surveillance of backflow prevention assemblies when actual or potential cross-connections exist and cannot be eliminated.

(d) ~~((The purveyor shall develop and document enforcement authority and operating policies in a manner acceptable to the department. The most recently published edition of the manual titled Accepted Procedure and Practice in Cross Connection Control - Pacific Northwest Section - American Waterworks Association, shall be used as a resource to establish:~~

- (i) ~~Minimum cross-connection control operating policies;~~
- (ii) ~~Backflow prevention assembly installation practices, and~~
- (iii) ~~Backflow prevention assembly testing procedures.~~

Purveyors and local authorities shall have the option of establishing more stringent requirements)) The cross-connection control program shall be included in the water system's plan under WAC 248-54-065 or small water system management program as outlined under WAC 248-54-196, whichever is appropriate.

(e) When an existing cross-connection poses a potential health or system hazard, the purveyor shall shut off water service to the premises until the cross-connection has been eliminated or controlled by the installation of a proper backflow prevention assembly. The cross-connection control program manager for the department shall be notified when a service has been shut off.

(2) Backflow prevention assembly installation and testing.

(a) If a cross-connection cannot be eliminated, then:

(i) An air-gap separation, reduced pressure principle backflow prevention assembly (RPBA) or a reduced pressure principle detector backflow prevention assembly (RPDA) shall be installed if the cross-connection creates an actual or potential health or system hazard.

(ii) An air-gap separation, RPBA, RPDA, double-check valve backflow prevention assembly (DCVA), or double-check detector backflow prevention assembly (DCDA) shall be installed if the cross-connection is objectionable, but does not ((hazardous)) pose an unreasonable risk to health.

(iii) A pressure vacuum breaker assembly (PVBA) or an atmospheric vacuum breaker may be installed where the substance which could backflow is objectionable but does not pose an unreasonable risk to health and where there is no possibility of backpressure in the downstream piping.

(iv) ~~((Air gaps or appropriate))~~ Backflow prevention assemblies, appropriate for the degree of hazard or air gaps and in some cases both, shall be installed at the service connection or within the following facilities, unless in the judgment of the water purveyor and the department, no hazard exists: Hospitals, mortuaries, clinics, laboratories, piers and docks, sewage treatment plants, food and beverage processing plants, chemical plants using water process, metal plating industries, petroleum processing or storage plants, radioactive material processing plants or nuclear reactors, car washes, facilities having a nonpotable auxiliary water supply, and others specified by the department.

(b) All installed RPBA's, RPDA's, DCVA's, DCDA's, and PVBA's shall be ~~((f))~~ models((t)) included on the current list of backflow assemblies, approved for installation in Washington state, and maintained and published by the department. ~~((The department shall publish and maintain a list of approved assemblies))~~ Backflow prevention assemblies in service, but not listed, shall remain in service provided the backflow prevention assemblies:

(i) Are listed on the current Washington state-approved cross-connection control assembly list at the time of installation;

(ii) Are properly maintained;

(iii) Are of a type appropriate for the degree of hazard; and

(iv) Are tested and successfully pass the test annually.

When unlisted assemblies are moved or require more than minimum maintenance, the unlisted assemblies shall be replaced by an assembly listed on the current approved model list.

(c) All air gaps and backflow prevention assemblies shall be ~~((a))~~ installed in accordance with the cross-connection control manual referenced ~~((m))~~ under WAC ~~((248-54-285-1))~~ 248-54-285 (1)(b) of this section.

(d) The purveyor may permit the substitution of a properly installed air gap in lieu of an approved backflow prevention assembly. All such air gap substitutions shall be inspected annually by a Washington state certified backflow assembly tester.

(e) A Washington state certified backflow assembly tester shall inspect and test all:

- (i) RPBA's,
- (ii) RPDA's,
- (iii) DCVA's,
- (iv) DCDA's,
- (v) New PVBA installations, and
- (vi) Existing PVBA's ~~((as they are))~~ discovered through routine inspections.

(f) Tests and/or inspections shall be conducted:

- (i) At the time of initial installation~~((:));~~
- (ii) Annually after initial installation, or more frequently if tests indicate repeated failures~~((:));~~ and
- (iii) After the assembly is repaired.

(g) The assemblies shall be repaired, overhauled, or replaced whenever found to be defective. The purveyor shall require that improperly installed or altered air gaps be replumbed or replaced by an approved RPBA at their discretion. Inspections, tests, and repairs shall be made under the purveyor's supervision and records thereof kept as required by the purveyor.

(h) The purveyor shall deny or discontinue water service to any customer failing to cooperate in the installation, maintenance, testing, or inspection of backflow prevention assemblies required by ~~((these))~~ the regulations of this chapter.

(3) Washington state certified backflow assembly testers.

(a) A backflow assembly tester shall become certified and maintain ~~((their))~~ certification per department backflow assembly tester certification program guidelines.

(b) The department shall maintain a list of persons certified to test backflow prevention assemblies.

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

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 248-54-255 PUBLIC NOTIFICATION.

**WSR 89-14-098**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 [Order 2829—Filed July 3, 1989, 8:27 a.m.]

Date of Adoption: July 3, 1989.

Purpose: The new Administrative Procedure Act (APA), chapter 34.05 RCW, becomes effective July 1, 1989. These rules govern the formal procedures prescribed or authorized by the act, including adjudicative proceedings, declaratory orders, petitions for rule making, and other topics.

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

Statutory Authority for Adoption: See below.

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

Reasons for this Finding: Section 250 of the new APA [RCW 34.05.250] requires the Chief Administrative Law Judge, Office of Administrative Hearings, to adopt model rules of procedure under the act. Section 220 (1)(a) [RCW 34.05.220] permits an agency to adopt its own rules. An agency must adopt as much of the model rules as is reasonable and state the reasons for any variation in the order of rule adoption. The model rules were filed on June 15 and become effective on July 15. The result is that if this agency does not adopt its own rules it may have no rules for some critical activities during the first two weeks of July. Further, this agency's rules contain variations from the model rules described in and for the reasons shown below.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: Yes, see below.

1. Indicate in the spaces below the rule section affected and the statutory authority

Washington Administrative Code (WAC)	New	Amend	Repeal	Statutory Authority (RCW or Session Law Chapter)	Reason for variation from Model Rules
248-14-070		Amend		18.51.070	Required by section 95, chapter 175, Laws of 1989.
248-554-030		Amend		70.123.030	Required by section 95, chapter 175, Laws of 1989.
275-16-055		Amend		43.208.335	The contents of the application are specified and, to achieve greater uniformity among programs, are modeled after section 95, chapter 175, Laws of 1989.
275-19-050		Amend		70.96A.090 as amended by sec. 19 ch 270. Laws of 1989.	1. Notice and application procedures are required by section 95, chapter 175, Laws of 1989. 2. Other differences are to continue to have these proceedings be based on the facts existing at the time the department acted against the applicant/license holder as opposed to a <u>de novo</u> proceeding.
275-20-080		Amend		74.08.090	The contents of the application are specified and, to achieve greater uniformity among programs, are modeled after section 95, chapter 175, Laws of 1989.
275-26-015			Repeal	71A.12.030	Not applicable.
275-26-020		Amend		Same	1. Subsections (1) and (2): None. 2. Subsection (3): Required by section 95, chapter 175, Laws of 1989.
275-26-022		Amend		Same	1. Subsections (1) through (4): Encouraged by RCW 34.05.060. 2. Subsection (3): Required by section 95, chapter 175, Laws of 1989.
275-27-500		Amend		Same	Required by RCW 71A.10.050 as amended by section 138, chapter 175, Laws of 1989.
275-36-310		Amend		Same	1. Subsections (1) through (4): Encouraged by RCW 34.05.060. 2. Required by section 95, chapter 175, Laws of 1989.
275-38-960		Amend		Same	The procedures are modeled after WAC 388-96-904 (see below) as both

				rules involve reimbursement for medical and other services rendered to department clients by similar kinds of facilities.
275-56-095	Amend	71.24.035		Required by section 95, chapter 175, Laws of 1989.
388-09-010	Repeal	74.08.090		1. Some changes required by section 95, chapter 175, Laws of 1989 and RCW 74.15.130 as amended by section 149, chapter 175, Laws of 1989. 2. Other changes are to achieve greater uniformity of hearing procedures by applying chapter 388-08 to this program's adjudicative proceedings.
388-09-020	Repeal	Same		Same
388-09-030	Repeal	Same		Same
388-09-040	Repeal	Same		Same
388-11-100	Amend	Same		1. The scope of the rule is broadened to include objection to a notice and finding of parental responsibility. See chapter 55, Laws of 1989. 2. Housekeeping. See RCW 34.05.461(1)(c) and RCW 74.20A.055 as amended by section 152, chapter 175, Laws of 1989.
388-11-105	Repeal	Same		The section is being repealed because it conflicts with RCW 34.05.464(5). See also RCW 74.20A.055 as amended by section 152, chapter 175, Laws of 1989.
388-11-180	Amend	Same		Housekeeping
388-11-185	Repeal	Same		This section would limit discovery to the devices stated in it by operation of RCW 34.05.446(2), (3). The Model Rules do not (see Section 120). Thus, repeal of this rule makes this program's discovery rules the same as those in chapter 388-08 WAC rules are the same as the Model Rules (compare WAC 10-08-120 with 388-08-446.
388-13-050	Amend	Same		Housekeeping. See RCW 74.20A.270 as amended by sections 156 and 157, chapter 175, Laws of 1989.
388-13-060	Amend	Same		Same
388-13-070	Amend	Same		Same
388-13-080	Repeal	Same		Same as WAC 388-11-105 (see above).
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388-13-110	Amend	Same		Pursuant to RCW 34.05.440(3) the department has adopted 14 days as the general time to file a motion to vacate a dismissal of the proceedings for reason of default. This general period is in WAC 388-08-440. This rule in chapter 388-11 is being repealed to make the WAC 388-08-440 apply to this program in the interest of achieving greater procedural uniformity among programs.
388-13-120	Amend	Same		Same Housekeeping and to achieve greater procedural uniformity for department programs.
388-14-260	Amend	Same		Same
388-14-270	Amend	Same		Housekeeping
388-14-385	Amend	Same		Same
388-14-390	Amend	Same		Housekeeping and to achieve greater procedural uniformity for department programs.
388-14-415	Amend	Same		1. Required by section 16, chapter 360, Laws of 1989. 2. Housekeeping
388-17-100	Amend	74.38.030		None
388-17-500	Amend	Same		The contents of the application are specified and, to achieve greater procedural uniformity, are modeled after section 95, chapter 175, Laws of 1989.
388-17-510	Amend	Same		Same
388-70-590	Amend	74.13.109		Housekeeping. See also RCW 74.13.127 as amended by section 148, chapter 175, Laws of 1989.
388-73-036	Amend	74.15.030		Required by section 95, chapter 175, Laws of 1989.
388-76-095	Amend	74.08.044		Same
388-80-005	Amend	74.08.090		Housekeeping.
388-96-904	Amend	74.09.120		Required by section 159, chapter 175, Laws of 1989.



388-98-700	Amend	18.51.070	To achieve greater procedural uniformity among programs this rule is modeled after section 95, chapter 175, Laws of 1989.
388-98-850	Amend	18.51.310	Required by section 96, chapter 175, Laws of 1989.

Effective Date of Rule: Immediately.

June 30, 1989  
Leslie F. James, Director  
Administrative Services

**AMENDATORY SECTION** (Amending Order 1455, filed 11/15/79)

WAC 248-14-070 LICENSURE—APPLICATION, INFORMATION REQUIRED. An application for a nursing home license, or renewal thereof, shall be signed by the owner or his legal representative and by the individual or individuals under whose management or supervision the home is to be operated if this person be different from the owner, be sworn to before a notary public and may include therein the following:

(1) The name and address of the applicant if an individual, and if a firm or partnership, of every controlling member thereof (a husband and wife shall be construed to be a partnership), and in the case of a corporation or association, the name and address thereof and of its officers and board of directors and trustees.

(2) The name of the individual or individuals under whose management or supervision the home will be operated.

(3) The location of the home for which a license is sought, including, in the case of locations known only by postal route and box numbers, adequate geographical identification.

(4) The number of individuals for which nursing care is to be provided, which number shall not exceed that which is lawfully permitted under these regulations or local zoning, building or other such regulations.

(5) Such other information as the department may reasonably require for proper administration of these standards.

(6) The department's notice of a denial, suspension, modification, or revocation of a license is governed by RCW 43.20A.\*\*\* and section 95, chapter 175, Laws of 1989. The applicant's and license holder's right to an adjudicative proceeding is in the same law.

**AMENDATORY SECTION** (Amending Order 2435, filed 11/3/86)

WAC 248-554-030 EXEMPTIONS, SEPARABILITY, AND NOTICE AND APPEAL. (1) Parts of regulations as stipulated in this chapter may be waived upon written application to the department and the department's determination that the following criteria are met:

(a) The waiver will not place the client's safety or health in jeopardy, and that the domestic violence service is unable to meet the requirements without the

waiver, or that the absence of such a waiver will have a detrimental effect on the provision of services.

(b) Substitution of procedures, materials, or equipment from those specified in this chapter have been demonstrated to be at least equivalent to those prescribed.

(2) If any of these regulations or their application is held invalid, the remainder of the regulations or application of the provision is not affected.

(3) The department is not obligated to disburse funds to domestic violence services complying with the standards as stipulated in this chapter.

(4) ((Appeal procedures shall be in accordance with chapter 34.04 RCW)) The department's notice of a denial, suspension modification, or revocation of a certificate of compliance is governed by RCW 43.20A.XXX and section 95, chapter 175, Laws of 1989. The applicant's and certificate holder's right to an adjudicative proceeding is in the same law.

**AMENDATORY SECTION** (Amending Order 1627, filed 3/25/81)

WAC 275-16-055 NOTICE OF FINDING OF RESPONSIBILITY (NFR)—APPEAL PROCEDURE. (1) The determination officer's assessment of the ability and liability of ((the)) a person or of the person's estate to pay hospitalization charges shall be issued in the form of a notice of finding of responsibility, hereinafter referred to as an NFR, as prescribed by RCW ((71.02.413. The NFR will be served upon those responsible parties as otherwise required by law, will indicate the charges being assessed, and explain the procedure for appeal therefrom)) 43.20B.340. When the NFR is for full hospitalization charges as specified in WAC 275-16-030, the financially responsible person will be informed of the current charges and that those charges are periodically recomputed by the department ((in accordance with RCW 71.02.410)). When the NFR is for adjusted charges, those charges will be expressed in a daily rate. Charges for ancillary services will be set aside when the NFR is for adjusted charges.

(2) The right to an adjudicative proceeding to contest the NFR is contained in RCW 43.20B.340.

(a) A person wishing to contest a notice and finding shall, within twenty-eight days of receipt of the notice:

(i) File a written application for an adjudicative proceeding by a method showing proof of receipt with the Office of Appeals, P.O. Box 2465, Olympia, WA 98504; and

(ii) Include in or with the application:

(A) A specific statement of the issue or issues and law involved;

(B) The grounds for contesting the department decision; and

(C) A copy of the department decision being contested.

(b) The proceeding shall be governed by the Administrative Procedure Act (chapter 34.05 RCW), RCW 43.20B.340, and chapter 388-08 WAC. If any provision of this section conflicts with chapter 388-08 WAC, the provision in this section governs.

AMENDATORY SECTION (Amending Order 2765, filed 2/22/89)

WAC 275-19-050 SUSPENSION, CANCELLATION, OR REVOCATION OF APPROVAL. (1) Failure to be in compliance with the requirements of chapters 69.54 and/or 70.96A RCW or these rules and regulations shall constitute grounds for the suspension or revocation of the department's approval ~~((in accordance with chapter 34.04 RCW))~~.

(2) The department may cancel approval if a facility ceases to provide the services for which the facility has been approved.

(3) The department may cancel approval if a facility fails to pay the required certification fee.

(4) The department may suspend or revoke the approval of a facility if the facility hires a person or persons into counselor or assessment officer job positions not meeting the qualifications in WAC 275-19-145 for qualified counselors and/or assessment officers.

(5) Disqualified applicants.

(a) The department shall consider each and every individual named in an application for treatment facility approval separately and jointly as applicants and, if anyone be deemed unqualified by the department in accordance with the law or these rules and regulations, the department may deny, suspend, or revoke approval.

(b) The department may deny, suspend, or revoke approval for any of the following:

(i) Obtaining or attempting to obtain approval by fraudulent means or misrepresentation;

(ii) Knowingly permitting, aiding, or abetting the commission of any illegal act on the premises of the treatment facility;

(iii) Misappropriation of the property of the patients.

~~(6) ((When the department intends to suspend, revoke, or cancel approval, the director of the bureau of alcohol and substance abuse or the bureau director's designees shall serve upon the approved treatment facility a notice of intent to suspend, revoke, or cancel the department's approval. Such notice shall provide for an administrative hearing and meet the requirements of chapter 34.04 RCW. The subsequent hearing and judicial review shall follow administrative procedures as specified in the Administrative Procedure Act, chapter 34.04 RCW and the rules and regulations promulgated thereunder)) The department's notice of a denial, revocation, suspension, or modification of approval is governed by RCW 43.20A.XXX and section 95, chapter 175, Laws of 1989. The facility's right to an adjudicative proceeding is in the same law.~~

(a) A facility wanting to contest a department decision shall within twenty-eight days of receipt of the decision:

(i) File a written application for an adjudicative proceeding by a method showing proof of receipt with the Office of Appeals, P.O. Box 2465, Olympia, WA 98504; and

(ii) Include in or with the application:

(A) A specific statement of the issue or issues and law involved;

(B) The grounds for contesting the department decision; and

(C) A copy of the department decision being contested.

(b) The proceeding shall be governed by the Administrative Procedure Act (chapter 34.05 RCW), RCW 43.20B.340, and chapter 388-08 WAC. If any provision of this section conflicts with chapter 388-08 WAC, the provision in this section governs.

~~((7))~~ (c) If the treatment facility requests a hearing, the department shall limit the hearing in scope to a review of the cause for the department's action. If the cause is a result of an inspection of the facility, the department shall limit the hearing to a review of the findings in the inspection report issued by the department and the facility's compliance with the requirements of chapters 69.54 and 70.96A RCW, and chapter 275-19 WAC at the time of the inspection. If the cause is not the result of an inspection, the department shall limit the hearing in scope to a review of:

(a) The department's written findings and stated cause for the action; and

(b) The facility's compliance with the requirements of chapters 69.54 and 70.96A RCW, and chapter 275-19 WAC on the date the findings were issued by the department.

~~(8) ((If the department finds public health, safety, or welfare requires emergency action and incorporates a finding to that effect in the suspension or revocation order, summary suspension of the department's approval may be ordered pending proceedings for suspension, revocation, or other actions deemed necessary by the department.~~

~~(9))~~ The department shall send written notice of any suspension, cancellation, or revocation of departmental approval to the county coordinator of each county in which the action is effective.

AMENDATORY SECTION (Amending Order 1418, filed 7/19/79)

WAC 275-20-080 ~~((JUDICIAL REVIEW))~~ NOTICE AND FINDING OF FINANCIAL RESPONSIBILITY—APPEAL PROCEDURE. (1) In all cases where a determination is made that the estate of a mentally or physically deficient person who resides at a state residential school is able to pay all or any portion of the monthly charges for care, support and treatment, a notice and finding of financial responsibility shall be personally served on the guardian of the resident's estate, or if no guardian has been appointed then to his spouse or parents or other person acting in a representative capacity and having property in his possession belonging to the resident of a state school and the superintendent of the state school. In those cases where a resident is an adult acting under no legal disability, such notice and

finding of financial responsibility shall be personally served on him or her. The notice shall set forth the amount the department has determined that such estate is able to pay per month, not to exceed the monthly charges fixed in accordance with RCW ((72.33.660)) 43.20B.420, and the responsibility for payment to the department of social and health services shall commence ((thirty)) twenty-eight days after personal service of such notice and finding of responsibility.

(2) ~~((Appeal from the determination of financial responsibility, as determined pursuant to the foregoing provisions contained in this chapter, may be made by the guardian of the resident's estate or if no guardian has been appointed by his spouse or parents or other person acting in a representative capacity and having property in his possession belonging to a resident of a state school. In those cases involving an adult resident acting under no legal disability, the appeal may be made by such resident personally. Such appeal shall be made to the secretary of the department of social and health services in writing within thirty days of the receipt of the department's notice and finding of financial responsibility. The written notice of appeal shall be served upon the secretary by registered or certified mail. If no appeal is so received by the secretary within this thirty day period, the notice containing the determination of financial responsibility shall be considered final. If an appeal is made as prescribed the execution of the determination and finding of financial responsibility will be held in abeyance, pending a decision on the appeal.~~

(3) ~~Appeal hearings may be held in any county seat most convenient to the appellant.~~

(4) ~~The secretary's decision may be appealed to the courts in accordance with existing provisions of the administrative procedures act.) The right to an adjudicative proceeding to contest the notice and finding of financial responsibility is contained in RCW 43.20B.430.~~

(a) A person wishing to contest a notice and finding shall within twenty-eight days of receipt of the notice:

(i) File a written application for an adjudicative proceeding by a method showing proof of receipt with the Office of Appeals, P.O. Box 2465, Olympia, WA 98504; and

(ii) include in or with the application:

(A) A specific statement of the issue or issues and law involved;

(B) The grounds for contesting the department decision; and

(C) A copy of the department decision being contested.

(b) The proceeding shall be governed by the Administrative Procedure Act (chapter 34.05 RCW), RCW 43.20B.430, and chapter 388-08 WAC. If any provision of this section conflicts with chapter 388-08 WAC, the provision in this section governs.

AMENDATORY SECTION (Amending Order 2349, filed 3/20/86)

WAC 275-26-020 CERTIFICATION. (1) Upon determination by the department of substantial compliance with WAC 275-26-030, the division may certify a tenant support agency as approved for referral of and

service provision to tenants under the provision of chapter 72.33 RCW. This certification is required biennially, but may be required more frequently by the ~~((division))~~ department. Initial application or proposal for certification shall be reviewed by the county and recommendations shall be forwarded by the county to the division. The county may submit recommendations to the division prior to annual certification by the department.

(2) An agency found to be substantially out of compliance with the provisions of this WAC chapter ~~((shall))~~ may be denied a certificate or be subject to interim certification ((and revocation procedures as outlined in WAC 275-26-015)) or suspension, revocation, or nonrenewal of its certificate.

(a) For an agency to be eligible for an initial or an interim certificate, the agency shall provide the department assurance that the agency will comply with these rules and regulations within a specific period of time acceptable to the secretary not to exceed one hundred eighty days.

(b) If the provider does not comply with the requirements of chapter 275-26 WAC within the one hundred eighty-day period the department shall initiate a suspension or revocation the tenant support initial or interim certification.

(3) The department's notice of a denial, nonrenewal, modification, suspension, or revocation of certification is governed by RCW 43.20A.XXX and section 95, chapter 175, Laws of 1989.

AMENDATORY SECTION (Amending Order 1945, filed 2/9/83)

WAC 275-26-022 ADMINISTRATIVE REVIEW CONFERENCE PROCESS. (1) ~~((All agencies providing tenant support services must abide by chapter 275-36 WAC as it pertains to decertification action. Any party who feels aggrieved by this decertification may request an administrative review. The request shall be signed by the provider, shall identify the challenged determination and the date thereof, and shall state as specifically as practicable the grounds for the provider's contention that the determination was erroneous. Copies of any documentation the provider intends to rely on to support the provider's position shall be included with the request))~~ Within twenty-eight days after a tenant support agency is notified of a certification determination it wishes to challenge, the agency shall request, in writing, that the division director or the division director's designee review such determination. The agency shall:

(a) Sign the request;

(b) Identify the challenged determination and the date thereof; and

(c) State as specifically as practicable the issues and regulations involved and the grounds for the agency's contention that the determination is erroneous. The agency shall include with the request copies of any documentation the agency intends to rely on to support its position.

(2) ~~((After receiving a request meeting the criteria in subsection (1) of this section, the director of the division of developmental disabilities will contact the provider to~~

~~schedule a conference for the earliest mutually convenient time. The conference shall be scheduled for no later than thirty days after a properly completed request is received unless both parties agree in writing to a specific later date)) After receiving a timely request meeting the criteria of this section, the director shall contact the agency to schedule a conference for the earliest mutually convenient time. The director shall schedule the conference no later than thirty days after a properly completed request is received, unless both parties agree in writing to a specific later date. The conference may be conducted by telephone unless either the department or the agency requests, in writing, the conference be held in person.~~

(3) The ((provider)) agency and appropriate representatives of the department shall attend the conference. In addition, representatives selected by the ((provider)) agency may attend and participate. The ((provider)) agency shall bring to the conference, or provide to the department in advance of the conference, any documentation the provider intends to rely on to support the ((provider)) agency's contentions. The parties shall clarify and attempt to resolve the issues at the conference. If additional documentation is needed to resolve the issues, a second session of the conference shall be scheduled for not later than thirty days after the initial session unless both parties agree in writing to a specific later date.

(4) Unless informal agreement has been reached at the conference, a written decision by the director of the division of developmental disabilities will be furnished to the ((provider)) agency within sixty days after the conclusion of the conference.

~~(5) ((If the provider desires review of an adverse decision of the director of the division of developmental disabilities, the provider shall within thirty days following receipt of such decision request a fair hearing in writing in accordance with the Administrative Procedure Act, chapter 34.04 RCW)) (a) An agency wanting to contest the director's determination shall within twenty-eight days of receipt of the determination:~~

~~(i) File a written application for an adjudicative proceeding by a method showing proof of receipt with the Office of Appeals, P.O. Box 2465, Olympia, WA 98504; and~~

~~(ii) Include in or with the application:~~

~~(A) A specific statement of the issue or issues and law involved;~~

~~(B) The grounds for contesting the director's determination; and~~

~~(C) A copy of the director's determination being contested.~~

~~(b) The proceeding shall be governed by the Administrative Procedure Act (chapter 34.05 RCW), RCW 43.20A.XXX and section 95, chapter 175, Laws of 1989; this section; and chapter 388-08 WAC. If any provision of this section conflicts with chapter 388-08 WAC, the provision in this section governs.~~

#### REPEALER

The following section of the Washington Administrative Code is repealed:

#### WAC 275-26-015 INITIAL AND INTERIM CERTIFICATION.

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

#### AMENDATORY SECTION (Amending Order 2418, filed 8/29/86)

WAC 275-27-500 FAIR HEARINGS. (1) A client, former client, or applicant ~~((, the parent when the client or applicant is a minor, and the guardian when the client or applicant is an adult,)) acting on his own behalf, or on behalf of or through an authorized representative, has the right to ((appeal)) an adjudicative proceeding to contest the following ~~((decision made by the division))~~ department actions:~~

(a) Denial or termination of eligibility set forth in WAC 275-27-030;

(b) Development or modification of the individual service plan set forth in WAC 275-27-060;

(c) Authorization, denial, reduction, or termination of services set forth in WAC 275-27-230;

(d) Admission or readmission to, or discharge from, a residential habilitation center;

(e) A claim the client, former client, or applicant owes an overpayment debt;

(f) A disagreement with an action of the secretary under RCW 71A.10.060 or 71A.10.070;

(g) A decision to change a client's placement from one category of residential services to a different category of residential services.

(2) Fair hearings are governed by the Administrative Procedure Act (chapter 34.05 RCW), RCW 71A.10.050, the rules in this chapter, and by chapter ~~((s 10-08 and))~~ 388-08 WAC. ~~((In cases of conflict between this chapter and chapter 388-08 WAC, the provisions in this chapter take precedence over the rules in chapter 388-08 WAC))~~ If any provision in this chapter conflicts with chapter 388-08 WAC, the provision in this chapter governs.

(3) The ((request)) application for a fair hearing must be in writing and filed with the DSHS office of hearings within thirty days of receipt of the decision the appellant wishes to ((appeal)) contest.

(4) The department shall not implement the following actions while ((administrative)) adjudicative proceeding ~~((s are))~~ is pending:

(a) Termination of eligibility;

(b) Reduction or termination of service, except when the action to reduce or terminate the service is based on the availability of funding and/or service; or

(c) Removal or transfer of a client from a service, except when a condition in subsection (5)(f) of this section is present.

(5) The department shall implement the following actions while administrative proceedings are pending:

(a) Denial of eligibility;

(b) Development or modification of an individual service plan;

(c) Denial of service;

(d) Reduction or termination of service when the action to reduce or terminate the service is based on the availability of funding and/or service;

(e) After notification of an administrative law judge's (or review judge) ruling that the appellant has caused an unreasonable delay in the proceedings; or

(f) Removal or transfer of a client from a service when:

(i) An immediate threat to the client's life or health is present;

(ii) The client's service provider is no longer able to provide services due to termination of the provider's contract; decertification of the provider; nonrenewal of provider's contract; revocation of provider's license; or emergency license suspension; or

(iii) The client, the parent when the client is a minor, or the guardian when the client is an adult, approves the decision.

(6) When the appellant (~~requests a hearing to appeal~~) files an application to contest a decision to return a resident of a state residential school to the community, the procedures specified in RCW ((72.33.164)) 71A.10.050(2) shall govern the proceeding(s). These include:

(a) A placement decision shall not be implemented during any period during which an appeal can be taken or while an appeal is pending and undecided unless:

(i) The client's or his or her representative gives written consent, or

(ii) The administrative law judge (or review judge) after notice to the parties rules the appellant has caused an unreasonable delay in the proceedings.

(b) The burden of proof is on the department(=); and

(c) The burden of proof is whether the specific placement proposed by the department is in the best interests of the resident.

~~((d) When a party files a petition for administrative review of an initial decision, the secretary shall rule on the petition and render the review decision. The secretary cannot delegate the authority to make the final decision. The secretary may get advice and assistance from agency employees who have not participated in the proceedings in any manner and whose duties do not include investigative or prosecutory functions and the secretary's review shall be confined to the record.))~~

(7) The initial (~~decision~~) order should be made within sixty days of the department's receipt of the (~~request~~) application for (~~a hearing~~) an adjudicative proceeding. When a party files a petition for administrative review, the review (~~decision~~) order should be made within sixty days of the department's receipt of the petition. The decision-rendering time is extended by as many days as the (~~hearing~~) proceeding is continued on motion by, or with the assent of, the appellant.

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

**AMENDATORY SECTION** (Amending Order 1950, filed 2/23/83)

WAC 275-36-310 ADMINISTRATIVE REVIEW CONFERENCE PROCESS. (1) (~~If a group home~~

~~wishes to challenge an action taken or a determination made by the division under chapter 275-36 WAC, the group home shall request in writing that the director of the division of developmental disabilities review such a determination. The written request must be received by the division within thirty days of the date the group home was notified of such a determination. The request shall be signed by the group home or the administrator of the facility, shall identify the challenged determination and the date thereof, and shall state as specifically as practicable the grounds for the group home operator's or administrator's contention that the determination was erroneous. Copies of any documentation the group home operator intends to rely on to support the group home operator's position shall be included with the request.) Within twenty-eight days after a group home is notified of determination it wishes to challenge, the group home shall request, in writing, the division director or the division director's designee review such determination. The group home shall:~~

~~(a) Sign the request;~~

~~(b) Identify the challenged determination and the date thereof; and~~

~~(c) State as specifically as practicable the issues and regulations involved and the grounds for its contention the determination is erroneous. The group home shall include with the request copies of any documentation the group home intends to rely on to support its position.~~

~~(2) ((After receiving a request meeting the criteria in subsection (1) of this section, the director of the division of developmental disabilities will contact the group home to schedule a conference for the earliest mutually convenient time. The conference shall be scheduled for no later than thirty days after a properly completed request is received unless both parties agree in writing to a specific later date.)) After receiving a timely request meeting the criteria of this section, the director shall contact the group home to schedule a conference for the earliest mutually convenient time. The director shall schedule the conference no later than thirty days after a properly completed request is received, unless both parties agree in writing to a specific later date. The conference may be conducted by telephone unless either the department or the group home requests, in writing, the conference be held in person.~~

(3) The group home and appropriate representatives of the department shall attend the conference. In addition, representatives selected by the group home may attend and participate. The group home shall bring to the conference, or provide to the department in advance of the conference, any documentation the group home intends to rely on to support the group home operator's contentions. The parties shall clarify and attempt to resolve the issues at the conference. If additional documentation is needed to resolve the issues, a second session of the conference shall be scheduled for not later than thirty days after the initial session unless both parties agree in writing to a specific later date.

(4) Unless informal agreement has been reached at the conference, a written decision by the director of the division of developmental disabilities will be furnished to

the group home within sixty days after the conclusion of the conference.

~~(5) ((If the group home desires review of an adverse decision of the director of the division of developmental disabilities, the group home shall within thirty days following receipt of such decision request a fair hearing in writing in accordance with the Administrative Procedure Act, chapter 34.04 RCW)) (a) A group home which wants to contest the director's determination shall within twenty-eight days of the determination:~~

~~(i) File a written application for an adjudicative proceeding by a method showing proof of receipt with the Office of Appeals, P.O. Box 2465, Olympia, WA 98504; and~~

~~(ii) Include in or with the application:~~

~~(A) A specific statement of the issue or issues and law involved;~~

~~(B) The grounds for contesting the director's determination; and~~

~~(C) A copy of the director's determination being contested.~~

~~(b) The proceeding shall be governed by the Administrative Procedure Act (chapter 34.05 RCW); RCW 43.20A.XXX and section 95, chapter 175, Laws of 1989; this section; and chapter 388-08 WAC. If any provisions of this section conflicts with chapter 388-08 WAC, the provision in this section governs.~~

AMENDATORY SECTION (Amending Order 2629, filed 6/1/88)

WAC 275-38-960 ADMINISTRATIVE REVIEW PROCESS. (1) Within ~~((thirty))~~ twenty-eight days after a contractor is notified of an action or determination made by the department ~~((pursuant to))~~ under a rule, contract provision, or policy statement, and the contractor wishes to challenge, the contractor shall request in writing the director or ~~((his or her))~~ the director's designee review such determination. The request shall be forwarded to the office of contracts management if the challenge pertains to audit findings (adjusting journal entries or AJEs) or other audit matters~~((:))~~ or the director, division of developmental disabilities, for other matters ~~((f))~~ such as rates, desk reviews, and settlements~~((t))~~. The request shall:

~~(a) Be signed by the contractor or the licensed administrator of the facility((- shall));~~

~~(b) Identify the challenged determination and the date thereof((- and shall));~~

~~(c) State as specifically as practicable the grounds for the contractor's or licensed administrator's contention the determination was erroneous.~~

(2) Copies of any documentation the contractor intends to rely on to support the contractor's position shall be included with the request.

~~((t))~~ (3) After receiving a request meeting the criteria, the department will contact the contractor to schedule a conference for the earliest mutually convenient time. The conference shall be scheduled for no earlier than fourteen days after the contractor was notified of the conference and no later than ninety days after a properly completed request is received unless both

parties agree in writing to a specific later date. The conference may be conducted by telephone unless either the department or the contractor requests in writing the conference be held in person.

~~((t))~~ (4) The contractor and appropriate representatives of the department shall attend the conference. In addition, representatives selected by the contractor may attend and participate. The contractor shall bring to the conference, or provide to the department in advance of the conference, any documentation requested by the department which the contractor is required to maintain for audit purposes pursuant to WAC 275-38-555, and any documentation on which the contractor intends to rely on to support the contractor's contentions. The parties shall clarify and attempt to resolve the issues at the conference. If additional documentation is needed to resolve the issues, a second session of the conference shall be scheduled for not later than thirty days after the initial session unless both parties agree in writing to a specific later date.

~~((t))~~ (5) Regardless of whether agreement has been reached at the conference, a written decision by the appropriate director or his or her designee will be furnished to the contractor within sixty days after the conclusion of the conference.

(5) A contractor, aggrieved by a decision of the director, may appeal ~~((an adverse))~~ the decision ~~((of the director or his or her designee by filing))~~ in an adjudicative proceeding.

(a) A contractor desiring an adjudicative proceeding shall:

(i) File a written ~~((request))~~ application for ~~((a hearing))~~ an adjudicative proceeding with the department's Office of ~~((hearings (mailing address:))~~ Appeals, P.O. Box 2465, Olympia, Washington 98504~~((t))~~. The ~~((request must be filed within thirty days of the date the contractor received the decision of the director. A copy of the director's decision being appealed must be attached to the request for hearing. The request must be signed by the contractor or the administrator of the facility, and shall state as specifically as practicable, the issue or issues and regulation or regulations involved, and the grounds for contending the director's decision is erroneous. Copies of any documentation on which the contractor intends to rely to support its position shall be included with the request))~~ contractor shall file the application within twenty-eight days of the date the contractor received the decision of the director that the contractor desires to appeal;

(ii) Sign the application or have the administrator of the facility sign it;

(iii) State as specifically as practicable the issue or issues and regulation involved;

(iv) State the grounds for contesting the director's decision; and

(v) Attach to the application a copy of the director's decision being appealed and copies of any documentation on which the contractor intends to rely to support its position.

(b) The proceeding shall be governed by the Administrative Procedures Act (chapter 34.05 RCW), this section, and chapter 388-08 WAC. If any provision in this

section conflicts with chapter 388-08 WAC, the provision in this section governs.

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

AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-095 LICENSING PROCEDURES FOR PROVIDERS—APPLICATION AND APPROVAL. The department shall review applications for licensure and approve those which meet minimum standards for community mental health programs.

(1) Applications for licensure shall be submitted to the department on forms furnished by the department. The applicant shall indicate the services for which licensure is requested.

(a) Applications shall be signed by the applicant's governing body and administrator.

(b) The applicant shall send a copy of the application to the county authority or the designee. The county authority or the designee may review the application and send written comments to the department with a copy to the applicant. If the department does not receive a response from the county authority or the designee within thirty days, the department shall proceed with the application.

(2) An on-site review shall be conducted for the purpose of collecting and analyzing the information necessary for the department to determine whether a provider is in compliance with the minimum standards specified in this chapter. The department shall provide forty-five days written notice prior to the date scheduled for the licensure review.

(3) The department shall notify the applicant of the results of the review and make the report of the on-site review available to the applicant and county authority within sixty days of the last day of the on-site review.

(4) ~~The ((applicant may appeal the department's licensure decision within thirty days of notification of decision. The appeal shall be made in accordance with the Administrative Procedure Act, chapter 34.04 RCW))~~ department's notice of denial, revocation, suspension, or modification of a licensing decision is governed by RCW 43.20A.XXX and section 95, chapter 175, Laws of 1989. The provider's right to an adjudicative proceeding is in the same law.

(5)(a) A provider wanting to contest a department licensing decision shall, within twenty-eight days of receipt of the decision:

(i) File a written application for an adjudicative proceeding by a method showing proof of receipt with the Office of Appeals, P.O. Box 2465, Olympia, WA 98504; and

(ii) Include in or with the application:

(A) A specific statement of the issue or issues and law involved;

(B) The grounds for contesting the department decision; and

(C) A copy of the department decision being contested.

(b) The proceeding shall be governed by the Administrative Procedure Act (chapter 34.05 RCW); RCW 43.20A.XXX and section 95, chapter 175, Laws of 1989; this section; and chapter 388-08 WAC. If any provision of this section conflicts with chapter 388-08 WAC, the provision in this section governs.

#### REPEALER

The following sections of the Washington Administration Code are repealed:

WAC 388-09-010 ADMINISTRATIVE HEARING—CHILD WELFARE AGENCY—DENIAL, SUSPENSION, REVOCATION, OR NONRENEWAL OF LICENSE.

WAC 388-09-020 ADMINISTRATIVE HEARING—APPLICABILITY OF CHAPTER 388-08 WAC.

WAC 388-09-030 ADMINISTRATIVE HEARING—APPEARANCE AND PRACTICE BEFORE DEPARTMENT—WHO MAY APPEAR.

WAC 388-09-040 TIME LIMIT FOR RENDERING DECISION.

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

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

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

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

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

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

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

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

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

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

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

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



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

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

WAC 388-11-180 PROCEDURAL REFERENCE. Hearings held under this chapter shall be governed by the Administrative Procedure Act (chapter 34.05 RCW), RCW 74.20A.055 ~~((shall be subject to the provisions of)), and chapters ((10-08 and)) 388-08 and 388-11 WAC ((to the extent these provisions are relevant and consistent with the rules adopted under this)).~~ If any provision in chapter 388-08 WAC conflicts with or is inconsistent with RCW 74.20.055 or this chapter, the provision in RCW 74.20.055 or this chapter governs.

#### REPEALER

The following sections of the Washington Administration Code are repealed:

WAC 388-11-105 REVIEW OF INITIAL DECISION.

WAC 388-11-185 DISCOVERY.

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

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

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

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

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

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

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

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

WAC 388-13-060 TIMELY REQUEST FOR HEARING. Any debtor who objects to all or any part of a notice of support debt shall have the right, for not more than twenty days from the date of service of the notice of support debt, to request in writing, a hearing, which request shall be ~~((served upon))~~ filed at the district office of the office of support enforcement by certified mail or by personal service. A request for hearing, pursuant to this section, shall be construed to be a general denial of liability to the department. The execution of the notice of support debt shall be stayed pending the final decision on such hearing. If a request for hearing is ~~((received))~~ filed, the department shall ~~((notify))~~ serve the notice of hearing on the appellant, ~~((his))~~ the appellant's attorney, or other designated representative ~~((, of the date, time and place of the hearing, at least twenty days prior to the date thereof by written notice to the appellant or his or her representative))~~ by certified mail or a method showing proof of receipt.

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

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



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

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

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

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

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

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

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

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

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

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

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

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

WAC 388-13-120 PROCEDURAL REFERENCE. ~~((1) WAC 388-11-145, 388-11-150 and 388-11-180 and all procedural references in that last section shall apply to actions under this chapter.~~

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

REPEALER

The following sections of the Washington Administration Code are repealed:

WAC 388-13-080 REVIEW OF INITIAL DECISION.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Any debtor objecting to all or any part of the notice of debt shall have a right to request a contested hearing under chapter 34.04 RCW. The request shall be in writing and shall include a statement of the grounds and defenses upon which relief from the administrative

order is sought and/or the basis for modification of the amount for future/current support.

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

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

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

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

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

(e) If a written request for hearing is (~~served upon~~) filed at the office of support enforcement after the twenty-day period, the debtor's right to relief from the administrative order shall be determined pursuant to the provisions of Civil Rule 60. (~~A contested hearing under chapter 34.04 RCW shall be promptly scheduled in response to such a request.~~) The filing of the petition for a hearing after the twenty-day period shall not affect any collection action previously taken under chapter 74.20A RCW. The granting of a request for hearing shall operate as a stay on any future collection action, pending

the final adjudicative decision (~~(of the secretary or the secretary's designee on the hearing)~~) and order. Moneys withheld as a result of collection action in effect at the time of the granting of the request for the hearing shall be delivered to the department and shall be held in trust by the department pending the final order (~~(of the secretary)~~) or during the pendency of any appeal to the courts made under chapter (~~(34.04)~~) 34.05 RCW. The department may petition the administrative law judge to require the responsible parent to pay future/current support. If an order for future/current support is entered and the responsible parent fails to comply with the order, the office of support enforcement may take appropriate collection action.

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

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

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

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

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

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

(10) Upon request from another state, the office of support enforcement shall provide available information/documentation from case files, including but not limited

to copies of superior court orders, administrative orders, pay records, and statements/affidavits of support debts, employment, and public assistance records.

AMENDATORY SECTION (Amending Order XXX [2794], filed XXX [5/3/89])

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

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

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

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

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

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

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

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

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

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

(B) The name of the physical custodian;

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

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

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

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

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

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

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

(b) Distribute a support payment within eight days of the date the office receives the payment, unless unable to

distribute the payment for one or more of the following reasons:

- (i) The location of the payee is unknown;
  - (ii) There is not sufficient information to identify the accounts against which and to which the payment should be applied;
  - (iii) An action is filed in a court or agency with jurisdiction to decide the issue, to determine whether or not a support payment is owed and/or how the payment should be distributed;
  - (iv) Under subsection (6) of this section, the office receives prepaid support moneys which are being held and will be distributed in future months;
  - (v) The office mails a notice of intent to distribute the support money to the physical custodian under subsection (2) of this section; or
  - (vi) Other circumstances exist which make a proper and timely distribution of the payment impossible through no fault or lack of diligence of the office.
- (c) The date of collection shall be the date on which the payment is received by the office. For interstate collections, the date of collection shall be the date on which the payment is received by the office or the legal entity of any state or political subdivision actually making the collection, whichever is earliest;
- (d) The office shall apply all payments:
- (i) To satisfy the support obligation for the month in which the payments are received and, then;
  - (ii) To any support debt or debts owed to:
    - (A) The family;
    - (B) A person for whom services are being provided;
    - (C) The department; or
    - (D) A child support agency in another state or foreign country.
- (e) If the responsible parent owes a current support obligation to more than one family and does not pay enough money during the month to satisfy these current support obligations in full, the office shall distribute the money collected based on the proportionate share of the obligation owed to each family;
- (f) The office shall apply amounts received during a month in excess of the responsible parent's current support obligation or obligations to the support debt or debts based on the proportionate size of the debts, except as provided in subsection (4)(g) of this section, if:
- (i) The support payment or payments exceed the amount required to satisfy the current support obligation or obligations for that month; and
  - (ii) The responsible parent owes more than one support debt.
- (g) The office may apply amounts distributed under this subsection to a single support debt rather than make a proportionate distribution in the following circumstances:
- (i) To satisfy a support debt owed to the family that accrued after the family terminated from public assistance as provided for in RCW 26.23.030; or
  - (ii) If proportionate distribution is administratively inefficient; or

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

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

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

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

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

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

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

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

(a) The office received prepaid support money;

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

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

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

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

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

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

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

(iv) Inform the person or family they may request an administrative hearing under chapter ~~((34.04))~~ 34.05 RCW to object to the notice. At the hearing, the person may contest the office's findings regarding the existence

and amount of the debt for erroneous payments or other payments the office is seeking to recover.

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

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

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

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

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

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

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

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

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

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

(d) If an apparent factual dispute exists:

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

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

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

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

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

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

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

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

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

(vi) Requests for deferral of support enforcement action;

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

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

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

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

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

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

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

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

section and remand them for issuance of a new decision in compliance with the standards.

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

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

(d) The director.

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

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

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

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

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

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

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

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

petition shall state the facts supporting the allegation by the responsible parent or the joint owner that the funds in the account, or a portion of those funds, are exempt from satisfaction of the child support obligation of the responsible parent.

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

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

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

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

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

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

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

If the final decision of the department or courts on appeal is that the department has caused funds in a bank account that are exempt from satisfaction of the child



support obligation of the responsible parent to be withheld by the bank or delivered to the department, the office of support enforcement shall promptly release the order to withhold and deliver or refund the proportionate share of the funds having been identified as being so exempt. No interest shall accrue or be payable by the department on any moneys withheld pursuant to RCW 74.20A.080.

AMENDATORY SECTION (Amending Order 2606, filed 3/4/88)

WAC 388-14-415 NOTICE OF SUPPORT ((~~DEBT~~)) OWED. (1) The notice of support ((~~debt~~)) owed issued, under RCW ((~~74.20A.040~~)) 26.23.110, shall state that:

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) ((~~Making~~)) Filing a written request for an administrative hearing to be held under chapter ((~~34.04~~)) 34.05 RCW; or

(ii) Filing an action in superior court.

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

(a) The factors stated in the order, and

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

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

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

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

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

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

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

(6) If the responsible parent requests a hearing under this section, the department shall issue a notice of hearing. The notice shall direct the responsible parent to appear and show why the current support amount and/or the support debt amount is wrong. A copy of the notice of hearing shall also be mailed to the person to whom the support is payable under the support order.

(7) The responsible parent shall:

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

(b) Attach an office approved financial affidavit;

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

(8) If the responsible parent requests a hearing within twenty days, the office shall stay collection action pending filing of the ((~~outcome of the hearing~~)) support order, except as provided in subsection (9) of this section.

(9) The office may take action to collect:

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

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

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

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

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

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

WAC 388-11-011, 388-11-065, 388-11-070, 388-11-100, ((~~388-11-105~~)), 388-11-115, 388-11-120, 388-11-130, 388-11-135, 388-11-140, 388-11-145, 388-11-150, 388-11-155, 388-11-170, ((~~388-11-180~~),

~~388-11-185,)) and 388-11-190((, and chapter 10-08 WAC)).~~

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

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

~~(a) Find the amount current support payable under the order,~~

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

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

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

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

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

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

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

(b) Correct mathematical computation of the stated debt,

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

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

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

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

~~(a) The office of support enforcement,~~

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

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

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

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

~~((20)) (17) A support order issued under this section shall:~~

~~(a) Contain the notice and information listed in RCW 26.23.050(4), and~~

~~(b) Be filed with the clerk of the court that has jurisdiction over the court order.~~

~~((21) The office is not required to serve a notice of support debt on the responsible parent prior to collection action if:~~

~~(a) The office is providing services on behalf of the responsible parent's dependent children, and~~

~~(b) A superior court or administrative order directs the responsible parent to make support payments through the office or the Washington state support registry.~~

~~((22)) (18) The responsible parent may request a hearing under this section if the responsible parent claims credit for payments under ((WAC 388-14-210(4). When the department issues a notice of hearing to the responsible parent,)) The department shall also mail a copy of the notice to the last known address of the person to whom support is payable under the order.~~

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

AMENDATORY SECTION (Amending Order 1970, filed 6/16/83)

WAC 388-17-100 RIGHTS AND RESPONSIBILITIES OF APPLICANTS AND RECIPIENTS.

(1) Each applicant and/or recipient of the senior citizens services program shall have the following rights:

(a) Any individual wishing to do so shall have the right to apply for the senior citizens services program and have his or her eligibility determined within ten days. If an adverse decision is made regarding eligibility, the applicant will be provided written notice. The notice of eligibility shall include a statement of the reasons upon which an unfavorable decision is based and a statement of the individual's right to ((a hearing)) an adjudicative proceeding, and a statement of the individual's right to representation at the hearing by a friend, relative, or other representative.

(b) An eligible individual shall be given the requested services, within the limits of available funds, offered by the area agency on aging in his or her geographic area.

(c) An applicant or recipient feeling aggrieved by a decision of the area agency or service provider regarding his or her eligibility for senior citizens services shall have the right to an informal hearing provided by the area agency. The hearing shall be held within thirty days of the date a request is made, and a written decision shall be rendered within fifteen days after the hearing. If the applicant or recipient is dissatisfied with the outcome of the informal hearing, he or she may ((request the department provide a fair hearing as specified in chapter



~~388-08 WAC~~) file an application for an adjudicative proceeding. Any person desiring a ((hearing)) proceeding must, within thirty days after receiving written notice of a decision regarding eligibility, ((make written request for a hearing to)) file a written application with the area agency or the department.

(d) Information obtained by the department, area agency, or vendor identifying any applicant or recipient of senior citizens services is confidential and privileged and may not be disclosed or used either directly or indirectly in any manner or for any purpose except for purposes directly related to the administration of the program, unless the applicant or recipient requests in writing that the information be disclosed.

(e) Each applicant and recipient shall be treated with dignity and courtesy, and there shall be no discrimination against any individual because of race, sex, religious creed, political beliefs, national origin, or handicap.

(f) Each applicant for services for which a fee may be charged (all services except nutrition, health screening, information and assistance, and transportation) shall be fully informed in writing of his or her rights and responsibilities in connection with the senior citizens services program.

(2) An applicant and/or recipient shall have the following responsibilities:

(a) Each applicant for services for which a fee may be charged shall provide complete and accurate information on an application form provided by the department and cooperate in establishing his or her eligibility for services.

(b) If services provided by the senior citizens services program are available at no cost to the applicant through other sources, the applicant shall apply for these services through the appropriate agency.

(c) Each recipient of services for which a fee may be charged shall promptly report any changes in income or resources in writing affecting his or her eligibility or amount of fees to be paid for services.

#### AMENDATORY SECTION (Amending Order 2458, filed 1/13/87)

WAC 388-17-500 LOCAL AREA AGENCY ON AGING CONTRACTS—ADMINISTRATIVE REVIEW PROCESS. (1) Local area agencies on aging shall establish a complaint resolution process. A service contract applicant or provider of services under a contract with a local area agency on aging who is aggrieved by an action of the local area agency shall attempt to resolve the grievance through the complaint resolution process.

(2) A service contract applicant or provider of services under a contract with a local area agency on aging has the right to an ((administrative proceeding)) adjudicative hearing. Only those issues raised at the complaint resolution procedure can be appealed to an ((administrative proceeding)) adjudicative hearing. The ((administrative hearing)) proceeding shall be governed by the Administrative Procedure Act (chapter ((34.04)) 34.05 RCW) and ((chapter 10-08 WAC, and)) the provisions of chapter 388-08 WAC ((that do not conflict with this section)).

(3) ((To make a request for an administrative hearing,)) A service contract applicant's or ((provider shall file a)) provider's application for an adjudicative proceeding shall be written ((appeal with)) and filed at the department's Office of ((administrative regulations and hearings. The appeal shall be filed)) Appeals, P.O. Box 2465, Olympia, WA 98504 within thirty days of the date the local agency on aging mailed the complaint resolution determination to the service contract applicant or recipient. A copy of the ((appeal)) application shall be sent to the local area agency. The ((appeal)) application shall:

(a) State specifically the issue or issues and regulation or regulations involved and the basis for considering the complaint resolution determination to be in error((-);

(b) Include any supporting documentation((-); and

(c) Include a copy of the complaint resolution determination being appealed.

(4) The department has the right to intervene in any ((administrative hearing)) adjudicative proceeding. To intervene, the department shall:

(a) File a written notice of intervention with the office of ((administrative regulations and hearings)) appeals or the presiding officer((-);

(b) Serve a copy of the notice ((to)) on the parties((-); and

(c) Include in the notice the name, address, and telephone number of the department employee and/or assistant attorney general who represents the department.

~~((5) After the administrative law judge has made a record, he or she shall make an initial decision (or order dismissing the appeal as withdrawn or abandoned). See WAC 10-08-210. The parties have the right to file a petition for administrative review against an initial decision (or order of dismissal). See WAC 388-08-409 and 388-08-413.))~~

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

#### AMENDATORY SECTION (Amending Order 2458, filed 1/13/87)

WAC 388-17-510 AREA AGENCY ON AGING PLAN—ADMINISTRATIVE REVIEW PROCESS.

(1) An area agency on aging aggrieved by an action of the department regarding a plan submitted under the provisions of the Older Americans Act has the right to an ((administrative hearing)) adjudicative proceeding. The ((hearing)) proceeding shall be governed by the Administrative Procedure Act (chapter ((34.04)) 34.05 RCW) and ((chapter 10-08 WAC, and)) the provisions of chapter 388-08 WAC ((that do not conflict with this section)). If any provision of this section conflicts with chapter 388-08 WAC, the provision in this section governs.

(2) ((To make a request for an administrative hearing,)) An area agency on aging's ((shall file a)) application for an adjudicative proceeding shall be written ((appeal with)) and filed at the department's Office of ((administrative regulations and hearings. The appeal shall be filed)) Appeals, P.O. Box 2465, Olympia,

WA 98504 within thirty days of the date the department first gave notice of the aggrieving action to the area agency. A copy of the (~~appeal~~) application shall be sent to the unit of the department which gave notice of the aggrieving action to the area agency. The (~~notice~~) application shall:

(a) State specifically the issue or issues and regulation or regulations involved and the basis for considering the aggrieving action to be in error.

(b) Include any supporting documents.

~~((3) The administrative decision-making procedure is the initial decision-petition for administrative review-review decision process. See WAC 388-08-409 and 388-08-413.))~~

AMENDATORY SECTION (Amending Order 1037, filed 7/29/75)

WAC 388-70-590 ADOPTION SUPPORT FOR CHILDREN—APPEAL FROM SECRETARY'S DECISION—HEARING. (1) Adoptive parents (~~may request a~~) have the right to a fair hearing to (review) contest:

(a) A decision by the secretary to increase or decrease the level of payment or payments for the support of an adoptive child without the mutual acceptance of the adoptive parents. Notification of proposed changes in the level of a payment or payments for the support of an adoptive child shall be made to the adoptive parents in writing (~~by certified mail or~~) personal service (and) or other means showing proof of receipt. The notice shall state the grounds upon which the secretary proposes such action;

(b) The decision of the secretary made pursuant to a written request by the adoptive parent or parents to adjust the amount of any payment or the level of continuing payments; such hearing may be requested thirty days following the date of receipt of the request by the secretary if the secretary has failed to take action upon such request;

(c) The decision of the secretary as to whether any standard or part of a standard adopted by the secretary after the date of an initial agreement, which standard or part is used by the secretary making any review and adjustment, is more generous than the standard in effect as of the date of the initial determination with respect to such agreement.

(2) A hearing must be requested within thirty days of the receipt of written notice by the adoptive parents of the decision of the secretary sought to be reviewed. A request for a hearing shall be made by (~~certified mail~~) personal service or other means showing proof of receipt.

(3) (~~AH~~) A hearing(s) held pursuant to this section shall be conducted in accordance with chapter 388-08 WAC and RCW (~~74.08-070~~) 74.08.080 except as specifically provided in the act and (~~these regulations~~) this section. (Such hearings) A hearing and the results thereof shall be confidential and shall not be revealed to any other person, institution or agency, public or private.

(4) Denial of an initial request for support payments and social decisions based on the appropriateness of the individual(s) to adopt a child shall not be subject to any review or hearing.

AMENDATORY SECTION (Amending Order 2796, filed 5/4/89)

WAC 388-73-036 LICENSURE—DENIAL, SUSPENSION, OR REVOCATION. (1) Before granting a license and as a condition for continuance of a license, the department shall consider the ability of each applicant and the chief executive officer, if any, to operate the agency in accordance with the law and this chapter. Such persons shall be considered separately and jointly as applicants or licensees and if any one be deemed disqualified by the department in accordance with chapter 74.15 RCW or this chapter, the license may be denied, suspended, revoked, or not renewed.

(a) The department shall disqualify any individual engaging in illegal use of drugs or excessive use of alcohol.

(b) The department shall disqualify any individual convicted of a felony or released from a prison within seven years of the date of application for the license because of the conviction, if:

(i) The conviction is reasonably related to the competency of the person to exercise responsibilities for ownership, operation, or administration of an agency; and

(ii) The department determines, after investigation, the person has not been sufficiently rehabilitated to warrant public trust.

(c) The department shall not grant a license to an individual who, in this state or elsewhere:

(i) Has been denied a license to operate a facility for the care of children, expectant mothers, or developmentally disabled adults; or

(ii) Had a license to operate such a facility suspended or revoked.

(d) An individual may establish by clear, cogent, and convincing evidence the ability to operate an agency under this chapter. The department may waive the provision in subsection (1)(c) of this section and license the individual.

(2) A license may be denied, suspended, revoked, or not renewed for failure to comply with the provisions of chapter 74.15 RCW, and rules contained in this chapter. A license shall be denied, suspended, revoked, or not renewed for any of the following reasons:

(a) Obtaining or attempting to obtain a license by fraudulent means or misrepresentation including:

(i) Making materially false statements on the application; or

(ii) Material omissions which would influence appraisal of the applicant's suitability.

(b) Permitting, aiding, or abetting the commission of any illegal act on the premises;

(c) Permitting, aiding, or abetting the abuse, neglect, exploitation, or cruel or indifferent care to persons under care;

(d) Repeatedly:

(i) Providing insufficient personnel relative to the number and types of persons under care; or

(ii) Allowing persons unqualified by training, experience, or temperament to care for or be in contact with the persons under care.

(e) Misappropriation of the property of persons under care;

(f) Failure or inability to exercise fiscal responsibility and accountability in respect to operation of the agency;

(g) Failure to provide adequate supervision to persons under care;

(h) Refusal to admit authorized representatives of the department or state fire marshal to inspect the premises;

(i) Refusal to permit authorized representatives of the department to have access to the records necessary for the operation of the facility or to permit them to interview agency staff and clients; and

(j) Knowingly having an employee or volunteer on the premises who has made misrepresentation or significant omissions on his or her application for employment or volunteer service.

(3) A license may be denied, suspended, revoked, or not renewed for violation of any condition or limitation upon licensure including, but not limited to, providing care for:

(a) More children than the number for which the facility is licensed; or

(b) Children of ages different from the ages for which the facility is licensed.

(4) The department's notice of a denial, revocation, suspension, or modification of a licensing decision is governed by RCW 43.20A.XXX and section 95, chapter 175, Laws of 1989. The provider's right to an adjudicative proceeding is in the same law.

(5)(a) A facility wanting to contest a department licensing decision shall within twenty-eight days of receipt of the decision:

(i) File a written application for an adjudicative proceeding by a method showing proof of receipt with the Office of Appeals, P.O. Box 2465, Olympia, WA 98504; and

(ii) Include in or with the application:

(A) A specific statement of the issue or issues and law involved;

(B) The grounds for contesting the department decision; and

(C) A copy of the department decision being contested.

(b) The proceeding shall be governed by the Administrative Procedure Act (chapter 34.05 RCW); RCW 43.20A.XXX and section 95, chapter 175, Laws of 1989; the rules of this chapter, and chapter 388-08 WAC. If any provision of this chapter conflicts with chapter 388-08 WAC, the provision in this chapter governs.

#### NEW SECTION

WAC 388-76-095 LICENSE ACTION NOTICE—ADJUDICATIVE PROCEEDING. (1) The department's notice of a denial, suspension, modification, or revocation of a license is governed by RCW 43.20A.XXX and section 95, chapter 175, Laws of 1989. The applicant's and license holder's right to an adjudicative proceeding is in the same law.

(2) The procedures for an adjudicative proceeding are in this chapter and chapter 388-08 WAC.

#### AMENDATORY SECTION (Amending Order 1996, filed 8/5/83)

WAC 388-80-005 DEFINITIONS. (1) "Application" shall mean a written request for medical assistance or limited casualty program from the applicant, an authorized representative, or if the applicant is incompetent or incapacitated, someone acting responsibly for the applicant to the department of social and health services the application shall be on a form prescribed by the department.

(2) "Assignment" is the method by which the provider receives payment for services under Part B of Medicare.

(3) "Assistance unit" means a person or members of a family unit who are eligible for cash or medical assistance under a federally matched program including state supplement.

(4) "Authorization" means an official approval of a departmental action.

(5) "Beneficiary" is an eligible individual who receives a federal cash benefit and/or state supplement under Title XVI.

(6) "Benefit period" is the time period used in determining whether Medicare can pay for covered Part A services. A benefit period begins the first day a beneficiary is furnished inpatient hospital or extended care services by a qualified provider. It ends when the beneficiary has not been an inpatient of a hospital or other facility primarily providing skilled nursing or rehabilitation services for sixty consecutive days. There is no limit to the number of benefit periods a beneficiary can have.

(7) "Cabulance" means a vehicle designed and used for the purpose of transporting persons confined to a wheelchair or persons otherwise physically restricted.

(8) "Carrier" is an organization who has a contract with the federal government to process claims under Part B of Medicare.

(9) "Categorically needy" refers to a resident of the state of Washington whose income and resources are evaluated for cash assistance and who is:

(a) Receiving or eligible to receive cash assistance.

(i) Aid to families of dependent children (AFDC).

(ii) Supplemental Security Income (SSI), including grandfathered individuals and individuals with essential spouses.

(iii) State supplement.

(iv) Special categories.

(b) A financially eligible person under twenty-one who would be eligible for AFDC but does not qualify as a dependent child and who is in:

(i) Foster care, or

(ii) Subsidized adoption, or

(iii) A skilled nursing home, intermediate care facility, or intermediate care facility for mentally retarded, or

(iv) An approved inpatient psychiatric facility.

(c) Individuals who would be eligible for cash assistance except for their institutional status.

(d) An individual who is SSI categorically related and would not be eligible for cash assistance if they were not institutionalized and whose gross income does not exceed the three hundred percent SSI benefit cap. This includes only aged, blind, and disabled groups.

(10) "Central disbursements" is a state office section which audits non-Medicaid medical claims for payment.

(11) "Certification date" means the date the worker certifies changes in a recipient's circumstances and authorizes an action.

(12) "CFR" means the code of federal regulations and is a codification of the general and permanent rules published in the federal register by the executive departments and agencies of the federal government.

(13) "Child" or "minor child" means a person under eighteen years of age.

(14) "Client" means an applicant for or recipient of financial and/or social services provided by the department of social and health services.

(15) "Coinsurance" means the portion of reimbursable hospital and medical expenses, after subtraction of any deductible, which Medicare does not pay. Under Part A, coinsurance is a per day dollar amount, and under Part B, is twenty percent of reasonable charges.

(16) "CSO" (community service office) is an office of the department which administers the various social and health services at the community level.

(17) "Continuing assistance" means payments to persons who presumably will be eligible for and receive, from the date of authorization, regular monthly grants on a prepayment basis. Continuing assistance includes federal aid and continuing general assistance grants to unemployable persons.

(18) "Copayment" means a fixed dollar amount that is the responsibility of the recipient of specified services.

(19) "Deductible" means an initial specified amount that is the responsibility of the applicant and/or recipient.

(a) Part A of Medicare - Inpatient hospital deductible - an initial amount in each benefit period which Medicare does not pay.

(b) Part B of Medicare - The first sixty dollars in expenses which must be incurred before Medicare starts to pay.

(c) Limited casualty program-medically indigent-means incurring a dollar amount as specified in chapter 388-100 WAC, the department does not pay.

(20) "Delayed certification" shall mean the date of certification for Medicaid and date of application for SSI are the same for an SSI beneficiary whose eligibility decision was delayed due to administrative action.

(21) "Department" shall mean the state department of social and health services.

(22) "Division of medical assistance" shall mean the single state agency authorized to administer the Title XIX medical assistance program.

(23) "Eligible couple" means an eligible individual and eligible spouse.

(24) "Eligible individual" means an aged, blind or disabled person as defined in Title XVI of the Social Security Act. If two such persons are husband and wife (and have not been living apart for more than six months), only one of them may be considered an eligible individual.

(25) "EPSDT" shall mean a program providing early and periodic screening, diagnosis and treatment to persons under twenty-one years of age who are eligible under Title XIX of the Social Security Act.

(26) "Essential spouse" means a spouse whose needs were taken into account in determining the need of OAA, AB, or DA recipient for December, 1973, who continues to live in the home of such recipient, and continues to be an essential spouse.

(27) "Extended care patient" is a recently hospitalized Medicare patient who needs relatively short-term skilled nursing and rehabilitative care in a skilled nursing facility.

(28) "Fair hearing" means an ((~~administrative~~)) adjudicative proceeding by which the department hears and decides the appeal of an applicant/recipient from an action or decision of the department.

(29) "Federal aid" means the assistance programs for which the state receives matching funds from the federal government.

(30) "Fraud" shall mean a deliberate, intentional, and wilful act, with the specific purpose of deceiving the department with respect to any material, fact, condition, or circumstances affecting eligibility or need.

(31) "General assistance - continuing" (GAU) means assistance to unemployable persons who are not eligible for or not receiving federal aid assistance and whose medical care is defined in chapter 388-86 WAC.

(32) "Grandfathering" refers to:

(a) A noninstitutionalized individual who meets all current requirements for Medicaid eligibility except the criteria for blindness or disability; and

(i) As eligible for Medicaid in December, 1973, as blind or disabled, whether or not he/she was receiving cash assistance in December, 1973; and

(ii) For each consecutive month after December, 1973, continue to meet the criteria for blindness and disability and other conditions of eligibility used under the Medicaid plan in December, 1973; and

(iii) The needs of the "essential person" shall only be considered when he/she is living with such person in the same household.

(b) An institutionalized individual who was eligible for Medicaid in December, 1973, or any part of that month, as an inpatient of a medical institution or resident of intermediate care facility that was participating in the Medicaid program and for each consecutive month after December, 1973:

(i) Continued to meet the requirements for Medicaid eligibility that were in effect under the state's plan in December, 1973, for institutionalized individuals; and

(ii) Remained institutionalized.

(33) "Home health agency" is an agency or organization certified under Medicare to provide skilled nursing and other therapeutic services to the patient in his/her place of residence.

(34) "Hospital" shall mean any institution licensed as a hospital by the official state licensing authority.

(35) "Institution" shall mean an establishment which furnishes food and shelter to four or more persons unrelated to the proprietor and, in addition provides medically related services and medical care. This would include hospitals, skilled nursing facilities, intermediate care facilities, and institutions for the mentally retarded, but does not include correctional institutions.

(36) "Intermediary" is an organization who has an agreement with the federal government to process Medicare claims under Part A.

(37) "Intermediate care facility" shall mean a licensed facility certified to provide intermediate care for which an agreement has been executed.

(38) "Intermediate care facility/IMR" shall mean a state institution or a licensed nursing home either of which has been certified by state office (SO) as meeting the CFR regulations to provide twenty-four hour health-related care and services to mentally retarded persons or persons with related conditions.

(39) "Legal dependents" are persons whom an individual is required by law to support.

(40) "Limited casualty program" means a medical care program for medically needy as defined in chapter 388-99 WAC, and for medically indigent as defined in chapter 388-100 WAC.

(41) "Medicaid" or "medical assistance" (MA) shall mean the federal aid Title XIX program under which medical care is provided to:

(a) Categorically needy as defined in chapter 388-82 WAC.

(b) Medically needy as defined in chapters 388-92 and 388-99 WAC.

(42) "Medical care services" means the limited scope of care financed by state funds and provided to general assistance recipients.

(43) "Medical consultant" shall mean a physician employed by the department at the CSO level.

(44) "Medical facility." See "institution."

(45) "Medically necessary" is a term for describing requested service which is reasonably calculated to prevent, diagnose, correct, cure, alleviate or prevent the worsening of conditions that endanger life, or cause suffering or pain, or result in illness or infirmity, or threaten to cause or aggravate a handicap, or cause physical deformity or malfunction, and there is no other equally effective more conservative or substantially less costly course of treatment available or suitable for the recipient requesting the service. For the purpose of this section "course of treatment" may include mere observation or, where appropriate, no treatment at all.

(46) "Medicare" is a commonly used term for the federal government health insurance program for certain aged or disabled recipients under Titles II and XVII of the Social Security Act.

(47) "Month of application" shall mean the calendar month in which the application is filed unless it is filed in the last ten days of that month; then the month of application may be the following month.

(48) "Nursing care consultant" shall mean a qualified and licensed registered nurse employed by the bureau of nursing home affairs who is centrally supervised, but stationed in CSO's.

(49) "Outpatient" is a nonhospitalized patient receiving care in an outpatient or emergency department of a hospital, or away from a hospital such as in a physician's office or the patient's own home or a nursing home.

(50) "Part A" is the hospital insurance portion of Medicare.

(51) "Part B" is the supplementary medical insurance benefit (SMIB) or the "doctor's portion" of Medicare.

(52) "PAS" - professional activity study is a compilation of inpatient hospital data by diagnosis and age, conducted by the commission of professional and hospital activities, which resulted in the determination of an average length of stay for patients. These data were published in a book entitled "Length of Stay in PAS Hospitals, Western." The department has adopted this book as the basis for authorizing payment for the maximum number of inpatient hospital days for recipients of state-funded programs, or where no memorandum of understanding with a PSRO exists.

(53) "Patient transportation" means the transportation of recipients to and from medical services covered under the medical assistance program.

(54) "Physician" is a doctor of medicine, osteopathy, or podiatrist who is legally authorized to perform the functions of his profession by the state in which he performs them.

(55) "Professional standards review organization" (PSRO). See "Washington state professional standards review organization."

(56) "Provider" or "provider of service" means an institution, agency, or individual who has a signed agreement to furnish medical care and goods and/or services to recipients and who is eligible to receive payment from the department.

(57) "Provider services" shall mean the office of the division of medical assistance which processes claims for payment under Title XIX and state-funded programs.

(58) Residence, state of means:

(a) The state where the applicant/recipient is living with the intent to remain there permanently or for an indefinite period;

(b) The state which he/she entered with a job commitment or to seek employment, whether or not currently employed;

(c) The state making a state supplementary payment;

(d) The state making placement in an out-of-state institution;

(e) The state of the parents or legal guardian, if one has been appointed, of an institutionalized individual who is under age twenty-one or is age twenty-one or over and who became incapable of determining residential intent before age twenty-one;

(f) The state where the person over age twenty-one judged to be legally incompetent is living.

(59) "Retroactivity" means: The period of no more than three months prior to month of application to an otherwise eligible individual under the Federal aid Title XIX medical assistance program.

(60) "Skilled nursing facility," unless otherwise described, shall mean any institution or facility licensed by the department as a nursing home, or is a nursing home

unit of a hospital licensed by the state department of social and health services and is certified, and has an agreement to provide skilled nursing home care.

(61) "Spell of illness." See "benefit period."

(62) "Spend down" means the individual incurs medical expenses to reduce income to the financial standards established by the department.

(63) "Spouse"

(a) "Eligible spouse" means an aged, blind or disabled individual who is the husband or wife of an eligible individual and who has not been living apart from such eligible individual for more than six months.

(b) "Ineligible spouse" means the husband or wife of an eligible individual who is not aged, blind or disabled; or who although aged, blind or disabled has not applied for such assistance.

(c) "Nonapplying spouse" means the husband or wife of an eligible individual who although aged, blind or disabled has not applied for such assistance.

(64) "State office" or "SO" shall mean the division of medical assistance of the department.

(65) "Supplementary payment" means the state money payment to individuals receiving benefits under Title XVI (or who would, but for their income, be eligible for such benefits) as assistance based on need in supplementation of SSI benefits. This payment includes:

(a) "Mandatory state supplement" means the state money payment with respect to individuals who, for December, 1973, were recipients of money payments under the department's former programs of old age assistance, aid to the blind and disability assistance.

(b) "Optional state supplement" means the elected state money payment to individuals eligible for SSI benefits or who except for the level of their income would be eligible for such benefits.

(66) "Supplemental security income (SSI) program, Title XVI," means the federal program of supplemental security income for the aged, blind, and disabled established by section 301 of the social security amendments of 1972, and subsequent amendments, and administered by the Social Security Administration (SSA).

(67) "Third party" means any entity that is or may be liable to pay all or part of the medical cost of injury, disease, or disability of an applicant or recipient of Medicaid.

(68) "Washington state professional standards review organization" (WSPSRO) is the state level organization responsible for determining whether health care activities are medically necessary, meet professionally acceptable standards of health care, and are appropriately provided in an outpatient or institutional setting for beneficiaries of Medicare and recipients of Medicaid and maternal and child health.

#### AMENDATORY SECTION (Amending Order 2742, filed 12/21/88)

WAC 388-96-904 ADMINISTRATIVE REVIEW PROCESS. (1) Within ~~((thirty))~~ twenty-eight days after a contractor is notified of an action or determination it wishes to challenge, the contractor shall request, in writing, that the appropriate director or his or her designee review such determination. The contractor shall

send the request to the office of contracts management if the challenge pertains to audit findings (adjusting journal entries or AJEs) or other audit matters. For other matters (such as rates, desk reviews, and settlements), the contractor shall send the request to the manager, residential rates program. The contractor or the licensed administrator of the facility shall:

(a) Sign the request,

(b) Identify the challenged determination and the date thereof, ~~((and))~~

(c) State as specifically as practicable the issues and regulations involved and the grounds for its contention that the determination is erroneous ~~((The contractor shall include with))~~; and

(d) Attach to the request copies of any documentation the contractor intends to rely on to support its position.

(2) After receiving a timely request meeting the criteria of this section, the department shall contact the contractor to schedule a conference for the earliest mutually convenient time. The department shall schedule the conference for no earlier than fourteen days after the contractor was notified of the conference and no later than ninety days after a properly completed request is received, unless both parties agree in writing to a specific later date. The department may conduct the conference by telephone unless either the department or the contractor requests, in writing, the conference be held in person.

(3) The contractor and appropriate representatives of the department shall participate in the conference. In addition, representatives selected by the contractor may participate. The contractor shall bring to the conference, or provide to the department in advance of the conference:

(a) Any documentation requested by the department which the contractor is required to maintain for audit purposes pursuant to WAC 388-96-113, and

(b) Any documentation on which it intends to rely to support its contentions. The parties shall clarify and attempt to resolve the issues at the conference. If additional documentation is needed to resolve the issues, the parties shall schedule a second session of the conference for not later than thirty days after the initial session unless both parties agree in writing to a specific later date.

(4) Regardless of whether agreement has been reached at the conference, the director of residential rates and licensure services or designee or the director of the office of nursing home audit or designee shall furnish a written decision to the contractor within sixty days after the conclusion of the conference.

(5) A contractor, aggrieved by a decision of the director, may appeal the decision in an ~~((administrative hearing))~~ adjudicative proceeding.

(a) A contractor desiring an ~~((administrative hearing))~~ adjudicative hearing shall:

(i) File a written ((request)) application for ((a hearing)) an adjudicative proceeding with the department's Office of ((Hearings)) Appeals, P.O. Box 2465, Olympia, Washington 98504. The contractor shall file the ((request for hearing)) application within ((thirty)) twenty-eight days of the date the contractor received the



decision of the director that he or she desires to appeal(;

~~(b) Attach a copy of the director's decision being appealed to the request for hearing;~~);

~~((f)) (ii) Sign the ((request)) application or have the licensed administrator of the facility sign it(;~~);

~~((d)) (iii) State as specifically as practicable the issue or issues and ((regulation or regulations)) law involved(;~~);

~~((e)) (iv) State the grounds for ((contending)) contesting the director's decision ((is erroneous));~~ and

~~((f)) (v) ((Include)) Attach to the application a copy of the director's decision being appealed and copies of any documentation on which the contractor intends to rely to support its position ((with the request)).~~

~~((g)) (b) ((Sections of)) The proceeding shall be governed by the Administrative Procedure Act (chapter 34.05 RCW), this section, and chapter 388-08 WAC ((not conflicting with this section shall apply to a hearing requested under WAC 388-96-904(5))). If any provision in this section conflicts with chapter 388-08 WAC, the provision in this section governs.~~

AMENDATORY SECTION (Amending Order 2546, filed 10/9/87)

WAC 388-98-700 STOP PLACEMENT. (1) The department shall institute a stop placement on a nursing home, effective on a date specified by the department, when the department determines:

(a) The nursing home no longer substantially meets the requirements of:

- (i) 42 U.S.C. § 1395 x(j), or
- (ii) 42 U.S.C. § 1396 d(c), or
- (iii) Chapter 18.51 RCW, or
- (iv) Chapter 74.42 RCW, or
- (v) Any federal or state regulation or regulations adopted under authority of the above referenced statutes.

(b) The deficiency or deficiencies in the nursing home:

(i) Jeopardize the health and safety of the residents, or

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

(2) When the department has initiated a stop placement, the department may approve a readmission to the nursing home from the hospital when the department determines the readmission would be in the best interest of the individual resident seeking readmission.

(3) The department shall terminate the stop placement when:

(a) The provider states in writing that the deficiencies necessitating the stop placement action have been corrected; and

(b) Department staff confirms in a timely fashion not to exceed fifteen working days:

(i) The deficiencies necessitating the stop placement action have been corrected, and

(ii) The provider exhibits the capacity to continue to deliver adequate care and service.

(4) A nursing home provider shall have the right to an informal review to present written evidence to refute the deficiencies cited as the basis for the stop placement. If

an informal review is desired, the nursing home shall request the informal review in writing within ten days of the effective date of the stop placement. The request shall be made to the director, residential rates and licensure services, aging and adult services administration.

(5)(a) The nursing home has the right to ~~((a contested case hearing))~~ an adjudicative proceeding to ~~((appeal))~~ contest a stop placement. ~~((If a hearing is requested, the))~~ A nursing home desiring a proceeding shall ~~((request the hearing in writing and shall))~~:

(i) ~~((Deliver the request by personal service or certified mail to the))~~ File a written application for an adjudicative proceeding by a method showing proof of receipt with the Office of ~~((hearings))~~ Appeals, P.O. Box 2465, Olympia, WA 98504.

(A) If no informal review was requested, the nursing home shall ~~((deliver))~~ file the ~~((request))~~ application within ten days of the effective date of the stop placement;

(B) If an informal review was requested, the nursing home shall ~~((deliver))~~ file the ~~((request))~~ application within ten days of the date the informal review determination was mailed; or

(C) If an informal review was requested and the determination was personally served or orally communicated, the nursing home shall ~~((deliver))~~ file the ~~((request))~~ application within ten days of the date the determination was served or communicated.

(ii) Include in or with the ~~((request))~~ application:

(A) A specific statement of the issue or issues and law ~~((or laws))~~ involved;

(B) The grounds for ~~((contending))~~ contesting the stop placement ~~((is erroneous));~~ and

(C) A copy of the stop placement notice(;) and a copy of ~~((f))~~ either the informal review determination or a statement ~~((where))~~ that an informal review has not been, and will not be, requested.

(b) The ~~((hearing))~~ proceeding shall be governed by the Administrative Procedure Act (chapter 34.05 RCW) and chapter ~~((s 10-08 and))~~ 388-08 WAC. If any provision of this section conflicts with chapter 388-08 WAC, the provision in this section ~~((applies. The decision making procedure shall be the initial decision, petition for review, and review decision procedure))~~ governs. The administrative law and review judges shall act on stop placement ~~((cases))~~ proceedings expeditiously.

(6)(a) The department shall not delay or suspend a stop placement because the nursing home requests ~~((a contested hearing or))~~ an informal review or files an application for an adjudicative proceeding.

(b) The stop placement shall remain in effect until:

(i) The department terminates the stop placement,

(ii) Fourteen days after a initial decision terminating the stop placement is mailed and the department does not file a petition for administrative review, or

(iii) A review decision terminating the stop placement is mailed.

AMENDATORY SECTION (Amending Order 2546, filed 10/9/87)

WAC 388-98-850 IMPOSITION AND PAYMENT OF FINES. (1) The department ~~((shall provide~~

~~written notice of a fine by personal service or certified mail to the licensee or licensee's agent)) imposing a civil fine is governed by RCW 18.51.060 and section 8, chapter 372, Laws of 1989, and RCW 43.20A.XXX and section 96, chapter 175, Laws of 1989.~~

(2) The amount of the fine shall be based on one or more of the following:

- (a) The severity of the deficiency;
- (b) The prevalence of the deficiency;
- (c) The licensee's or licensee's agent's efforts to correct the deficiency;
- (d) The degree of progress achieved in correcting the deficiency; and/or
- (e) The cost to the department.

(3) The department may require assessed civil fines:

- (a) To be paid in full;
- (b) To be paid in installments; or
- (c) To be spent, in whole or in part, to correct or ameliorate the deficiency or to improve nonadministrative services within the facility.

(4) The department may consider, but is not limited to considering, the following factors in deciding whether to require payment of a fine in full, to permit installment payments, or to require some or all of the fine to be applied toward improvements in the nursing home:

- (a) The amount of the fine,
- (b) The potential harm to the residents resulting from the method of payment, and
- (c) The cost to the licensee of correcting the deficiency.

(5) Fines paid on an installment basis shall accrue interest at the rate of one percent per month.

(6) The department at its discretion, may suspend the payment of a fine or a portion thereof, for up to one year after correction has been documented by a post survey, to assure the corrections continue. If the deficiency for which the fine was assessed remains corrected throughout the period established in the suspension notice, the department shall rescind the suspended fine. If the same deficiency reoccurs any time during the period established in the suspension notice, the licensee shall pay the department triple the amount of the suspended fine.

(7) Factors which the department may consider in deciding whether to suspend all or a portion of a fine include, but are not limited to:

- (a) The amount of the fine,
- (b) The licensee's history of providing care, and
- (c) Mitigating circumstances contributing to the deficiency.

(8) If the department suspends all or a portion of a fine, the department shall provide a written notice of suspension by personal service or certified mail to the licensee or licensee's agent. The notice shall include:

- (a) The citation of the specific deficiency or deficiencies resulting in the imposition of the fine,
- (b) The amount of the fine,
- (c) The amount of the fine suspended, and
- (d) The time frame through which correction must be maintained to avoid payment of the trebled amount of the suspended fine.

~~(9)((a) The written notice of a fine is an order that shall become final twenty days after the service upon the~~

~~licensee or licensee's agent unless the licensee or licensee's agent requests a hearing.~~

~~(b) If no hearing is requested, the fine becomes due on the thirtieth day after notice of imposition, except for any portion of the fine ordered to be spent to correct or ameliorate the deficiency.~~

~~(c)) When any portion of a fine is ordered to be spent to correct or ameliorate the deficiency:~~

~~((i)) (a) The licensee or licensee's agent shall provide the department with documentation of expenses paid, up to the amount ordered, to correct or ameliorate the deficiency. Finance charges and interest payments associated with correcting the deficiency shall not be applied toward the amount fined.~~

~~((ii)) (b) The licensee or licensee's agent shall provide the department with documentation of the expenses paid within thirty days of the date established by the department for correcting such deficiency. If the amount of fine ordered to be applied to correcting the deficiency is greater than the amount required to correct the deficiency, the difference shall be due to the department within thirty days of the date established by the department for correcting the deficiency.~~

~~(10)((a) The licensee or licensee's agent has the right to appeal a civil fine to a contested case hearing. If a hearing is requested, the licensee or licensee's agent shall request the hearing in writing and shall:~~

~~(i) Deliver the request by personal service or certified mail to the office of hearings, P.O. Box 2465, Olympia, WA 98504, within twenty days following receipt of the notice of fine; and~~

~~(ii) Include in or with the request:~~

~~(A) A specific statement of the issue or issues and law or laws involved;~~

~~(B) The grounds for contending the civil fine is erroneous; and~~

~~(C) A copy of the notice of fine.~~

~~(b) The hearing shall be governed by chapters 10-08 and 388-08 WAC. If any provision of this section conflicts with chapter 388-08 WAC, the provision in this section applies)) The department's notice of a civil fine is governed by RCW 43.20A.XXX and section 96, chapter 175, laws of 1989. The licensee's or agent's right to an adjudicative proceeding is in the same law.~~

~~(a) A licensee or agent who wants to contest a department decision shall within twenty-eight days of receipt of the decision:~~

~~(i) File a written application for an adjudicative proceeding by a method showing proof of receipt with the Office of Appeals, P.O. Box 2465, Olympia, WA 98504; and~~

~~(ii) Include in or with the application:~~

~~(A) A specific statement of the issue or issues and law involved;~~

~~(B) The grounds for contesting the department decision; and~~

~~(C) A copy of the department decision being contested.~~

~~(b) The proceeding shall be governed by the Administrative Procedure Act (chapter 34.05 RCW), RCW 43.20A.XXX and section 96, chapter 175, Laws of 1989; this section; and chapter 388-08 WAC. If any provision~~



of this section conflicts with chapter 388-08 WAC, the provision in this section governs.

(11) Any suspended fines shall become due ten working days after notice is given to the department of any change of ownership as defined in WAC 388-96-010 or as defined in WAC 275-38-001 for nursing homes certified as institutions for the mentally retarded.

(12) When any licensee fails to pay a fine imposed under this chapter ((within ten days after the date of the final order imposing the fine)) when due, the department may:

(a) Withhold an amount equal to the fine plus interest, if any, from the licensee's payment, or

(b) Suspend the licensee's nursing home license. Such license suspension shall continue until the fine is paid.

### WSR 89-16-001

#### PERMANENT RULES

#### DEPARTMENT OF LABOR AND INDUSTRIES

[Order 89-07—Filed July 20, 1989, 3:29 p.m.]

I, Joseph A. Dear, director of the Department of Labor and Industries, do promulgate and adopt at Olympia, Washington, the annexed rules relating to workers' compensation insurance, chapter 296-17 WAC, underwritten by the Washington state fund, Department of Labor and Industries, and specifically the amendment of rules, definitions, and risk classifications applicable to the parimutuel horse racing industry of Washington.

This action is taken pursuant to Notice No. WSR 89-11-088 filed with the code reviser on May 24, 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 51.04.020(1) which directs that the Department of Labor and Industries has authority to implement the provisions of HB 2060, chapter 385, Laws of 1989.

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 July 20, 1989.

By Joseph A. Dear  
Director

AMENDATORY SECTION (Amending Order 89-02, filed 3/21/89, effective 4/21/89)

WAC 296-17-350 MINIMUM PREMIUMS—ASSUMED WORKER HOURS. A minimum premium is the lowest amount of premium to be paid by an employer and is also the basis for determining premium computation for workers for whom an assumed number of worker hours must be, and hereby, is established:

(1) Minimum premium. Except as otherwise provided in this chapter, every employer shall be liable for a premium not less than ten dollars for any calendar quarter regardless of number of worker hours reported.

(2) Excluded employments. Any employer having any person in their employ excluded from industrial insurance whose application for coverage under the elective adoption provisions of RCW 51.12.110 or authority of RCW 51.12.095 or 51.32.030 has been accepted by the director shall report and pay premium on the actual hours worked for each such person who is paid on an hourly, salaried-part time, percentage of profit or piece basis; or one hundred sixty hours per month for any such person paid on a salary basis employed full time. In the event records disclosing actual hours worked are not maintained by the employer for any person paid on an hourly, salaried-part time, percentage of profits or piece basis the worker hours of such person shall be determined by dividing the gross wages of such person by the state minimum wage for the purpose of premium calculation. However, when applying the state minimum wage the maximum number of hours assessed for a month will be one hundred sixty.

(3) Resident managers, caretakers, or similar employments that are employed for irregular periods and whose compensation is for a stipulated sum in money or a substitute for money shall be reported for the purpose of premium calculation as provided in subsection (6) of this section.

(4) Commission personnel. Commission personnel are persons whose compensation is based upon a percentage of the amount charged for the commodity or service rendered. Commission personnel are to be reported for premium purposes at a minimum of assumed worker hours of not less than eight worker hours a day for part-time employment, or not less than 40 worker hours per week for full-time employment: PROVIDED, That the assumed eight worker hours daily for part-time employment will apply only if the employer's books and records are maintained so as to show separately such person's actual record of employment.

(5) Salaried personnel. Salaried personnel for the purposes of this chapter means persons whose compensation is not governed by the number of hours devoted to employment for their employer. Employers having salaried personnel in their employ shall for the purpose of premium calculation report assumed worker hours based upon one hundred sixty worker hours for each month in which the employee is on salary: PROVIDED, That if the employer maintains complete and accurate records, supported by original time cards or timebook entries, the employer may report and pay premium on the actual hours worked by salaried personnel: PROVIDED FURTHER, That the department may, at its discretion, authorize some other method in assuming workers hours for premium calculating purposes in the case of contract personnel employed by schools and/or school districts.

(6) Piece workers. For employees whose compensation is based upon the accomplishment of a number of individual tasks whether computed on the number of pounds, items, pieces, or otherwise who are not subject to any federal or state law or rule which requires the reporting of actual hours worked, the employer shall for the purpose of premium calculation assume each two dollars of earnings of each employee as representing one worker hour: PROVIDED, That if the average rate of

compensation for the applicable classification is at least \$3.00 but less than \$3.50 per worker hour the assumed amount shall be \$3.00 of earnings as representing one worker hour, and on a progressive basis, if the average compensation is at least \$3.50 but less than \$4.00 the assumed amount shall be \$3.50 of earnings as representing one worker hour, and so forth. The records of the department as compiled for the preceding fiscal year ending June 30, shall be the basis for determining the average rate of compensation for each classification: PROVIDED FURTHER, That an employer who maintains records but is not required to do so shall report the actual hours worked for the purpose of premium calculation. In the event an employer who is otherwise required by federal or state laws or rules to maintain records of actual hours worked by each employee fails to do so, the worker hours of such employees will be determined by dividing the gross wages of each employee by the state minimum hourly wage to determine the hours reported for the purpose of premium calculation. Notwithstanding any other provisions of this section, workers employed in a work activity center pursuant to WAC 296-17-779 shall be reported on the basis of the piece worker rule.

(7) Noncontact sports teams. All employers having personnel in their employ as defined under WAC 296-17-745 shall for the purpose of premium calculations, report assumed worker hours based upon 40 worker hours for each week in which any duties are performed.

(8) All employers having personnel in their employ as defined under WAC 296-17-739 shall, for the purpose of premium calculations, report assumed worker hours based upon ten hours for each mount in each horse race; professional drivers shall report worker hours based upon ten hours for each heat or race of any racing event: PROVIDED, That any day such personnel do not ride or drive in a race, the premium calculation shall be made by assuming ten worker hours for any day in which duties are performed.

(9) Pilots and flight crew members having flight duties during a work shift including preflight time shall have premium calculated by utilizing daily readings logged per federal requirements of the aircraft tachometer time: PROVIDED, That if the total tachometer time for any day includes a fraction of an hour, the reportable time will be increased to the next full hour: PROVIDED FURTHER, That pilots and flight crew members who assume nonflying duties during a work shift will have premium calculated in accordance with the appropriate rules and classifications applicable to nonflight duties.

~~((10) Licensed trainers—parimutuel racing. All trainers which come under the jurisdiction of the Washington horse racing commission and who become licensed subject to the Washington horse racing commission's rules and regulations who employ workers shall pay a minimum premium of one hundred dollars annually to the department which shall be in addition to a per start rate established for the various parimutuel tracks state-wide. The minimum premium shall be calculated using twenty assumed worker hours and be reported in~~

~~classification 6613. For the purpose of premium calculation report assumed worker hours based upon ten hours for each start.))~~

#### NEW SECTION

WAC 296-17-45001 SPECIAL HORSE RACING CLASSIFICATION INTERPRETATION. For the purposes of administering the parimutuel horse racing Classifications 6614 through 6617 the terms used such as parimutuel horse racing, trainers, grooms, etc., shall be given the same meanings as those contained in chapter 67.16 RCW "Horse Racing" or Title 260 WAC "Horse Racing Commission."

The term "major tracks" shall mean Yakima Meadows, Spokane Playfair, and Longacres in Renton.

The term "fair meets or bush tracks" shall mean all other parimutuel horse racing tracks licensed by the Washington state horse racing commission.

For premium purposes, owners shall contribute one hundred fifty dollars annually at the time of license issuance or renewal. The payment of premium by an owner does not imply an employer employee relationship but serves to help fund the premium obligation of the horse racing industry. Individuals involved in a syndication or percentage ownership of a parimutuel race horse and who become licensed by the horse racing commission shall pay premium according to their percentage ownership in the horse or horses.

#### NEW SECTION

WAC 296-17-73105 CLASSIFICATION 6614.

Parimutuel horse racing: All other employees, N.O.C. – Major tracks

This classification is limited in scope to employees of trainers and/or owners who come under the jurisdiction of the Washington horse racing commission, and who become licensed subject to the Washington horse racing commission's rules or regulations. This classification covers all on or off track employments of employers subject to this classification, such as: Assistant trainers, pony riders, and exercise riders; but excludes grooms which are to be reported separately in classification 6615. For purposes of this rule, jockeys will be considered exercise riders when employed by a trainer and/or owner at a time other than during the dates of a scheduled race meet. A meet, as used in this section, shall be for the duration of the racing season as set for each track by the Washington state horse racing commission.

#### NEW SECTION

WAC 296-17-73106 CLASSIFICATION 6615.

Parimutuel horse racing: Grooms – Major tracks

This classification is limited in scope to individuals licensed as grooms by the Washington horse racing commission who are employed by a trainer and/or owner who come under the jurisdiction of and are licensed by the Washington horse racing commission. This classification covers all on or off track activities

of grooms employed at major tracks. Employment activities performed by grooms at a fair or bush track are to be reported separately in classification 6617.

NEW SECTION

WAC 296-17-73107 CLASSIFICATION 6616.

Parimutuel horse racing: All other employees, N.O.C. - Fair meets or bush tracks

This classification is limited in scope to employees of trainers and/or owners who come under the jurisdiction of the Washington horse racing commission, and who become licensed subject to the Washington horse racing commission's rules or regulations. This classification covers all on or off track employments of employees subject to this classification, such as: Assistant trainers, pony riders, and exercise riders; but excludes grooms which are to be reported separately in classification 6617. For purposes of this rule, jockeys will be considered exercise riders when employed by a trainer and/or owner at a time other than during the dates of a scheduled race meet. A meet, as used in this section, shall be for the duration of the racing season as set for each track by the Washington state horse racing commission.

NEW SECTION

WAC 296-17-73108 CLASSIFICATION 6617.

Parimutuel horse racing: Grooms - Fair meets or bush tracks

This classification is limited in scope to individuals licensed as grooms by the Washington horse racing commission who are employed by a trainer and/or owner who come under the jurisdiction of and are licensed by the Washington horse racing commission. This classification covers all on or off track activities of grooms employed at a bush track or fair meet. Employment activities performed by grooms at a major track are to be reported separately in classification 6615.

AMENDATORY SECTION (Amending Order 88-05, filed 5/31/88)

WAC 296-17-773 CLASSIFICATION 7302.

Livestock farms

Parimutuel horse racing: Proprietors, partners, and corporate officers

This subclassification is limited in scope to excluded employment contained in RCW 51.12.020 (5) and (8) "Sole proprietors, partners, and corporate officers" who elect workers compensation insurance on a voluntary basis. See WAC 296-17-350(2) "Excluded employments" for premium reporting and calculations.

Riding academies

This classification includes all farm operations related and incidental to the enterprises described above and applies to all acreage devoted to the raising of these animals.

AMENDATORY SECTION (Amending Order 88-30, filed 12/1/88, effective 1/1/89)

WAC 296-17-885 TABLE III.

Expected Loss Rates and D-Ratios  
Expected Loss Rates in Dollars Per Worker Hour  
for Indicated Fiscal Year

CLASS	1985	1986	1987	D-RATIO
0101	1.0201	.9484	.8175	.411
0102	1.0280	.9583	.8280	.449
0103	1.3328	1.2376	1.0652	.381
0104	1.0174	.9385	.8035	.314
0105	1.1115	1.0351	.8929	.416
0106	1.8162	1.6879	1.4540	.399
0107	.8341	.7771	.6712	.440
0108	.8902	.8272	.7127	.406
0109	2.1966	2.0325	1.7444	.342
0201	1.6840	1.5595	1.3398	.361
0202	2.6587	2.4653	2.1182	.338
0206	1.5649	1.4480	1.2427	.339
0301	.5478	.5131	.4450	.511
0302	1.6473	1.5286	1.3160	.396
0306	.7815	.7282	.6288	.436
0307	.6873	.6406	.5533	.440
0401	2.8637	2.6679	2.3040	.439
0402	1.4820	1.3806	1.1916	.426
0403	1.1425	1.0583	.9092	.355
0502	1.0510	.9776	.8429	.412
0503	1.4127	1.3161	1.1359	.426
0504	1.0523	.9828	.8506	.473
0505	1.3240	1.2327	1.0638	.431
0506	2.6557	2.4777	2.1415	.451
0507	2.8637	2.6679	2.3040	.439
0508	2.6750	2.4774	2.1272	.342
0509	2.0372	1.8832	1.6146	.320
0510	1.1615	1.0835	.9367	.456
0511	1.0696	.9933	.8554	.394
0512	1.3484	1.2570	1.0859	.446
0513	.6796	.6337	.5478	.454
0514	1.1615	1.0835	.9367	.456
0515	1.7602	1.6363	1.4106	.413
0516	1.3240	1.2327	1.0638	.431
0601	.4882	.4552	.3933	.445
0602	.3655	.3405	.2941	.441
0603	.6843	.6352	.5470	.396
0604	1.7363	1.6147	1.3907	.376
0606	.2255	.2105	.1820	.458
0607	.2602	.2431	.2103	.468
0608	.2609	.2438	.2111	.479
0701	1.2606	1.1674	1.0031	.367
0803	.3608	.3360	.2898	.417
0804	.5685	.5282	.4551	.400
0901	1.8533	1.7128	1.4693	.346
1002	1.0182	.9514	.8238	.480
1003	.5495	.5118	.4420	.435
1004	.5495	.5118	.4420	.435
1005	3.4288	3.2005	2.7695	.469
1007	.1801	.1685	.1459	.488
1101	.5366	.5012	.4334	.463
1102	1.1561	1.0749	.9267	.413
1103	.4109	.3847	.3336	.505

CLASS	1985	1986	1987	D-RATIO	CLASS	1985	1986	1987	D-RATIO
1104	.5049	.4726	.4097	.503	3503	.2670	.2503	.2172	.524
1106	.1905	.1787	.1551	.541	3506	.6009	.5591	.4823	.421
1108	.4240	.3961	.3428	.472	3508	.4341	.4067	.3529	.517
1109	.8021	.7479	.6462	.449	3602	.0747	.0699	.0607	.513
1301	.2238	.2087	.1804	.448	3603	.5649	.5286	.4582	.499
1303	.1797	.1676	.1448	.452	3604	1.0841	1.0072	.8674	.390
1304	.0162	.0152	.0131	.501	3605	.3747	.3501	.3029	.472
1305	.3221	.3017	.2616	.511	3606	.7142	.6679	.5782	.482
1401	1.3165	1.2297	1.0625	.443	3701	.2602	.2425	.2095	.441
1404	.5772	.5375	.4638	.422	3702	.3853	.3586	.3095	.424
1405	.4955	.4625	.4000	.464	3707	.3359	.3145	.2728	.506
1501	.3235	.3019	.2611	.462	3708	.2532	.2368	.2050	.483
1507	.2350	.2193	.1896	.458	3801	.2029	.1894	.1638	.461
1701	1.5921	1.4727	1.2643	.357	3802	.1323	.1243	.1081	.556
1702	1.5921	1.4727	1.2643	.357	3808	.2217	.2078	.1803	.519
1703	.4277	.3982	.3439	.436	3901	.1549	.1447	.1252	.473
1704	.7917	.7362	.6347	.410	3902	.5165	.4819	.4167	.460
1801	.9102	.8467	.7299	.408	3903	1.0118	.9442	.8159	.448
1802	.3920	.3654	.3154	.437	3905	.1305	.1226	.1066	.560
2002	.5345	.4989	.4313	.458	3906	.3725	.3474	.3004	.456
2003	.3658	.3423	.2965	.493	3909	.2443	.2289	.1984	.514
2004	.6522	.6083	.5259	.456	4002	.5876	.5481	.4738	.451
2005	.3011	.2817	.2439	.489	4101	.1645	.1540	.1333	.488
2007	.3286	.3063	.2645	.434	4103	.2712	.2539	.2202	.504
2008	.2502	.2330	.2013	.435	4107	.0880	.0823	.0712	.483
2101	.5840	.5450	.4709	.446	4108	.1645	.1540	.1333	.488
2102	.3658	.3423	.2965	.493	4109	.1645	.1540	.1333	.488
2104	.3026	.2835	.2461	.524	4201	.3008	.2804	.2423	.446
2105	.4697	.4371	.3770	.422	4301	.7740	.7238	.6270	.490
2106	.3693	.3447	.2979	.452	4302	.6395	.5969	.5161	.460
2201	.2466	.2303	.1994	.476	4303	.5919	.5601	.4899	.701
2202	.4462	.4167	.3604	.462	4304	.5371	.5021	.4345	.478
2203	.2780	.2603	.2258	.509	4305	1.1811	1.0996	.9487	.422
2401	.4715	.4402	.3809	.468	4401	.3915	.3666	.3180	.508
2903	.5904	.5534	.4804	.524	4402	.6269	.5855	.5067	.472
2904	.6626	.6201	.5370	.493	4404	.5034	.4713	.4086	.504
2905	.4448	.4163	.3608	.501	4501	.1303	.1211	.1043	.396
2906	.5002	.4676	.4052	.490	4502	.0328	.0305	.0263	.412
2907	.4396	.4115	.3570	.508	4504	.0741	.0695	.0602	.512
2908	.8817	.8232	.7122	.468	4601	.5742	.5340	.4597	.371
2909	.5694	.5321	.4606	.479	4802	.2901	.2715	.2355	.502
3101	.5530	.5138	.4427	.399	4803	.3280	.3068	.2660	.499
3102	.3754	.3502	.3028	.456	4804	.5422	.5076	.4399	.502
3103	.3754	.3502	.3028	.456	4805	.3315	.3097	.2679	.469
3104	.4944	.4611	.3982	.435	4806	.0820	.0768	.0665	.495
3105	.7084	.6611	.5715	.455	4808	.4261	.3970	.3427	.430
3301	.7336	.6867	.5958	.507	4809	.2191	.2052	.1779	.513
3302	.6764	.6314	.5463	.468	4810	.1418	.1325	.1147	.479
3303	.2520	.2348	.2027	.426	4811	.2840	.2651	.2291	.459
3309	.4233	.3942	.3398	.403	4812	.3347	.3129	.2710	.487
3401	.3536	.3306	.2863	.482	4901	.0456	.0426	.0368	.470
3402	.3254	.3048	.2643	.509	4902	.0329	.0307	.0265	.474
3403	.1294	.1210	.1047	.476	4903	.0456	.0426	.0368	.470
3404	.3454	.3236	.2807	.516	4904	.0162	.0152	.0131	.501
3405	.2391	.2230	.1927	.445	4905	.2826	.2652	.2302	.534
3406	.1842	.1723	.1491	.487	4906	.0474	.0444	.0385	.502
3407	.2677	.2495	.2156	.442	4907	.0869	.0811	.0702	.458
3408	.1014	.0946	.0817	.441	4908	.1146	.1071	.0926	.460
3409	.1568	.1464	.1265	.450	4909	.1146	.1071	.0926	.460
3501	.6539	.6094	.5261	.432	5001	3.6616	3.3998	2.9266	.386

CLASS	1985	1986	1987	D-RATIO	CLASS	1985	1986	1987	D-RATIO
5002	.4536	.4249	.3685	.512	6603	.2398	.2241	.1941	.481
5003	1.3866	1.2862	1.1061	.366	6604	.0627	.0585	.0506	.457
5004	1.7928	1.6757	1.4512	.484	6605	.1858	.1740	.1508	.506
5101	.6228	.5807	.5017	.447	6607	.1626	.1524	.1322	.533
5102	1.1768	1.0935	.9422	.403	6608	.2229	.2079	.1796	.448
5103	.7893	.7370	.6374	.464	6609	3.1883	2.9856	2.5873	.505
5106	.6091	.5676	.4900	.429	6610	3.1883	2.9856	2.5873	.505
5108	.6317	.5899	.5103	.467	6611	3.1883	2.9856	2.5873	.505
5109	.5085	.4718	.4058	.372	6612	3.1883	2.9856	2.5873	.505
5201	.2982	.2779	.2401	.438	6613	3.1883	2.9856	2.5873	.505
5204	1.3266	1.2415	1.0771	.505	6614	3.1883	2.9856	2.5873	.505
5206	.3391	.3150	.2714	.401	6615	3.1883	2.9856	2.5873	.505
5207	.1626	.1524	.1322	.533	6616	3.1883	2.9856	2.5873	.505
5208	.8947	.8356	.7231	.473	6617	3.1883	2.9856	2.5873	.505
5209	.5480	.5113	.4418	.450	6704	.1754	.1639	.1418	.469
5301	.0222	.0207	.0179	.451	6705	.6633	.6218	.5396	.527
5305	.0261	.0243	.0210	.438	6706	.3241	.3028	.2619	.467
5306	.0285	.0266	.0230	.453	6707	12.6231*	11.8673*	10.3188*	.578
5307	.2928	.2736	.2368	.476	6708	3.6961	3.4590	2.9950	.491
6103	.0406	.0381	.0329	.503	6709	.1419	.1332	.1156	.547
6104	.2734	.2553	.2207	.460	6801	.4628	.4304	.3711	.415
6105	.2429	.2280	.1980	.542	6802	.3266	.3048	.2634	.450
6107	.1056	.0987	.0852	.455	6803	1.6612	1.5225	1.2963	.256
6108	.4884	.4587	.3988	.554	6804	.2136	.1982	.1706	.372
6109	.0337	.0316	.0274	.508	6809	2.3196	2.1749	1.8859	.529
6201	.1359	.1269	.1098	.463	6901	.0392	.0366	.0317	.701
6202	.5600	.5217	.4504	.428	6902	.4879	.4531	.3903	.401
6203	.0886	.0827	.0715	.451	6903	4.9785	4.5990	3.9400	.302
6204	.1500	.1404	.1217	.505	6904	.1582	.1475	.1274	.443
6205	.1500	.1404	.1217	.505	6905	.2438	.2266	.1951	.386
6206	.1500	.1404	.1217	.505	6906	.1024	.0960	.0830	.701
6207	.8973	.8405	.7287	.512	6907	1.1711	1.0924	.9446	.459
6208	.2051	.1915	.1655	.457	6908	.2658	.2483	.2148	.469
6209	.2371	.2217	.1919	.478	6909	.0581	.0542	.0469	.462
6301	.1072	.1000	.0863	.436	7101	.0268	.0250	.0216	.434
6302	.1462	.1362	.1175	.423	7102	24.2906*	22.7579*	19.7084*	.509
6303	.0478	.0448	.0387	.474	7103	.1809	.1684	.1453	.418
6304	.1164	.1088	.0940	.468	7104	.0406	.0378	.0327	.440
6305	.0485	.0454	.0394	.487	7105	.2862	.2682	.2328	.524
6306	.2315	.2163	.1872	.471	7106	.5751	.5366	.4641	.462
6308	.0349	.0324	.0279	.407	7107	1.3032	1.2182	1.0543	.476
6309	.0990	.0928	.0805	.516	7108	2.2113	2.0656	1.7883	.477
6402	.2196	.2052	.1776	.475	7109	5.5532	5.1815	4.4795	.456
6403	.1414	.1327	.1154	.551	7110	.2862	.2682	.2328	.524
6404	.1109	.1040	.0903	.540	7111	.2862	.2682	.2328	.524
6405	.5529	.5153	.4450	.440	7112	.5751	.5366	.4641	.462
6406	.0690	.0646	.0560	.498	7113	.5751	.5366	.4641	.462
6407	.1543	.1447	.1256	.529	7114	.5751	.5366	.4641	.462
6408	.3134	.2913	.2509	.382	7715	.5751	.5366	.4641	.462
6409	.3695	.3453	.2989	.477	7116	.5751	.5366	.4641	.462
6501	.0529	.0497	.0431	.537	7117	1.3032	1.2182	1.0543	.476
6502	.0181	.0169	.0147	.493	7118	2.2113	2.0656	1.7883	.477
6503	.0938	.0868	.0743	.311	7119	2.2113	2.0656	1.7883	.477
6504	.2989	.2809	.2440	.568	7120	5.5532	5.1815	4.4795	.456
6505	.1728	.1618	.1402	.505	7121	5.5532	5.1815	4.4795	.456
6506	.0575	.0538	.0465	.478	7201	.5216	.4877	.4223	.485
6508	.3696	.3462	.3001	.510	7202	.0341	.0317	.0273	.401
6509	.2410	.2255	.1952	.485	7203	.1031	.0962	.0831	.449
6601	.1728	.1617	.1400	.489	7301	.5622	.5255	.4551	.483
6602	.4206	.3945	.3427	.538	7302	.6392	.5979	.5173	.480

CLASS	1985	1986	1987	D-RATIO
7307	.8776	.8242	.7160	.557
7308	.2218	.2072	.1793	.466
7309	.1419	.1332	.1156	.547

Base Rates Effective  
January 1, 1989

Class	Accident Fund	Medical Aid Fund
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\*Daily expected loss rate

AMENDATORY SECTION (Amending Order 88-30, filed 12/1/88, effective 1/1/89)

WAC 296-17-895 INDUSTRIAL INSURANCE ACCIDENT FUND BASE RATES AND MEDICAL AID BASE RATES BY CLASS OF INDUSTRY. Industrial insurance accident fund and medical aid fund base rates by class of industry shall be as set forth below.

Class	Base Rates Effective January 1, 1989		Class	Accident Fund	Medical Aid Fund
	Accident Fund	Medical Aid Fund			
0101	0.9125	0.5277	0607	0.2040	0.1703
0102	0.9270	0.5371	0608	0.2157	0.1597
0103	1.0931	0.7846	0701	1.2004	0.5530
0104	0.9706	0.4254	0803	0.2796	0.2342
0105	0.8293	0.7555	0804	0.4958	0.3058
0106	1.5560	1.0073	0901	1.8286	0.7286
0107	0.7448	0.4414	1002	0.8661	0.5983
0108	0.8162	0.4374	1003	0.4663	0.3159
0109	1.9588	1.0924	1004	0.4663	0.3159
0201	1.5564	0.7874	1005	3.2320	1.6677
0202	1.9333	1.8051	1007	0.1380	0.1224
0206	1.3705	0.8044	1101	0.3831	0.3905
0301	0.4588	0.3352	1102	1.0390	0.5935
0302	1.5943	0.7119	1103	0.3392	0.2558
0306	0.6617	0.4513	1104	0.4054	0.3259
0307	0.5636	0.4173	1106	0.1181	0.1612
0401	2.5428	1.5295	1108	0.3310	0.2796
0402	1.1525	0.9614	1109	0.6901	0.4548
0403	0.9859	0.6092	1301	0.1793	0.1411
0502	0.8922	0.5962	1303	0.1538	0.1029
0503	1.0919	0.9237	1304	0.0112	0.0123
0504	0.9216	0.5878	1305	0.2470	0.2209
0505	1.1976	0.6797	1401	0.7148	1.1924
0506	2.0977	1.7081	1404	0.4578	0.3641
0507	2.5428	1.5295	1405	0.4228	0.2871
0508	2.2195	1.5145	1501	0.2667	0.1971
0509	1.7384	1.0857	1507	0.1832	0.1542
0510	1.0175	0.6419	1701	1.5644	0.6396
0511	0.9321	0.5740	1702	1.5644	0.6396
0512	1.1642	0.7587	1703	0.3941	0.2126
0513	0.6071	0.3625	1704	0.6857	0.4339
0514	1.0175	0.6419	1801	0.7316	0.5595
0515	1.6333	0.8484	1802	0.3182	0.2411
0516	1.1976	0.6797	2002	0.4216	0.3455
0601	0.3932	0.3048	2003	0.2831	0.2462
0602	0.3301	0.1894	2004	0.5703	0.3615
0603	0.6349	0.3256	2005	0.2256	0.2101
0604	1.1492	1.3215	2007	0.2534	0.2161
0606	0.1721	0.1518	2008	0.2096	0.1468
			2101	0.4157	0.4235
			2102	0.2831	0.2462
			2104	0.2480	0.1919
			2105	0.4212	0.2437
			2106	0.2827	0.2473
			2201	0.2080	0.1464
			2202	0.3174	0.3258
			2203	0.2281	0.1748
			2401	0.4024	0.2737
			2903	0.4811	0.3776
			2904	0.4593	0.5023
			2905	0.3515	0.2927
			2906	0.4266	0.2943
			2907	0.3744	0.2619
			2908	0.7655	0.4982
			2909	0.4629	0.3570

Base Rates Effective  
January 1, 1989Base Rates Effective  
January 1, 1989

Class	Base Rates Effective January 1, 1989		Class	Base Rates Effective January 1, 1989	
	Accident Fund	Medical Aid Fund		Accident Fund	Medical Aid Fund
3101	0.4731	0.3073	4504	0.0467	0.0615
3102	0.3257	0.2108	4601	0.3763	0.4404
3103	0.3257	0.2108	4802	0.2360	0.1840
3104	0.3306	0.3800	4803	0.2719	0.2022
3105	0.5698	0.4456	4804	0.4120	0.3743
3301	0.6669	0.3928	4805	0.2564	0.2208
3302	0.6012	0.3672	4806	0.0674	0.0512
3303	0.1854	0.1749	4808	0.3304	0.2778
3309	0.2933	0.3108	4809	0.1583	0.1604
3401	0.2848	0.2250	4810	0.1118	0.0925
3402	0.2564	0.2159	4811	0.2369	0.1698
3403	0.0986	0.0880	4812	0.2834	0.1988
3404	0.2687	0.2334	4901	0.0355	0.0301
3405	0.1815	0.1612	4902	0.0264	0.0209
3406	0.1201	0.1473	4903	0.0355	0.0301
3407	0.2231	0.1589	4904	0.0112	0.0123
3408	0.0791	0.0660	4905	0.2094	0.2035
3409	0.1119	0.1136	4906	0.0358	0.0331
3501	0.5187	0.4145	4907	0.0675	0.0572
3503	0.2171	0.1713	4908	0.0648	0.1015
3506	0.5355	0.3152	4909	0.0648	0.1015
3508	0.3525	0.2781	5001	3.1244	2.0286
3602	0.0556	0.0531	5002	0.3796	0.2779
3603	0.4550	0.3623	5003	1.1477	0.7985
3604	0.8901	0.6403	5004	1.5543	1.0248
3605	0.2981	0.2411	5101	0.5391	0.3493
3701	0.2144	0.1569	5102	1.0408	0.6186
3702	0.3294	0.2176	5103	0.6461	0.4868
3707	0.2853	0.2008	5106	0.4609	0.4094
3708	0.1907	0.1751	5108	0.5043	0.4035
3801	0.1634	0.1278	5109	0.4325	0.2811
3802	0.1028	0.0912	5201	0.2280	0.1986
3808	0.1796	0.1426	5204	1.3424	0.5661
3901	0.1198	0.1033	5206	0.3007	0.1772
3902	0.4303	0.3096	5207	0.1080	0.1298
3903	0.7406	0.7127	5208	0.7660	0.5182
3905	0.0987	0.1058	5209	0.4395	0.3452
3906	0.3223	0.2101	5301	0.0151	0.0168
3909	0.1816	0.1737	5305	0.0194	0.0179
4002	0.4831	0.3576	5306	0.0232	0.0177
4101	0.1186	0.1198	5307	0.2430	0.1782
4103	0.2195	0.1733	6103	0.0235	0.0357
4107	0.0628	0.0645	6104	0.2041	0.1892
4108	0.1186	0.1198	6105	0.1827	0.1726
4109	0.1186	0.1198	6107	0.0788	0.0730
4201	0.2566	0.1726	6108	0.3862	0.3294
4301	0.6692	0.4460	6109	0.0267	0.0222
4302	0.5392	0.3767	6201	0.0990	0.0968
4304	0.4046	0.3707	6202	0.4495	0.3487
4305	0.9809	0.6973	6203	0.0683	0.0589
4401	0.3220	0.2454	6204	0.1076	0.1103
4402	0.5148	0.3862	6205	0.1076	0.1103
4404	0.4141	0.3147	6206	0.1076	0.1103
4501	0.1074	0.0767	6207	0.6421	0.6636
4502	0.0263	0.0202	6208	0.1554	0.1394

Base Rates Effective January 1, 1989			Base Rates Effective January 1, 1989		
Class	Accident Fund	Medical Aid Fund	Class	Accident Fund	Medical Aid Fund
6209	0.1590	0.1844	6903	4.1064	2.7848
6301	0.0856	0.0676	6904	0.1288	0.0972
6302	0.1178	0.0903	6905	0.1922	0.1524
6303	0.0334	0.0357	6906	—	0.1524
6304	0.0873	0.0804	6907	1.0590	0.6129
6305	0.0350	0.0353	6908	0.2185	0.1633
6306	0.1649	0.1693	6909	0.0429	0.0407
6308	0.0300	0.0193	7101	0.0226	0.0156
6309	0.0700	0.0743	7102	10.86*	24.77*
6402	0.1844	0.1313	7103	0.1527	0.1039
6403	0.1030	0.1044	7104	0.0151	0.0168
6404	0.0783	0.0840	7105	0.0338	0.0241
6405	0.4661	0.3221	7106	0.1844	0.1313
6406	0.0461	0.0542	7107	0.1844	0.1313
6407	0.1077	0.1178	7108	0.1844	0.1313
6408	0.2359	0.2078	7109	0.2359	0.1802
6409	0.2759	0.2574	7110	0.2359	0.1802
6501	0.0395	0.0379	7111	0.2359	0.1802
6502	0.0128	0.0135	7112	0.5186	0.3033
6503	0.0791	0.0508	7113	0.5186	0.3033
6504	0.1871	0.2534	7114	0.5186	0.3033
6505	0.1207	0.1305	7115	0.5186	0.3033
6506	0.0413	0.0418	7116	0.5186	0.3033
6508	0.2864	0.2502	7117	0.8915	0.9943
6509	0.1476	0.2027	7118	1.9733	1.1996
6601	0.1264	0.1238	7119	1.9733	1.1996
6602	0.3366	0.2772	7120	4.6053	3.3871
6603	0.1830	0.1632	7121	4.6053	3.3871
6604	0.0528	0.0370	7201	0.4559	0.2946
6605	0.1509	0.1183	7202	0.0286	0.0195
6607	0.1080	0.1298	7203	0.0773	0.0706
6608	0.1988	0.1189	7204	—	—
6609	2.7739	3.2429	7301	0.4838	0.3252
6610	1.1999	1.4027	7302	0.3936	0.5346
6611	0.7428	0.8685	7307	0.5793	0.7106
6612	0.3874	0.4529	7308	0.1697	0.1496
6613	2.4884	2.4746	7309	0.0891	0.1193
6614	91.7390**	107.2610**			
6615	68.6890**	80.3110**			
6616	8.7590**	10.2410**			
6617	6.4540**	7.5460**			
6704	0.1232	0.1301			
6705	0.4570	0.5119			
6706	0.2261	0.2417			
6707	8.22*	10.40*			
6708	2.2429	3.1360			
6709	0.0891	0.1193			
6801	0.4124	0.2417			
6802	0.2517	0.2166			
6803	1.7596	0.4612			
6804	0.1767	0.1235			
6809	1.3296	2.0704			
6901	—	0.0582			
6902	0.4535	0.2321			

\*Daily rate. The daily rate shall be paid in full on any person for any calendar day in which any duties are performed that are incidental to the profession of the worker.

\*\*These rates are calculated on a per license basis for parimutuel race tracks and are base rated.

**REPEALER**

The following sections of the Washington Administrative Code are repealed:

- WAC 296-17-731 CLASSIFICATION 6609.
- WAC 296-17-73101 CLASSIFICATION 6610.
- WAC 296-17-73102 CLASSIFICATION 6611.
- WAC 296-17-73103 CLASSIFICATION 6612.
- WAC 296-17-73104 CLASSIFICATION 6613.



**WSR 89-16-002**  
**ATTORNEY GENERAL OPINION**  
**Cite as: AGO 1989 No. 13**  
 [July 18, 1989]

**NEEDLE EXCHANGE PROGRAMS—AIDS LEGISLATION—  
 CRIMES—DRUG PARAPHERNALIA**

1. In light of RCW 69.50.412, which makes it a criminal violation to deliver drug paraphernalia, a regional AIDS service network established pursuant to RCW 70.24.400 may not lawfully authorize the distribution of hypodermic needles to intravenous drug users.
2. To the extent a regional AIDS service network authorizes the distribution of hypodermic needles under the purported authority of chapter 70.24 RCW, the persons actually distributing the needles are not generally exempt from criminal prosecution; however, certain persons might be exempt in specific cases.

**Requested by:**

The Honorable Charlie Wolfe  
 State Representative  
 Fourth District  
 424 House Office Building  
 Olympia, Washington 98504

**WSR 89-16-003**  
**RULES COORDINATOR**  
**EDMONDS COMMUNITY COLLEGE**  
 [Filed July 21, 1989, 8:28 a.m.]

As required by RCW 34.05.310(3), Edmonds Community College, Washington Community College District 23, names Barbara Patterson, Edmonds Community College, 20000 68th Avenue West, Lynnwood, WA 98036, (206) 771-1535, 721-1535 scan, as our rules coordinator.

**WSR 89-16-004**  
**RULES COORDINATOR**  
**TRANSPORTATION IMPROVEMENT BOARD**  
 [Filed July 21, 1989, 8:30 a.m.]

In accordance with the new Administrative Procedure Act, Laura Pelis is designated as the TIB rules coordinator. The following address should be used for all correspondence concerning WAC rules: Ms. Laura L. Pelis, Rules Coordinator, Transportation Improvement Board, Transportation Building, Olympia, Washington 98504.

**WSR 89-16-005**  
**RULES COORDINATOR**  
**WASHINGTON STATE**  
**SCHOOL FOR THE BLIND**  
 [Filed July 21, 1989, 8:40 a.m.]

The Washington State School for the Blind is planning to initiate rule-making proceedings under the new Administrative Procedure Act. In accordance with RCW 34.05.310, the rules coordinator for the Washington State School for the Blind is Larry Drotz, 611 Grand Boulevard, Mailstop S-26, Vancouver, WA 98661, phone (206) 696-6620, 476-6620 scan.

**WSR 89-16-006**  
**RULES COORDINATOR**  
**DEPARTMENT OF**  
**SERVICES FOR THE BLIND**  
 [Filed July 21, 1989, 9:37 a.m.]

Bonnie Jindra, executive assistant, will be the rules coordinator for the department. She can be reached at 521 East Legion Way, Mailstop FD-11, Olympia, WA 98504-1422, phone 586-0275.

**WSR 89-16-007**  
**PERMANENT RULES**  
**DEPARTMENT OF AGRICULTURE**  
**(Noxious Weed Control Board)**

[Order 28, Resolution No. 28—Filed July 21, 1989, 2:30 p.m.]

Be it resolved by the State Noxious Weed Control Board, acting at Kent, Washington, that it does adopt the annexed rules relating to state Noxious Weed Control Board position numbers for elected members and establishes those eligible to vote for each position.

This action is taken pursuant to Notice No. WSR 89-11-071 filed with the code reviser on May 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 17.10.030 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 July 19, 1989.

By Arlie Clinkenbeard  
 Chairman

**NEW SECTION**

WAC 16-750-950 STATE NOXIOUS WEED CONTROL BOARD POSITION NUMBERS — ELIGIBILITY FOR VOTING. Position numbers for elected members of the Washington State Noxious

Weed Control Board and those eligible to vote for each position are as follows:

- | POSITION                    | VOTING ELIGIBILITY   |
|-----------------------------|--|
| (1) westside, southern tier | (a) voting members of activated county noxious weed control boards in Grays Harbor, Mason, Thurston, Pierce, Lewis, Pacific, Wahkiakum, Cowlitz, Skamania, and Clark counties.   |
| (2) eastside, southern tier | (a) voting members of activated county noxious weed control boards in Adams, Whitman, Asotin, Garfield, Columbia, Walla Walla, Franklin, Benton, Klickitat, and Yakima counties. |
| (3) westside, northern tier | (a) voting members of activated county noxious weed control boards in Whatcom, Skagit, San Juan, Island, Snohomish, King, Kitsap, Clallam, and Jefferson counties.               |
| (4) eastside, northern tier | (a) voting members of activated county noxious weed control boards in Okanogan, Ferry, Stevens, Pend Oreille, Spokane, Lincoln, Grant, Kittitas, Chelan, and Douglas counties.   |
| (5) weed districts          | (a) directors of activated weed districts in Washington.   |

Reasons for this Finding: Restrictions in Areas 4B, 5, 6, 6A, 6C, 7 and 7A provide protection for United States and Canadian origin chinook stocks. Openings in Areas 7B, 7C, 12B and 12C provide opportunity to harvest non-Indian allocation of chinook destined for the Nooksack-Samish and Hood Canal regions of origin, and to prevent wastage. All other Puget Sound areas are closed to prevent overharvest of local salmon stocks.

Effective Date of Rule: July 23, 1989.

July 21, 1989  
Judith Merchant  
Deputy  
for Joseph R. Blum  
Director

NEW SECTION

*WAC 220-47-500 PUGET SOUND ALL-CITIZEN COMMERCIAL SALMON FISHERY. Notwithstanding the provisions of Chapter 220-47 WAC, effective 12:01 AM Sunday July 23, 1989, until further notice, it is unlawful to take, fish for, or possess salmon or Atlantic salmon for commercial purposes taken from the following Puget Sound Salmon Management and Catch Reporting Areas except in accordance with the following open periods and restrictions:*

- \* Areas 4B, 5, 6, 6A, 6C, 7, and 7A - Under the control of the Pacific Salmon Commission. Drift gill net gear restricted to 5-inch minimum, 6-inch maximum mesh when open.
- \* Areas 7B and 7C - Gillnets using 7-inch minimum mesh may fish from 7 PM to 9:30 AM nightly, Monday, July 24 and Tuesday, July 25.
- \* Areas 12B and 12C - Purse Seines using the 5-inch strip may fish from 5 AM to 9 PM daily, Monday, Tuesday, Wednesday, and Thursday, July 24, 25, 26, and 27, and gill nets using 7-inch minimum mesh may fish from 7 PM to 9:30 AM nightly, Monday, Tuesday, Wednesday, and Thursday, July 24, 25, 26, and 27. This opening excludes those waters of area 12B north of a line projected from Hood Point to Quatsap Point and those waters of area 12C south of a line projected from the Cushman powerhouse to the public boat ramp at Union.
- \* Areas 6B, 6D, 7D, 7E, 8, 8A, 8D, 9, 9A, 10, 10A, 10C, 10D, 10E, 10F, 10G, 11, 11A, 12, 12A, 12D, 13, 13A, 13C, 13D, 13E, 13F, 13G, 13H, 13I, 13J, and 13K and all freshwater areas - Closed.

**WSR 89-16-008**  
**EMERGENCY RULES**  
**DEPARTMENT OF FISHERIES**  
[Order 89-63—Filed July 21, 1989, 3:30 p.m.]

Date of Adoption: July 21, 1989.  
Purpose: Amend commercial fishing regulations.  
Citation of Existing Rules Affected by this Order: Amending chapter 220-47 WAC.  
Statutory Authority for Adoption: RCW 75.08.080.  
Pursuant to RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

**WSR 89-16-009**  
**EMERGENCY RULES**  
**DEPARTMENT OF FISHERIES**  
[Order 89-64—Filed July 21, 1989, 3:32 p.m.]

Date of Adoption: July 21, 1989.  
Purpose: Classification of foodfish.

Citation of Existing Rules Affected by this Order:  
Amending WAC 220-12-01000A [220-12-010].

Statutory Authority for Adoption: RCW 75.08.080.

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

Reasons for this Finding: This action is necessary in order to legalize the sale of Atlantic salmon caught in marine and freshwater commercial fisheries and, under chapter 220-69 WAC, to require catch reporting of such catch. This is necessary to obtain information on incidence of Atlantic salmon in the commercial catch, and provide opportunity for sport catch requirements if needed.

Effective Date of Rule: July 23, 1989.

July 21, 1989  
Judith Merchant  
Deputy  
for Joseph R. Blum  
Director

NEW SECTION

*WAC 220-12-01000A FOOD FISH — CLASSIFICATION Notwithstanding the provisions of Chapter 220-12 WAC, effective 12:01 AM July 23, 1989 until further notice, the following fish is classified as food fish under RCW 75.08.080 and is subject to the provisions of this title:*

*Atlantic Salmon Salmo salar (except in its landlocked form)*

**WSR 89-16-010**

**EMERGENCY RULES**

**DEPARTMENT OF FISHERIES**

[Order 89-65—Filed July 21, 1989, 3:33 p.m.]

Date of Adoption: July 21, 1989.

Citation of Existing Rules Affected by this Order:  
Repealing WAC 220-57-43500E.

Statutory Authority for Adoption: RCW 75.08.080.

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

Reasons for this Finding: This order is necessary to repeal WAC 220-57-43500E.

Effective Date of Rule: 6:00 a.m., July 22, 1989.

July 21, 1989  
Judith Merchant  
Deputy  
for Joseph R. Blum  
Director

REPEALER

*The following section of the Washington Administrative Code is repealed effective 6:00 A.M., July 22, 1989:*

*WAC 220-57-43500E SKYKOMISH RIVER.  
(89-52)*

**WSR 89-16-011**

**RULES COORDINATOR**

**UTILITIES AND TRANSPORTATION  
COMMISSION**

[Filed July 21, 1989, 3:35 p.m.]

Notice is hereby given that Paul Curl, Office of the Secretary, Chandler Plaza Building, 1300 South Evergreen Park Drive S.W., FY-11, Olympia, WA 98504, (206) 753-6451, is the rules coordinator designated by the Washington Utilities and Transportation Commission.

**WSR 89-16-012**

**PROPOSED RULES**

**SUPERINTENDENT OF PUBLIC INSTRUCTION**

[Filed July 21, 1989, 3:58 p.m.]

Original Notice.

Title of Rule: Chapters 392-101, 392-168, 392-171, 392-190 and 392-137 WAC, readoption to comply with new APA requirements.

Purpose: To comply with new APA requirements.

Statutory Authority for Adoption: Readoption under RCW 34.05.220(A) [34.05.220 (1)(a)] and chapter 392-137 WAC.

Reasons Supporting Proposal: Readoption necessary to maintain current practices of agency and prevent disruption of services.

Name of Agency Personnel Responsible for Drafting: Richard M. Wilson, Old Capitol Building, 753-2298; Implementation: Doyle Winter, Old Capitol Building, 753-1880; and Enforcement: Warren Burton, Old Capitol Building, 753-1880.

Name of Proponent: Superintendent of Public Instruction, governmental.

Explanation of Rule, its Purpose, and Anticipated Effects: Readoption to comply with new APA requirements.

Proposal does not change existing rules.

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

Hearing Location: Wanamaker Conference Room, Old Capitol Building, Olympia, Washington, on September 8, 1989, at 9:00 a.m.

Date of Intended Adoption: September 8, 1989.

July 21, 1989  
Judith A. Billings  
Superintendent of  
Public Instruction

**READOPTED SECTION** (Readopting Order 83-5, filed 8/17/83)

WAC 392-101-001 **AUTHORITY.** The authority for this chapter is RCW 34.04.020 which authorizes the superintendent of public instruction to adopt rules governing the formal and informal procedures prescribed or authorized by chapter 34.04 RCW.

**READOPTED SECTION** (Readopting Order 83-5, filed 8/17/83)

WAC 392-101-005 **ADMINISTRATIVE PRACTICES REGARDING HEARINGS AND RULE PROCEEDINGS.** The superintendent of public instruction is governed by the state Administrative Procedure Act, chapter 34.04 RCW, the Washington State Register Act, chapter 34.08 RCW, and the state office of Administrative Hearings Act, chapter 34.12 RCW. These acts govern the conduct of "rule" making proceedings and the conduct of "contested case" hearings as these terms are defined in RCW 34.04.010 (2) and (3). Appearances in representative capacities before the superintendent of public instruction; the procedures and conditions governing petitions for declaratory rulings or the adoption, amendment, or repeal of a rule; and, the standards, procedures and conditions governing the conduct of contested case hearings and proceedings by or before the superintendent of public instruction shall be as set forth in rules of the state code reviser and the office of administrative hearings as now or hereafter amended. The rules of the code reviser are currently set forth in chapters 1-08 and 1-12 WAC. The rules of the office of administrative hearings are currently set forth in chapter 10-08 WAC.

All other regulatory actions and hearings conducted by the superintendent of public instruction may be conducted informally at the discretion of the superintendent.

**READOPTED SECTION** (Readopting Order 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.

**READOPTED SECTION** (Readopting Order 88-13, filed 4/18/88)

WAC 392-168-105 **AUTHORITY.** The authority for this chapter is RCW 28A.02.100 which authorizes the superintendent of public instruction to receive and administer federal funds on behalf of school districts of the state of Washington in compliance with applicable rules and regulations.

**READOPTED SECTION** (Readopting Order 88-13, filed 4/18/88)

WAC 392-168-110 **PURPOSE.** The purpose of this chapter is to ensure compliance by the state of Washington with 34 CFR 76.780 through 782, Department of Education regulations governing state-administered federal grant programs, and with the Hatch Amendment.

**READOPTED SECTION** (Readopting Order 88-13, filed 4/18/88)

WAC 392-168-115 **APPLICABILITY.** This chapter shall apply to federal programs administered by the superintendent of public instruction and listed in 34 CFR 76.1(b):

- (1) Title III-A of the National Defense Education Act of 1958, Strengthening Instruction in Academic Subjects in Public Schools;
- (2) Title IV of Public Law 96-511, Emergency Immigrant Education Program;
- (3) Title II, Sections 201-206, 208-211, and 213 of the Education for Economic Security Act, State Grants for Strengthening the Skills of Teachers and Instruction in Mathematics, Science, Foreign Languages, and Computer Learning;
- (4) Part B of the Education of the Handicapped Act, Assistance to States for Education of Handicapped Children;
- (5) Section 619 of the Education of the Handicapped Act, Incentive Grants;

(6) Part A of Title I of the Vocational Education Act, State Vocational Education Program;

(7) Career Education Incentive Act (except Sections 10, 11, and 12) Career Education—State Allotment Program; and

(8) Adult Education Act (except Sections 309, 314, 317, and 318), State Adult Education Program;

(9) **PROVIDED,** That pursuant to 34 CFR 76.1(c), this chapter shall not apply to programs authorized under Chapter 1 and Chapter 2 of the Education Consolidation and Improvement Act of 1981:

(a) Chapter 1—Financial Assistance to Local Educational Agencies to Meet the Special Educational Needs of Educationally Deprived Children, Grants to State Educational Agencies for Program to Meet the Special Educational Needs of Migratory Children, Grants to State Agencies for Programs to Meet the Special Education Needs of Children in Institutions for Neglected or Delinquent Children, State-operated Programs for Handicapped Children; and

(b) Chapter 2—Consolidation of Federal Programs for Elementary and Secondary Education:

(10) **PROVIDED FURTHER,** That any additional complaint procedure requirements of particular programs shall be applicable to those programs in addition to the basic citizen complaint procedure described in this chapter.

**READOPTED SECTION** (Readopting Order 88-13, filed 4/18/88)

WAC 392-168-120 **DEFINITION—HATCH AMENDMENT.** As used in this chapter, the term the "Hatch Amendment" means section 439 of the General Education Provisions Act (GEPA), "Protection of Pupil Rights" which provides that:

(1) Parents or guardians of children involved in a research or experimentation project supported with federal funds shall have a right to inspect instructional materials used in connection with the project; and

(2) No student in such a project shall be required to submit to psychiatric or psychological examination, testing, or treatment which might reveal specified personal information without the consent of an adult or emancipated minor student or, for other minor students, without prior written parental consent.

**READOPTED SECTION** (Readopting Order 88-13, filed 4/18/88)

WAC 392-168-125 **DEFINITION—COMPLAINT.** As used in this chapter, the term "complaint" means a written allegation, signed by the complainant, that the state, a local school district, an educational service district, or other subgrantee receiving federal funds has systematically violated a federal statute or regulation or a state regulation that applies to a federal program covered under this chapter.

**READOPTED SECTION** (Readopting Order 88-13, filed 4/18/88)

WAC 392-168-130 **DEFINITION—OTHER SUBGRANTEE.** As used in this chapter, the term "other subgrantee" means the government, nonprofit, or other legal entity to which the state as grantee awards a subgrant, and which is accountable to the state for the use of the funds provided. The subgrantee is the entire legal entity even if only a particular component of the entity is designated in the subgrant award document.

**READOPTED SECTION** (Readopting Order 88-13, filed 4/18/88)

WAC 392-168-135 **RIGHT TO REGISTER A COMPLAINT.** Any individual, entity, or organization may register a complaint: **PROVIDED,** That a complaint filed pursuant to the Hatch Amendment may be filed only by a student or parent or guardian of a student directly affected by the alleged violation: **PROVIDED FURTHER,** That if a parent or adult student has also filed an individualized complaint which constitutes the basis in whole or in part for initiation of a due process special education hearing pursuant to WAC 392-171-531, a citizen complaint by such person regarding systemic noncompliance shall be held in abeyance until the hearing has been concluded.

**READOPTED SECTION** (Readopting Order 88-13, filed 4/18/88)

WAC 392-168-140 **CONTENTS OF COMPLAINT.** A complaint filed under this chapter shall be in writing, signed by the complainant, and shall include:

- (1) A statement that the state, a local school district, an educational service district, or other subgrantee has violated one or more requirements of federal statutes or regulations or state regulations that apply to a federal program;

- (2) The facts on which the statement is based;
- (3) The name and address of the complainant; and
- (4) In the case of a complaint alleging a violation by an entity other than the state and filed directly with the superintendent of public instruction, the name and address of the allegedly offending entity.

**READOPTED SECTION** (Readopting Order 88-13, filed 4/18/88)

**WAC 392-168-145 PROCEDURE FOR FILING A COMPLAINT.** The procedure for filing a complaint shall be as follows:

(1) A complaint alleging a violation by a local school district, an educational service district, or other subgrantee shall be filed directly with a responsible official of the local school district, an educational service district, or other subgrantee: **PROVIDED**, That a complaint alleging a violation by an entity other than the state may be filed directly with the superintendent of public instruction at the complainant's discretion.

(2) A complaint against a local school district, an educational service district, or other subgrantee filed directly with the superintendent of public instruction shall be referred back to the allegedly offending entity for action pursuant to this chapter.

**READOPTED SECTION** (Readopting Order 88-13, filed 4/18/88)

**WAC 392-168-150 COMPLAINT DIRECTED TO A SCHOOL DISTRICT, AN EDUCATIONAL SERVICE DISTRICT, OR OTHER SUBGRANTEE AND DESIGNATION OF RESPONSIBLE EMPLOYEE.** The chief officer of each local school district, an educational service district, or other subgrantee shall designate at least one employee to monitor and coordinate the entity's compliance with this chapter. Such employee shall also be charged with the responsibility for investigating any complaint(s) communicated to the entity pursuant to WAC 392-168-145.

**READOPTED SECTION** (Readopting Order 88-13, filed 4/18/88)

**WAC 392-168-155 INVESTIGATION OF AND RESPONSE TO COMPLAINTS AGAINST A SCHOOL DISTRICT, EDUCATIONAL SERVICE DISTRICT, OR OTHER SUBGRANTEE.** Investigation of and response to a complaint shall be as follows:

(1) Upon receipt of a properly filed complaint, the employee(s) designated pursuant to WAC 392-168-150 shall investigate the alleged violations.

(2) Upon completion of the investigation, the designated employee(s) shall provide the responsible official of the entity with a written report of the results of the investigation. Said officials shall respond in writing to the complainant no later than twenty calendar days after the date of receipt by the entity of such complaint.

(3) The response to the complainant shall clearly state either:

(a) That the entity denies the allegations contained in the complaint and the basis for such denial; or

(b) The reasonable corrective action deemed necessary to correct the violation: **PROVIDED**, That any such corrective measures shall be instituted as expeditiously as possible but in no event later than thirty calendar days following the date of the response to the complainant.

**READOPTED SECTION** (Readopting Order 88-13, filed 4/18/88)

**WAC 392-168-160 APPEAL TO THE SUPERINTENDENT OF PUBLIC INSTRUCTION OF A LOCAL SCHOOL DISTRICT, EDUCATIONAL SERVICE DISTRICT, OR OTHER SUBGRANTEE DECISION.** The complainant shall have the following right of appeal:

(1) In the event a complainant remains aggrieved with the written decision of a local school district, an educational service district, or other subgrantee, or upon failure or refusal of such entity to respond to a properly filed complaint, the complainant may, in writing, appeal the decision to the superintendent of public instruction or, in the case of a failure or refusal to respond, may register the complaint directly with the superintendent: **PROVIDED**, That upon the refusal of the local school district, educational service district, or other subgrantee to grant a request of the parent (or adult student) for a due process special education hearing made in conformance with WAC 392-171-531, the parent (or adult student) may register the complaint with the superintendent of public instruction.

(2) The written notice of appeal must be received by the superintendent of public instruction on or before the fifteenth day after the date the complainant received the written response of the local school district, educational service district, or other subgrantee pursuant to

WAC 392-168-155; or in the case of a failure or refusal to respond to a complaint, a written notice registering the complaint must be received by the superintendent of public instruction on or before the thirty-fifth day after the citizen registered the complaint with the entity.

(3) In the case of a local school district, an educational service district, or other subgrantee's refusal to grant a request of a parent (or adult student) for a special education hearing made in conformance with WAC 392-171-531, a written notice registering the complaint must be received by the superintendent of public instruction on or before either the fifteenth day after the date the parent (or adult student) received notice of such entity's refusal to grant a hearing or on or before the fifteenth day after the expiration of the time period for rendering a final decision pursuant to a request for a hearing (i.e., forty-five days after the date of receipt of a request for a hearing), whichever occurs first.

**READOPTED SECTION** (Readopting Order 88-13, filed 4/18/88)

**WAC 392-168-165 CONTENT OF APPEAL NOTICE.** The appeal notice shall set forth:

(1) A statement of the portion(s) of the local school district, educational service district, or other subgrantee's decision which is appealed or, in the case of a failure or refusal to respond, a statement so indicating; and

(2) The relief or remedy requested by the complainant/appellant.

**READOPTED SECTION** (Readopting Order 88-13, filed 4/18/88)

**WAC 392-168-170 ACTIONS BY SUPERINTENDENT OF PUBLIC INSTRUCTION IN RESPONSE TO NOTICES OF APPEAL AND NOTICES REGISTERING COMPLAINTS.** The superintendent of public instruction shall respond in the following manner to appeals and direct complaints:

(1) The superintendent of public instruction shall investigate the allegation(s) contained in a written notice of appeal or a written notice registering the complaint that is deemed to be of substance and make a decision no later than fifteen calendar days after the receipt of a written appeal or no later than sixty calendar days after receipt of a complaint registered directly with the superintendent of public instruction by a citizen. Investigations carried out pursuant to this section may be performed on-site as necessary.

(2) If the investigation reveals that there is merit to the allegation(s), the superintendent of public instruction shall provide for negotiations, or technical advice and assistance, or other remedial action in an attempt to ensure compliance with this chapter and/or state and/or federal laws and regulations: **PROVIDED**, That any corrective measures deemed necessary shall be instituted no later than ten calendar days following the decision of the superintendent of public instruction.

(3) If compliance by a local school district, educational service district, or other subgrantee is not achieved pursuant to subsection (2) of this section, the superintendent of public instruction shall initiate funding withholding, fund recovery, or any other sanction deemed appropriate.

(4) In the event a complainant, local school district, educational service district, or other subgrantee remains aggrieved with the decision of the superintendent of public instruction, either party may appeal the decision to the secretary, department of education.

**READOPTED SECTION** (Readopting Order 88-13, filed 4/18/88)

**WAC 392-168-175 COMPLAINTS AGAINST THE SUPERINTENDENT OF PUBLIC INSTRUCTION—DESIGNATION OF RESPONSIBLE EMPLOYEE(S).** (1) A complaint alleging a violation by the superintendent of public instruction shall be filed directly with the superintendent of public instruction in the form specified in WAC 392-168-140.

(2) The superintendent of public instruction shall designate at least one office of the agency to monitor and coordinate the agency's compliance with this chapter, which shall include ensuring that investigation of any complaint is conducted expeditiously and thoroughly.

**READOPTED SECTION** (Readopting Order 88-13, filed 4/18/88)

**WAC 392-168-180 COMPLAINTS AGAINST THE SUPERINTENDENT OF PUBLIC INSTRUCTION—INVESTIGATION OF AND RESPONSE TO COMPLAINTS.** (1) The staff responsible for investigating the alleged violation shall commence investigation

within ten days of receipt of the complaint by the superintendent of public instruction.

(2) Investigation by the superintendent of public instruction may include on-site investigations as appropriate.

(3) Upon completion of the investigation, investigating staff shall provide the superintendent of public instruction with a written report on the results of the investigation.

(4) The superintendent of public instruction shall respond in writing to the complainant as expeditiously as possible but in no event later than sixty calendar days after the date of receipt of such complaint by the superintendent of public instruction.

(5) The response shall clearly state either:

(a) That the complaint is without merit, the allegations are denied, and the basis for such denial; or

(b) The reasonable corrective measures deemed necessary to correct any violation: PROVIDED, That any such corrective measures deemed necessary shall be instituted as expeditiously as possible but in no event later than thirty calendar days following the date of the response to the complainant.

#### READOPTED SECTION (Readopting Order 88-13, filed 4/18/88)

WAC 392-168-185 WAIVER OF TIMELINES. (1) Timelines established in this chapter may be waived by mutual consent in writing of both complainant and local school district or other subgrantee. Such waiver of timelines shall be communicated within ten days to the appropriate division, superintendent of public instruction, by the entity named in the complaint.

(2) An extension of time limits applicable to actions by the superintendent of public instruction shall be waived by mutual consent of the complainant and the superintendent of public instruction: PROVIDED, That if exceptional circumstances exist with respect to a particular complaint, the superintendent of public instruction may unilaterally extend the timelines for cause upon written notice to the parties.

#### READOPTED SECTION (Readopting Order 88-13, filed 4/18/88)

WAC 392-168-190 APPEAL TO THE SECRETARY OF EDUCATION IN COMPLAINTS AGAINST THE SUPERINTENDENT OF PUBLIC INSTRUCTION. In the event that a complainant remains aggrieved with the response of the superintendent of public instruction, the complainant may file an appeal directly with the secretary, Department of Education.

#### READOPTED SECTION (Readopting Order 84-19, filed 6/28/84)

WAC 392-171-295 AUTHORITY. The authority for this chapter is RCW 28A.13.070(7) which authorizes the superintendent of public instruction to promulgate rules and regulations to implement chapter 28A.13 RCW. Such authority is supplemented by RCW 28A.02.100 which authorizes the superintendent of public instruction to receive federal funds in accordance with the provisions of federal law.

#### READOPTED SECTION (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-300 PURPOSES. The purposes of this chapter are:

(1) To implement chapter 28A.13 RCW in a manner that is compatible also with the federal Education for All Handicapped Children Act, 20 United States Code (USC) section 1401 et seq. (PL 94-142);

(2) To assure that all handicapped students as defined in this chapter have an opportunity for a free and appropriate education at public expense (i.e., free special education and related services) to meet their unique needs;

(3) To assure that the rights of handicapped students and their parents are protected;

(4) To assist school districts and others to provide for the education of all handicapped students;

(5) To assess and assure the effectiveness of efforts to educate handicapped students; and

(6) To be applicable to all handicapped education programs established pursuant to law and operated by the common school districts or on behalf of the common school districts, including the state residential school programs established and operated pursuant to RCW 28A.58.770 et seq.

#### READOPTED SECTION (Readopting Order 11-78, filed 10/31/78)

WAC 392-171-305 ADVISORY COUNCIL. (1) Council established—The special education state advisory council is hereby established in order to help facilitate the provision of special education and related services to meet every handicapped student's unique needs, abilities, and limitations.

(2) Membership—The membership of the council shall include at least one representative of each of the following groups or entities:

(a) Handicapped individuals;

(b) Teachers of handicapped students;

(c) Parents of handicapped students;

(d) Local administrators of special education programs;

(e) Support services personnel;

(f) Superintendents;

(g) Principals;

(h) Nonpublic schools serving handicapped students;

(i) School directors;

(j) Institutions of higher education;

(k) Department of social and health services;

(l) The medical profession; and

(m) Other individuals or groups as may hereafter be designated and approved by the superintendent of public instruction.

(3) Functions—The council's purposes are:

(a) To advise the superintendent of public instruction and make recommendations on all matters related to special education and specifically advise the superintendent of unmet needs within the state in the education of handicapped students;

(b) Comment publicly on the state's annual program plan, state rules regarding the education of handicapped students, and the procedures for distribution of funds; and

(c) Assist the state in developing and reporting such information and evaluations as may assist the federal government.

(4) Organization—The council shall conduct its affairs in accordance with bylaws approved by the superintendent of public instruction. To assure that maximum information and recommendations are provided to the superintendent of public instruction, the state advisory council shall have the authority to recommend the design of its organization and to appoint subcommittees from its membership for carrying out council responsibilities. Ad hoc subcommittees with membership other than council members may be appointed: PROVIDED, That the superintendent of public instruction or his or her designee has given prior approval for such appointments.

#### READOPTED SECTION (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-310 DEFINITIONS OF "FREE APPROPRIATE, PUBLIC EDUCATION," "ADULT STUDENT," "HANDICAPPED STUDENT," "PARENT," AND "SCHOOL DISTRICT." As used in this chapter:

(1) "Free appropriate, public education" means special education and related services which:

(a) Are provided at public expense, under local school district supervision and direction, and without charge;

(b) Meet the standards of the state educational agency, including the requirements of this chapter; and

(c) Are provided in conformity with an individualized education program which meet the requirements of WAC 392-171-461.

(2) "Adult student" means a handicapped student or a student who is eighteen, nineteen, or twenty years of age, except as provided for in WAC 392-171-331, and who has not been judged incompetent by a court of law or otherwise judged by a court of law as being incapable of assuming and exercising the rights, duties and responsibilities otherwise granted to and imposed upon parents by this chapter (a student shall assume and be entitled to exercise all rights, duties and responsibilities otherwise granted to or imposed upon parents by this chapter upon attaining the age of eighteen and shall retain and be entitled to exercise the same until he or she has been judged incompetent or otherwise incapable of exercising the same by a court of law).

(3) "Handicapped student" and "student" (depending upon the context in which the terms are used) mean:

(a) A person under the age of twenty-one, except as provided for in WAC 392-171-331, who has been determined pursuant to this chapter to have one or more of the disabilities set forth in WAC 392-171-381 through 392-171-451 and to be in need of special education and related services; or

(b) A person under the age of twenty-one who has become a focus of concern and who may have one or more of the disabilities set forth

in WAC 392-171-381 through 392-171-451 in the judgment of the school district superintendent or his or her designee, or the parent(s), or the adult student; or

(c) A person under the age of twenty-one, except as provided for in WAC 392-171-331, who resides in a residential school for the handicapped in accordance with RCW 28A.58.770 et seq.

(d) The foregoing categories of persons—notwithstanding the fact the person(s) may not be enrolled in or attending school in the normal sense of the term "student."

(4) "Parent" means a natural parent, a legal guardian, an adult person acting as a parent, or a surrogate parent who has been appointed in accordance with WAC 392-171-581, who represents a nonadult student. The term does not include the state if the child is a ward of the state.

(5) "School district" means:

(a) Each public school district in the state;

(b) Each educational service district that provides special education or related services to one or more handicapped students; and

(c) Each public or private organization or entity or person who provides special education and/or related services to one or more handicapped students in behalf of a public school district—even though such public school district, educational service district, or public or private organization or entity or person does not receive federal funds made available for the purposes of the Education for All Handicapped Children Act.

#### READOPTED SECTION (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-311 DEFINITIONS OF "ASSESSMENT," "CURRENT ASSESSMENT," "REASSESSMENT," AND "CONSENT." As used in this chapter:

(1) "Assessment" means procedures used in accordance with WAC 392-171-346 through 392-171-366 and 392-171-516 to determine whether a student is handicapped and/or the nature and extent of the special education and related services that the student needs. The term means procedures used selectively with an individual student and does not include basic tests administered to or procedures used with all students in a school, grade, or class.

The purposes of assessment are to:

(a) Measure the student's present level of educational performance to identify the student's unique needs, abilities and limitations;

(b) Draw conclusions regarding the significance of the findings as related to the student's instructional program;

(c) Provide appropriate personnel with information for determining appropriate placement and developing the individualized education program in accordance with WAC 392-171-461;

(d) Assure appropriate identification of the handicapping condition; and

(e) Determine the student's eligibility for funding for special education and related services.

(2) "Current assessment" means:

(a) Intellectual assessment data shall be considered current if obtained during a one calendar year period prior to the formal assessment or if obtained during the formal assessment period.

(b) Academic assessment data, including perceptual assessment data, shall be considered "current" if obtained during a ninety calendar day period prior to formal assessment or if obtained during the formal assessment period.

(c) Psychological and social assessment data shall be considered "current" if obtained during a thirty calendar day period prior to formal assessment or if obtained during the formal assessment period.

(d) Adaptive behavior assessment data, including vocational and career assessment data, shall be considered "current" if obtained during a ninety calendar day period prior to formal assessment or if obtained during the formal assessment period.

(e) Speech/language (communication skills) assessment data shall be considered "current" if obtained during a ninety calendar day period prior to formal assessment or if obtained during the formal assessment period.

(f) Vision/hearing screening data shall be considered "current" if obtained during a one calendar year period prior to formal assessment or if obtained during the formal assessment period.

(g) Medical assessment data shall be considered "current" if obtained during a one hundred eighty calendar day period prior to formal assessment or if obtained during the formal assessment period.

(3) "Reassessment" means procedures used in accordance with WAC 392-171-346 through 392-171-366 to determine the student's

eligibility for and need for continuing special education and related services pursuant to WAC 392-171-516.

(4) "Consent" means that:

(a) The parent (or the adult student) has been fully informed of all information relevant to the activity for which consent is sought in his or her native language or other mode of communication, including being informed of existing assessment data to be used within the definitions of current assessment;

(b) The parent (or the adult student) understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) which will be released and to whom; and

(c) The parent (or the adult student) understands that the granting of consent is voluntary on the part of the parent (or the adult student) and may be revoked at any time.

#### READOPTED SECTION (Readopting Order 86-1, filed 2/21/86)

WAC 392-171-315 DEFINITION OF "SPECIAL EDUCATION." As used in this chapter "special education" means specially designed instruction, at no cost to the parent or the student, to meet the unique needs, abilities, and limitations of a student having a handicapped condition, including classroom and itinerant instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions. The term includes communication disorders services, physical and occupational therapy, orientation and mobility instruction, and audiology. The term also includes career development and vocational education if either consists of specially designed instruction, at no cost to the parents or the student, to meet the unique needs of a handicapped student.

The terms in the definition of "special education" are defined as follows:

(1) "Specially designed instruction" means organized and planned teaching and/or training activities provided by certificated and/or licensed special education personnel, including therapists, designed to facilitate progress toward specific written objectives and which occurs repeatedly over a given period of time during regularly scheduled sessions. The term does not include diagnostic or assessment activities, related services per se, consultative services, or materials preparation.

(2) "At no cost" means that all specially designed instruction is provided without charge, but does not preclude incidental fees which are normally charged to nonhandicapped students or their parents as a part of the regular education program.

(3) "Physical education" means the development of:

(a) Physical and motor fitness;

(b) Fundamental motor skills and patterns; and

(c) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports).

The term includes special physical education, adapted physical education, movement education, and motor development.

(4) "Career development" means instructional activities infused into a student's education program which make provision for career awareness, career exploration and career preparation for all occupations.

(5) "Vocational education" means a planned series of learning experiences, the specific objective of which is to prepare persons to enter, continue in, or upgrade themselves in gainful employment in recognized occupations not designated as professional or requiring a baccalaureate or higher degree.

(6) "Audiology" means the provision of habilitative activities related to a hearing impairment, such as language habilitation, auditory training, speech reading (lip reading), training for hearing evaluation, and speech conservation.

(7) "Occupational therapy" means improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation; improving ability to perform tasks for independent functioning when functions are impaired or lost; and preventing through early intervention, initial or further impairment or loss of function.

(8) "Orientation and mobility instruction" means the provision of training/instruction in orientation and mobility for visually handicapped students.

(9) "Physical therapy" means seeking to relieve disability or pain, developing or restoring motor function and maintaining appropriate performance commensurate with the student's unique needs, abilities, and limitations.

(10) "Communication disorders services" mean the provision of speech and language services for the habilitation or prevention of communication disorders.



READOPTED SECTION (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-320 DEFINITION OF "RELATED SERVICES." As used in this chapter "related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a handicapped student to benefit from special education, and includes communication disorders services and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in students, counseling services, medical services for diagnostic or assessment purposes, and orientation and mobility services. The term also includes school health services, social work services in schools, parent counseling and training, and classified staff services.

The terms used in the definition of "related services" are defined as follows:

- (1) "Audiology" includes:
- (a) Identification of students with hearing loss;
  - (b) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;
  - (c) Creation and administration of programs for prevention of hearing loss;
  - (d) Counseling and guidance of students, parents, and teachers regarding hearing loss; and
  - (e) Determination of the student's need for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.
- (2) "Counseling services" means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.
- (3) "Early identification" means the implementation of a formal plan for identifying a disability as early as possible in a student's life.
- (4) "Medical services" means services provided by a licensed physician to determine a student's medically related handicapping condition which results in the student's need for special education and related services.
- (5) "Occupational therapy" includes:
- (a) The identification and assessment of the student's physical and self-care status;
  - (b) Determination of the student's need for occupational therapy; and
  - (c) Related counseling and guidance of parents, students, and staff regarding the provision of occupational therapy.
- (6) "Orientation and mobility services" includes:
- (a) Identification and assessment of the student's mobility status;
  - (b) Determination of the student's need for orientation and mobility services; and
  - (c) Related counseling and guidance of parents, students and staff regarding orientation and mobility services.
- (7) "Parent counseling and training" means assisting parents in understanding the special needs, abilities, and limitations of their child or ward and providing parents with information about child/student development.
- (8) "Physical therapy" includes:
- (a) Identification and assessment of the student's physical status;
  - (b) Determination of the student's need for physical therapy; and
  - (c) Related counseling and guidance of parents, students and staff regarding physical therapy services.
- (9) "Psychological services" includes:
- (a) Administering psychological and educational tests, and other assessment procedures;
  - (b) Interpreting assessment results;
  - (c) Obtaining, integrating, and interpreting information about child/student behavior and conditions relating to learning;
  - (d) Consulting with other staff members in planning school programs to meet the special needs of students as indicated by psychological tests, interviews, and behavioral evaluations; and
  - (e) Planning and managing a program of psychological services, including psychological counseling for students and parents.
- (10) "Recreation" includes:
- (a) Assessment of leisure function;
  - (b) Therapeutic recreation services;
  - (c) Recreation programs in school and community agencies; and
  - (d) Leisure education.
- (11) "School health services" means services provided by a qualified school nurse or other qualified person.
- (12) "Social work services in schools" include:

- (a) Preparing a social or developmental history on a handicapped student;
  - (b) Group and individual counseling with the student and family;
  - (c) Working with those problems in a student's living situation (home, school, and community) that affect the student's adjustment in school; and
  - (d) Mobilizing school and community resources to enable the student to receive maximum benefit from his or her educational program.
- (13) "Communication disorders services" includes:
- (a) Identification of students with communication disorders;
  - (b) Diagnosis and appraisal of specific communication disorders;
  - (c) Referral for medical or other professional attention necessary for the habilitation of communication disorders; and
  - (d) Counseling and guidance of parents, students, and staff regarding communication disorders.
- (14) "Transportation" includes:
- (a) Travel to and from school and between schools;
  - (b) Travel in and around school buildings; and
  - (c) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a handicapped student.
- (15) "Classified staff services" includes:
- (a) Services provided by classified staff which provide for the handicapped student's safety and/or personal care and instructional assistance (e.g. interpreter services and braille services); and
  - (b) Services provided by classified staff which provide assistance for handicapped students and certificated staff to achieve placement in the least restrictive environment.

READOPTED SECTION (Readopting Order 84-19, filed 6/28/84)

WAC 392-171-325 STUDENTS' RIGHTS TO SPECIAL EDUCATION PROGRAMS. (1) Each school district shall provide every handicapped student between the age of three and twenty-one a free and appropriate educational program consisting of special education and related services. The date of eligibility to begin receiving such services shall be the child's birthdate: PROVIDED, That handicapped children between the age of three and four need not be served until the 1985-86 school year.

(2) School districts may provide special education and related services to handicapped students in the zero to one, one, two, three and/or four year old age groups without being obligated to extend preschool programs to nonhandicapped children. However, if a school district provides an education to any nonhandicapped child in the zero to three year old age group, the district shall make special education and related services available pursuant to this chapter to all its handicapped students of the same age: PROVIDED, That school districts that do not offer services to all eligible three year old handicapped children in the 1984-85 school year shall be subject to this nondiscriminatory service requirement.

(3) Any student made a focus of concern shall qualify pursuant to the disability definitions and criteria set forth in this chapter in order to receive state or federal special education funding. A handicapped student shall remain eligible for special education and related services until: (a) The student has met high school graduation requirements established by the school district pursuant to rules of the state board of education; or (b) the student has reached age twenty-one; or (c) the student is no longer in need of special education and related services as judged by the student's multidisciplinary team based upon a reassessment of the student, whichever occurs first. The student may continue to receive special education and related services: PROVIDED, That a reassessment of the student concludes that, notwithstanding the fact that the student no longer meets the initial eligibility criteria, the student's performance is or will be adversely affected if he or she is terminated from special education.

READOPTED SECTION (Readopting Order 84-19, filed 6/28/84)

WAC 392-171-331 CONTINUING ELIGIBILITY. (1) Any student whose eligibility was established pursuant to rules in effect at a time of prior assessment but before September 1, 1984, shall continue to remain eligible for special education and related services under the authority and provisions of such prior rules unless:

- (a) The student has met high school graduation requirements established by the school district pursuant to the rules of the state board of education; or
- (b) The student reaches age twenty-one; or



(c) The student is no longer in need of special education and related services: PROVIDED, That the determination that the student needs to receive special education and related services is based on a reassessment of the student which concludes that, notwithstanding the fact that the student no longer meets the initial eligibility criteria, the student's performance is or will be adversely affected if he or she is terminated from special education. Any such student shall be reassessed pursuant to WAC 392-171-346 through 392-171-366 and the applicable section(s) of WAC 392-171-381 through 392-171-451.

(2) Any student made a focus of concern for the first time and/or assessed for the first time after September 1, 1984, shall be assessed and determined eligible pursuant to WAC 392-171-346 through 392-171-366 and the applicable section(s) of WAC 392-171-381 through 392-171-451.

(3) Effective September 1, 1984, and thereafter, every handicapped student shall remain eligible for special education and related services only so long as the student has not yet met high school graduation requirements established by the school district pursuant to rules of the state board of education or the student has not reached age twenty-one, or the student no longer requires special education and related services as judged by the student's multidisciplinary team based on a reassessment of the student.

(4) The student whose twenty-first birthday occurs during the school year shall continue to be eligible for special education and related services for the remainder of the school year.

#### READOPTED SECTION (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-336 **CHILDFIND**. The local district shall conduct childfind activities to locate and identify students with a suspected handicapping condition who are residing within the boundaries of the district and not currently receiving special education services. Childfind activities shall apply to students age 0 to 21 and may include, but are not necessarily limited to: Preschool developmental screening, local media informational campaigns, liaison with public health and other medical and social agencies, public or private, questionnaire for first-time enrolling students, screening of district-wide group standardized test results, inservice education to teaching staff, and cooperation as requested with state childfind programs.

#### READOPTED SECTION (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-341 **STUDENT AS FOCUS OF CONCERN—PREESSMENT PROCEDURES—TIMELINE**. (1) A student shall become a focus of concern when the student is brought to the attention of a school district superintendent or his or her designee because of a suspected handicapping condition(s). Such concern for a student may be originated by or transmitted through any source, including: Parents, medical personnel, school district personnel, community agencies, civil authorities, district screening procedures, and other identified, interested persons.

(2) When the possibility of a student's need for special education and related services has been brought to the attention of the school district superintendent or his or her designee, the superintendent or his or her designee shall act on the referral by promptly:

(a) Recording the circumstance by date, origin, and reason for concern; and

(b) Providing the student's parent(s) (or the adult student) written notice that the student has been referred because of a suspected handicapping condition and that within fifteen school days the district will determine whether or not there is good reason to believe that the student is a candidate for assessment.

(3) The superintendent or his or her designee shall, within fifteen school days after the date of referral, review the referral, collect and examine existing school, medical and other records in the possession of the school district and make a determination that there is or is not good reason to believe that the student is a candidate for assessment. This decision shall be in writing and shall set forth the date and the name of the person making the decision. The superintendent or his or her designee shall, within ten school days after the date of such decision, direct a written notice to the student's parent(s) (or the adult student) that complies with the notice requirements of WAC 392-171-526.

(4) In the event the decision is that there is good reason to believe that the student is a candidate for assessment, the school district shall fully assess the student and arrive at a decision pursuant to WAC 392-171-376 within:

(a) Thirty-five school days (also referred to as the formal assessment period) after the date written consent for an assessment has been provided by the parent(s) (or the adult student); or

(b) Thirty-five school days (also referred to as the formal assessment period) after the date the refusal of the parent(s) (or the adult student) to grant consent has been overridden pursuant to a hearing (or appeal) in accordance with WAC 392-171-521 et seq.; or

(c) Such other time period as may be agreed to by the parent(s) (or the adult student) and school authorities.

(5) The school district shall request the parent to sign consent form(s) for the mutual exchange of pertinent information where such information is available between the school, other agencies, and/or professionals.

(6) If temporary (not to exceed thirty school days) special education programming is necessary for diagnostic reasons during the assessment period, the district shall obtain written permission for such diagnostic placement from the parent(s) prior to making the placement.

(7) In the case of students admitted to state residential schools, an assessment and individualized education program must be completed as provided in this chapter within fifty school days of enrollment.

#### READOPTED SECTION (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-346 **GENERAL AREAS OF ASSESSMENT**. The assessment of a student shall be in all areas related to the suspected disability. The assessment procedures outlined in WAC 392-171-381 through 392-171-451 are to be considered minimal, required procedures. Where concerns are indicated, as judged by the multidisciplinary team, additional or more in depth assessment in each of the following areas shall be conducted.

(1) Scholastic assessment. This area may include assessment of the intellectual, language and communication, academic and cognitive development of the student and any other scholastic area as deemed appropriate by the multidisciplinary team.

(2) Physical assessment. This area may include a review of the general health status of the student, vision and hearing screening, oral-peripheral examination, evaluation of musculo-skeletal, neurological, and developmental modalities, and any other physical area as deemed necessary by the multidisciplinary team.

(3) Adjustment assessment. This area may include assessment of the social skills and emotional status of the student, career and vocational assessment, and assessment of adaptive behaviors (e.g., self-help, interpersonal communication, survival skills, and practical application of academic skills).

#### READOPTED SECTION (Readopting Order 86-1, filed 2/21/86)

WAC 392-171-351 **GENERAL ASSESSMENT SAFEGUARDS—PERSONNEL, MATERIALS AND PROCEDURES**. Every student who is assessed or reassessed shall be assessed according to the procedures established in this chapter.

(1) The initial assessment of a student (except one with a suspected communication disorder) shall be made by a multidisciplinary team (i.e., a group of professionals) including at least one special education teacher and at least one person qualified to conduct individual diagnostic assessment in the area of suspected disability. In a reassessment of a student, the multidisciplinary team also shall consist of a representative from each professional area involved in identified deficits or other eligibility criteria pertinent to the classification of such student in the most recent assessment of the student and such other professional areas as recommended by any professional involved in the reassessment. Each member of the team shall be licensed, registered, credentialed, or certificated according to his or her professional standards in accordance with state statutes and rules: PROVIDED, That in assessing or reassessing a student suspected of having a specific learning disability, each school district shall include on the multidisciplinary team at least three members:

(a) The student's regular education teacher or, if the student does not have a regular education teacher, a regular education teacher qualified to teach a student of his or her age;

(b) A special education teacher having experience with learning disabled students; and

(c) A school psychologist.

(2) No single test instrument or single procedure shall be the sole criterion for determining a student's eligibility or handicapping condition and/or for determining the appropriate educational program for a student.

(3) Assessment materials, procedures, and instruments used for the purpose of assessment and placement shall be selected and administered so as not to be racially or culturally discriminatory.

(4) All tests and other evaluation materials shall have been validated for the specific purpose for which they are used and shall accurately reflect whatever factors the tests purport to measure. If properly validated tests are unavailable, the professional judgment of each member of the multidisciplinary team shall determine eligibility for special education based on other evidence of the existence of a specific handicap and need. This professional judgment shall be documented in a written narrative.

(5) All tests and other evaluation materials shall be administered by qualified personnel in conformance with the instructions of their producer. Tests designed to measure intellectual functioning shall be administered and interpreted by a qualified psychologist: PROVIDED, That cognitive tests for developmentally delayed students other than an intelligence quotient test shall be administered by a qualified psychologist or by professionals with other titles who have considerable training and experience in individual psychological or psychoeducational assessment.

(6) Assessment materials, procedures or instruments shall be provided and administered in a student's primary language or mode of communication, unless it is clearly not feasible to do so. Tests shall be selected and administered so as to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors the test purports to measure).

(7) In conducting assessment activities, appropriate assessment team members shall:

(a) Collect and review all available existing school, medical, and other records pertinent to the suspected handicapping condition(s) of the student, including previous screening and assessment results, health reports, relevant cumulative records and recommendations of related service providers; and

(b) Conduct current assessment activities required by this chapter and in accordance with the procedures specified herein; and

(c) Collect such other data as needed to verify the results of standardized testing, including but not limited to parent and/or teacher interviews and current classroom performance data.

(8) Assessment data shall be summarized in writing, dated, and signed by each person conducting an assessment. Information used to support the assessment, but which is not incorporated into the file, (e.g., review of health record), shall be referenced as to date of record, location, and source person. The summaries shall specify the procedures and instruments used, the results obtained, and the apparent significance of findings as related to the student's instructional program, including a description of the specific factors which are interfering with the student's educational performance and the special education and related services needed to assist the student in benefiting from his or her educational placement, including the need, if appropriate, of scheduling such services over a period of time that exceeds the regular one hundred eighty day school calendar: PROVIDED, That in the event the assessment is an initial assessment by the district, the recommendation regarding the appropriateness of an extended school year for a particular student need not be made until May of the school year in which the initial assessment was made.

#### READOPTED SECTION (Readopting Order 86-1, filed 2/21/86)

**WAC 392-171-358 COMMUNICATION DISORDERED STUDENTS—ASSESSMENT.** Students who are suspected of having a communication disorder as their only handicap shall be assessed by a qualified communication disorder specialist who shall use procedures appropriate for the diagnosis and appraisal of communication disorders. The student shall be referred for additional assessment needs for appropriate placement. The assessment results required in this section shall be summarized as provided in WAC 392-171-351(8).

#### READOPTED SECTION (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-361 MEDICAL EVALUATION.** (1) A medical evaluation is required when:

(a) It is necessary to meet the eligibility criteria for funding; or

(b) Voice training is being considered in the presence of hoarseness; or

(c) Whenever a qualified health professional suspects a student under consideration as a possible handicapped student of having a health problem which may affect his or her educational program.

(2) Medical evaluations at the expense or otherwise in behalf of a school district shall be obtained only:

(a) At the direction of or with the prior approval of the school district superintendent or his or her designee (except in the case of an independent assessment pursuant to WAC 392-171-371);

(b) In accordance with criteria established by the school district including, but not limited to, the location of the evaluation and the report required; and

(c) When the student's parent(s) (or the adult student) agrees in advance to the type of examination and the choice of medical examiner;

(d) When, except in the case of an adult student, the student's parent(s) is present at the time of the examination or has agreed that his or her presence is not required; and

(e) When the evaluation is conducted by the student's personal physician or if conducted by another physician, when the student's personal physician has been involved in the planning with the permission of the student's parent(s) (or the adult student).

(4) Medical evaluation services necessary to a determination of the educational needs of residential school students, shall be the responsibility of the department of social and health services pursuant to RCW 28A.58.774.

#### READOPTED SECTION (Readopting Order 86-1, filed 2/21/86)

**WAC 392-171-366 SUMMARY ANALYSIS OF ASSESSMENT DATA.** (1) The leader of a student's assessment team shall review and analyze the summaries of assessment data provided for in WAC 392-171-351(8) and any other available data in each of the areas assessed. The conclusions, recommendations, and the facts and/or reasons resulting in the eligibility decision pursuant to WAC 392-171-376 shall:

(a) Describe the discrepancy which exists between the student's actual performance and his or her expected performance;

(b) Identify the handicapping condition(s), if any, that qualifies the student as a handicapped student;

(c) Set forth the nature and extent of the special education and related services that the student needs, if any;

(d) Reconcile any inconsistent or contradictory information and/or opinions evidenced in the assessment data, if any, supporting conclusion(s) with appropriate data;

(e) Relate the apparent significance, as appropriate, of such factors as test measurement error or cultural, environmental, economic, and behavioral factors to the assessment results.

Where specific test results obtained in any assessment do not appear to the multidisciplinary team to accurately reflect a student's expected performance the multidisciplinary team shall apply professional judgment to determine eligibility for special education and related services. In such event, the multidisciplinary team shall document in a written narrative the basis for such determination, the instruments used, and the data used for a determination of eligibility.

(f) Make recommendations to the individualized education program committee regarding placement, special education and related services needed (including the need, if appropriate, of scheduling such services over a period of time that exceeds the regular one hundred eighty school days), needs for specialized materials or equipment, learning modalities (e.g., auditory), and student management strategies (e.g., reinforcement schedules, etc.), as determined by the multidisciplinary team to be significant to the student's program. If the multidisciplinary team at the time of the student's initial assessment by the district for professionally sound reasons is unable to make a recommendation regarding the need for an extended school year for a particular student, the multidisciplinary team shall make its recommendation regarding an extended school year prior to the May following initial assessment; and

(g) Provide any necessary professional judgment(s) and the facts or reasons in support of the judgment(s).

(2) The summary analysis shall be signed and dated by both the team leader and the school district's special education director or his or her designee.

(3) Provided that, in the case of a student suspected of having a specific learning disability, the summary analysis shall also include a statement of:

(a) The relevant behavior noted during observation(s) of the student, including the relationship of that behavior to the student's academic problem(s) in the regular education program;

(b) A summary, if applicable, of previous intervention attempts and results; and

(c) The educationally relevant medical findings, if any, including the results of a current vision and hearing screening.

(4) Each multidisciplinary team member shall certify in writing whether the summary analysis reflects his or her conclusion. If it does not reflect his or her conclusion, the team member must submit a separate statement presenting his or her conclusion(s) and the reasons therefor.

#### READOPTED SECTION (Readopting Order 86-1, filed 2/21/86)

##### WAC 392-171-371 INDEPENDENT EDUCATIONAL ASSESSMENT. (1) General.

(a) The parent(s) of a student (or the adult student) made a focus of concern and assessed or any student reassessed has the right to obtain an independent educational assessment, subject to subsections (3) and (4) of this section.

(b) Each school district shall provide to parents, (or adult students) on request, information about where an independent educational assessment may be obtained.

(c) For the purposes of this section:

(i) "Independent educational assessment" means an assessment conducted by a qualified examiner who is not employed by the school district responsible for the education of the student in question; and

(ii) "Public expense" means that the school district either pays for the full cost of the assessment or assures that the assessment is otherwise provided at no cost to the parent (or to the adult student).

(2) Parent/adult student right to assessment at public expense. A parent (or the adult student) has the right to an independent educational assessment at public expense if the parent (or the adult student) disagrees with the assessment results obtained by the school district, as follows:

(a) The parent(s) (or the adult student) shall provide a written notice to the school district superintendent or special education director which:

(i) Specifies the portion(s) of the assessment results with which the parent(s) (or the adult student) disagrees; and

(ii) Requests an independent educational assessment at public expense;

(b) The school district shall have the prior opportunity to initiate and conduct a hearing pursuant to WAC 392-171-531 et seq. to show that its assessment is appropriate: PROVIDED, That the school district shall provide the parent(s) (or the adult student) written notice of the election to initiate a hearing no later than the tenth day after the date of receipt of the parent's (or adult student's) notice of disagreement;

(c) If the final decision pursuant to WAC 392-171-521 et seq. is that the school district's assessment is appropriate, the parent (or adult student) still has the right to an independent educational assessment, but not at public expense; and

(d) If the district elects not to hold a hearing or is not upheld by the final decision, the parent's (or adult student's) request for an independent assessment shall be provided at public expense in accordance with the same criteria which the district uses when it initiates an assessment including, but not limited to, the location of the assessment and the qualifications of the examiner.

(3) Parent/adult student initiated assessment. If the parent (or adult student) obtains an independent educational assessment at private expense, the results of the assessment:

(a) Shall be considered by the school district in any decision made with respect to the provision of special education and related services to the student; and

(b) May be presented as evidence at such hearings regarding that student as may be conducted pursuant to WAC 392-171-521 et seq.

(4) Requests for assessment by hearing officers. If a hearing officer requests an independent educational assessment as part of a hearing, the cost of the assessment shall be at public expense.

#### READOPTED SECTION (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-376 SCHOOL DISTRICT DECISION. The school district superintendent or his/her designee shall, based on the preceding procedures (WAC 392-171-341 through 392-171-366), arrive at one of the following decisions.

(1) The student does not have a handicapping condition(s); or

(2) The student does have a handicapping condition(s) and is in need of special education and related services.

The school district superintendent or his or her designee shall duly record in writing the decision as to the handicapping condition(s) of a student brought to the school's attention. Whatever decision is made, the information from the procedures for making the determination shall be filed in school district records. Within ten calendar days of the decision that the student does not have a handicapping condition, the parents or legal guardian of the student shall be informed in writing of the assessment findings in compliance with notice requirements of WAC 392-171-521. If the decision is that the student has a handicapping condition(s), the school district shall request the parent(s) to participate in the IEP conference (individualized education program) pursuant to WAC 392-171-456. Upon the request of the parent (or the adult student) the school district shall provide the parent (or the adult student) a copy of the summary analysis prior to the IEP meeting: PROVIDED, That the parent (or the adult student) may request a meeting with the school district to explain the summary analysis.

#### READOPTED SECTION (Readopting Order 84-19, filed 6/28/84)

##### WAC 392-171-381 DEFINITION AND ELIGIBILITY CRITERIA FOR DEVELOPMENTALLY HANDICAPPED. Definition and eligibility criteria for developmentally handicapped are as follows:

(1) As used in this chapter, the term "developmentally handicapped" shall mean children under the age of eligibility to the first grade who meet the definition and eligibility criteria for one of the following:

(a) WAC 392-171-382, Developmentally delayed;

(b) WAC 392-171-396, Orthopedically impaired;

(c) WAC 392-171-401, Health impaired;

(d) WAC 392-171-436, Deaf;

(e) WAC 392-171-441, Hard of hearing;

(f) WAC 392-171-446, Visually handicapped; and

(g) WAC 392-171-451, Deaf-blind;

(2) The term "developmentally handicapped" does not include children under the age of eligibility for entry to the first grade who qualify solely for communications disorder services under WAC 392-171-391.

#### READOPTED SECTION (Readopting Order 84-19, filed 6/28/84)

##### WAC 392-171-382 DEFINITION AND ELIGIBILITY CRITERIA FOR DEVELOPMENTALLY DELAYED. Definition and eligibility criteria for developmentally delayed are as follows:

(1) Developmentally delayed, birth to three years. As used in this chapter, the term "developmentally delayed, birth to three years" shall mean those children under three years of age who demonstrate a 1.5 standard deviation or twenty-five percent delay in the developmental delay area of cognitive (WAC 392-171-383(1)), communication (WAC 392-171-383(2)), fine motor (WAC 392-171-383(3)), gross motor (WAC 392-171-383(4)), or motor which for the purpose of this section shall be a combined delay area of fine motor (WAC 392-171-383(3)) and gross motor (WAC 392-171-383(4)). Such children in order to continue to be eligible for special education and related services after reaching three years of age shall meet the entry eligibility criteria for developmentally delayed, three to six years or one of the other eligibility criteria specified in WAC 392-171-381;

(2) Developmentally delayed, three to six years. As used in this chapter, the term "developmentally delayed, three to six years" shall mean those children between three years and the age of eligibility for entry to the first grade who receive a score on a standardized norm referenced test, with a test-retest or split-half reliability of .80 that is at least:

(a) Two standard deviations below the mean in one or more of the five developmental delay areas defined in WAC 392-171-383; or

(b) One and one-half standard deviations below the mean in two or more of the five developmental delay areas defined in WAC 392-171-383.

#### READOPTED SECTION (Readopting Order 84-19, filed 6/28/84)

WAC 392-171-383 AREAS OF DEVELOPMENTAL DELAY—DEFINITIONS. The five developmental delay areas for the purpose of applying eligibility criteria to developmentally delayed children are:

(1) Cognitive: Comprehending, remembering, and making sense out of one's experience. Cognitive ability is the ability to think and is often thought of in terms of intelligence;

(2) Communication: The ability to effectively use or understand, age-appropriate language, including vocabulary, grammar, and speech sounds;

(3) Fine motor: Motor skills requiring precise, coordinated use of the small muscles;

(4) Gross motor: Motor skills used for body control such as standing, walking, balance and climbing; and

(5) Social/emotional: The ability to develop and maintain functional interpersonal relationships and to exhibit age appropriate social and emotional behaviors.

#### READOPTED SECTION (Readopting Order 84-19, filed 6/28/84)

**WAC 392-171-384 DISTINCTION BETWEEN DEVELOPMENTALLY HANDICAPPED AND COMMUNICATION DISORDER—REASSESSMENT OF DEVELOPMENTALLY DELAYED UPON ENTRY TO FIRST GRADE.** (1) Except for children who qualify solely for communications disorder services under WAC 392-171-391, children under the age of eligibility for entry to first grade, in order to be eligible for special education and related services, shall meet the eligibility criteria for one of the handicapping conditions specified in WAC 392-171-381.

(2) Children under the age of eligibility to first grade, who qualify for special education as developmentally delayed under WAC 392-171-382 shall not qualify for special education and related services upon entry to first grade until a reassessment is conducted and a determination is made that the student qualifies under the provisions of one of the other handicapping conditions in this chapter.

#### READOPTED SECTION (Readopting Order 84-19, filed 6/28/84)

**WAC 392-171-386 DEFINITION AND ELIGIBILITY CRITERIA FOR SERIOUSLY BEHAVIORALLY DISABLED.** (1) Seriously behaviorally disabled students are those who exhibit one or more of the following characteristics over a long period of time and to a marked degree, which adversely affects their own educational performance:

(a) An inability to learn which cannot be explained by intellectual, sensory, or health factors;

(b) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

(c) Inappropriate types of behavior or feelings under normal circumstances;

(d) A general pervasive mood of unhappiness or depression; or

(e) A tendency to develop physical symptoms or fears associated with personal or school problems.

(2) The term includes students who are schizophrenic. The term does not include students who are socially maladjusted, unless it is determined that they are also seriously behaviorally disabled. Students whose primary disability is identified in another handicapping category do not qualify as seriously behaviorally disabled.

(3) All students considered for initial placement in special education as seriously behaviorally disabled shall be assessed by a multidisciplinary team including at least one school psychologist or school social worker and determined as eligible for special education and related services according to the following:

(a) A current school district evaluation which concludes that the student has a serious behavioral disability and which considers and describes the student's social and emotional behaviors and provides any implications for educational planning.

(b) For the purposes of establishing that the student has a behavioral disability, the evaluation shall describe behaviors which distinguish between common disciplinary problem behaviors and serious behavioral disabilities. Common disciplinary problem behaviors (e.g., truancy, smoking, breaking school conduct rules) may exist in conjunction with serious behavioral disabilities, but cannot be used as the sole criteria for recommending special education and related services.

The evaluation shall include:

(i) Dated and signed documented anecdotal records of behavioral observations made by two or more persons at separate times and places, each of which cite and corroborate specific behaviors which, in the aggregate, provide foundation for probable concern for serious behavioral disability. Multiple settings are required (e.g., in addition to the classroom setting consider playground, cafeteria, school bus, hallway, etc.); and

(ii) Dated and signed documented evidence of at least two intervention techniques that have been tried and the effect of each. These interventions may include, but are not limited to, changes in student's regular class schedule, curriculum, and/or teacher, school counseling, community agency therapy, or counseling; and

(iii) A social or developmental history compiled directly from the parent(s) and/or records, when parents are not available.

(c) Current assessment of level of academic or cognitive achievement as measured by standardized tests appropriate to age level and administered individually.

(d) A current vision and hearing screening report.

(e) In the event that the required academic assessment and vision and hearing screening are completed and there are documented and dated anecdotal records of behavioral observations showing that the student's disability is evident in the school environment, the following evaluation reports may be substituted for the school district's evaluation:

(i) A current psychiatric evaluation which considers and describes the student's social and emotional behaviors, which concludes and describes a serious behavioral disability and where implications for educational planning are provided. The multidisciplinary team shall consider these implications in planning and implementing the student's educational program; or

(ii) A current psychological evaluation by a nonpublic school mental health professional who holds a graduate degree in a recognized mental health specialty that considers and describes the student's social and emotional behaviors, which concludes that the student has a serious behavioral disability, the consequences of which entail the necessity for active, on-going therapy and/or counseling, and where implications for educational planning are provided. The multidisciplinary team shall consider these implications in planning and implementing the student's educational program.

#### READOPTED SECTION (Readopting Order 84-19, filed 6/28/84)

**WAC 392-171-391 DEFINITION AND ELIGIBILITY CRITERIA FOR COMMUNICATION DISORDERED.** A student shall be considered to have a communication disorder if there is present a documented communication disorder such as stuttering, voice disorder, language impairment, and/or impaired articulation which adversely affects a student's educational performance. The assessment procedures and eligibility standards outlined in this section apply to those students whose only handicapping condition is a communication disorder.

All students considered for initial placement in special education as communication disorder shall be assessed and determined eligible for special education and related services according to the following:

(1) A current hearing screening report;

(2) A current description of the level of educational or cognitive development as provided by the classroom teacher, or where available, by standardized tests in those areas affected by the speech and/or communication problem(s) including discussion of the existing or potential impact of the problem(s) on educational performance; and

(3) A current assessment of the level of speech and/or language development as measured by standardized tests or professionally recognized procedures, scales, or checklists appropriate to the student's age level and mode of communication, individually administered, and which considers the student's sex, dialect norms, social-cultural environment, and behaviors: PROVIDED, That for children under the age of eligibility for entry to the first grade the assessment shall include development acquisition of speech and language. Such measures shall result in one or more of the following findings that the student:

(a) Achieves a rating of moderate or severe on a standardized articulation test that yields a severity rating and/or misarticulates in comparison to developmental norms five or more unrelated phonemes each in two or more positions (initial, medial, or final) for children under the age of eligibility for entry to the first grade, three or more unrelated phonemes for students age six through age seven, or one or more for students over age seven, with consideration given to the student's speech intelligibility, physical ability, and/or therapy history.

(b) Has a delay in receptive and/or expressive language such that functioning is one year or more below chronological age for students up through age eight or functioning is two-thirds of chronological age or below for students over age eight.

(c) Has interruptions or dysfluencies in more than one speaking situation such as repetitions, prolongations, blockage in flow of speech, struggle, or avoidance behaviors which interfere with communication or are inconsistent with age or development.

(d) Has a deviation in voice quality, pitch, or loudness characterized by abusive vocal habits, or interference with communication, or is inconsistent with age or development, or demonstrates chronic hoarseness of duration of three weeks or more.

Whenever appropriate, referral for medical and/or psychological and/or other evaluations shall be made and the results considered in the assessment of the student's suspected handicapping condition.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-396 DEFINITION AND ELIGIBILITY CRITERIA FOR ORTHOPEDICALLY IMPAIRED.** Orthopedically impaired students are those who lack normal function of muscles, joints or bones due to congenital anomaly, disease or permanent injury, and such condition adversely affects their educational performance.

All students considered for initial placement in special education as orthopedically impaired shall be assessed and determined eligible for special education and related services according to the following:

- (1) A current medical evaluation by a qualified medical practitioner which describes and confirms the student's health circumstances and which provides any medical implications for educational planning;
- (2) Current assessment of level of academic achievement as measured by standardized tests appropriate to age level and administered individually;
- (3) A current evaluation which considers and describes the student's social and emotional behaviors and which provides any implications for educational planning, including an evaluation of adaptive behavior as measured by standardized instrument(s) or professionally recognized scales where there are no known standardized measures, which addresses the student's self-help and interpersonal communication skills in relation to chronological age/grade peers;
- (4) A current physical therapy and/or occupational therapy evaluation which considers and describes implications for therapy as a part of educational planning; and
- (5) A current vision and hearing screening report.

**READOPTED SECTION** (Readopting Order 84-19, filed 6/28/84)

**WAC 392-171-401 DEFINITION AND ELIGIBILITY CRITERIA FOR HEALTH IMPAIRED.** Health impaired students are those who have chronic or acute health problems—such as students with serious congenital heart defect, other congenital syndrome(s), other disorders of the cardiorespiratory systems, disorders of the central nervous system including epilepsy or neurological impairment, autism or other profound health circumstances or degenerative condition(s)—which adversely affect or with a high degree of professional certainty will affect their educational performance.

All students considered for initial placement in special education as health impaired shall be assessed and determined eligible for special education and related services according to the following:

- (1) A current medical evaluation by a qualified medical practitioner which describes and confirms the student's health circumstances and which provides any medical implications for educational planning;
- (2) Current assessment of level of academic achievement as measured by standardized tests appropriate to age level and administered individually;
- (3) A current evaluation which considers and describes the student's social and emotional behaviors and which provides any implications for educational planning which may include an evaluation of adaptive behaviors as measured by standardized instrument(s) or professionally recognized scales addressing the student's self-help and interpersonal communication skills in relation to chronological age/grade peers; and
- (4) A current vision and hearing screening report.

**READOPTED SECTION** (Readopting Order 84-19, filed 6/28/84)

**WAC 392-171-406 SPECIFIC LEARNING DISABILITY—DEFINITION.** Specific learning disability is a disorder in one or more of the basic psychological processes involved in understanding or using spoken or written language. Such disorder may include problems in visual and auditory perception and integration and may manifest itself in an impaired ability to think, speak or communicate clearly, read with comprehension, write legibly and with meaning, and to accurately perform mathematical calculations, including those involving reading. Spelling shall not stand alone as a qualifying academic achievement area. The presence of a specific learning disability is indicated by intellectual functioning above that specified in this chapter for eligibility as mentally retarded and by a severe discrepancy between the student's

intellectual ability and academic achievement in one or more of the following areas:

- (1) Oral expression;
- (2) Listening comprehension;
- (3) Written expression;
- (4) Basic reading skill;
- (5) Reading comprehension;
- (6) Mathematics calculations; and
- (7) Mathematics reasoning;

**PROVIDED,** That such a performance deficit cannot be explained by visual or hearing problems, motor handicaps, mental retardation, behavioral disability, or environmental, cultural, or economic factors.

A specific learning disability includes conditions described as perceptual handicap, minimal brain dysfunction, dyslexia, and developmental aphasia: **PROVIDED,** That the student meets the eligibility criteria set forth in WAC 392-171-411, including documentation of severe discrepancy as required by WAC 392-171-413 and 392-171-418.

**READOPTED SECTION** (Readopting Order 84-19, filed 6/28/84)

**WAC 392-171-411 SPECIFIC LEARNING DISABILITY—ASSESSMENT PROCEDURES AND ELIGIBILITY CRITERIA.** Assessment procedures and eligibility standards: All students considered for initial placement in special education as specific learning disabled shall be assessed and determined eligible for special education and related services according to the following:

- (1) A current assessment of sufficient scope to rule out eligibility for any other handicapping condition and to rule out environmental, cultural, or economic factors as an explanation for the specific academic problem;
- (2) A current vision and hearing screening report shall be obtained and shall be of sufficient scope to rule out vision or hearing acuity as an explanation for the specific academic problem;
- (3) A written record of observation of the student's learning behaviors in the regular education program and the relationships of these behaviors to the specific academic problem shall be completed by a member of the assessment team other than the student's regular education teacher; and
- (4) Written documentation that the student has an academic achievement problem in the regular education program shall be available. Such documentation shall include, if applicable, previous intervention attempts and the results obtained. Examples of data used for documentation may include:

- (a) Student performance on daily classroom work and/or criterion-referenced tests;
  - (b) Summary of past student performance;
  - (c) Group test results;
  - (d) Teacher observation and judgments; and
  - (e) Performance on student learning objectives.
- (5) Documentation of the existence of a severe discrepancy between the student's intellectual ability and academic achievement in one or more of the seven areas specified in WAC 392-171-406 shall be recorded. Such documentation shall conform to the requirements of WAC 392-171-413 or 392-171-418, whichever is applicable.
- (6) Tests used to assess the student's intellectual ability and academic achievement shall be:
- (a) Current;
  - (b) Reliable as demonstrated by a reliability coefficient of .85 or above;
  - (c) Normed on representative national samples;
  - (d) Selected and administered in accordance with the general requirements of WAC 392-171-351; and
  - (e) Individually administered and interpreted by a qualified person (defined in WAC 392-171-351) in accordance with the standardized procedures described in the test manuals.

**READOPTED SECTION** (Readopting Order 84-19, filed 6/28/84)

**WAC 392-171-412 DISCREPANCY TABLES FOR DETERMINING SEVERE DISCREPANCY UNDER WAC 392-171-413.** The superintendent of public instruction shall develop and publish discrepancy tables for the purpose of determining a severe discrepancy between intellectual ability and academic achievement pursuant to WAC 392-171-413. Such tables shall be developed on the basis of a regressed standard score discrepancy method which shall consider the following variables:

- (1) The reliability coefficient of the intellectual ability test;

- (2) The reliability coefficient of the academic achievement test; and  
 (3) An appropriate correlation between the intellectual ability and the academic achievement tests.

The regressed standard score discrepancy method shall be applied at a criterion level of 1.55.

**READOPTED SECTION** (Readopting Order 84-19, filed 6/28/84)

**WAC 392-171-413 METHOD FOR DOCUMENTING SEVERE DISCREPANCY—GRADES ONE AND ABOVE.** (1) For students in grades one and above, a severe discrepancy shall be determined and documented from tables developed pursuant to WAC 392-171-412.

(2) For the purposes of applying the severe discrepancy tables, the following scores shall be used:

- (a) A total or full scale intellectual ability score; and  
 (b) An academic achievement test score which can be converted into a standard score with a mean of one hundred and a standard deviation of fifteen.

(c) A severe discrepancy between the student's intellectual ability and academic achievement in one or more of the seven areas provided for in WAC 392-171-406 shall be determined by applying the regressed standard score discrepancy method to the obtained intellectual ability and achievement test scores using the tables referenced above: **PROVIDED**, That where the assessment results do not appear to accurately represent the student's intellectual ability and where the discrepancy between the student's intellectual ability and academic achievement does not initially appear to be severe upon application of the discrepancy tables, WAC 392-171-412, the multidisciplinary team shall apply professional judgment in order to determine the presence of a severe discrepancy. In this event, the multidisciplinary team shall document in writing a narrative explanation as to why the student has a severe discrepancy. The multidisciplinary team must provide supportive evidence, including the procedures used to determine that a severe discrepancy exists between the student's intellectual ability and academic achievement: **PROVIDED FURTHER**, That if the prohibition against the use of specific tests or test results as provided in WAC 392-171-351(4) shall preclude the use of any of the tests referenced above, the multidisciplinary team shall document in a written narrative the basis upon which the members decided that there exists a severe discrepancy between intellectual ability and achievement.

**READOPTED SECTION** (Readopting Order 84-19, filed 6/28/84)

**WAC 392-171-418 ADDITIONAL METHOD FOR DOCUMENTING SEVERE DISCREPANCY—GRADES SEVEN AND ABOVE.** For a student in grades seven and above not found eligible under WAC 392-171-413 as a specific learning disabled student, the existence of a severe discrepancy between that student's intellectual ability and academic achievement shall be determined and documented as follows:

- (1) An intellectual ability test shall be administered.  
 (2) An academic achievement test in one or more of the seven areas described in WAC 392-171-406 shall be administered.  
 (3) The student's chronological age/grade (CAG) performance in one or more of the academic achievement areas provided for in the definition shall be adjusted for expectations due to variance in intellectual functioning. The expected performance adjusted for intellectual functioning shall then be compared to the results of the actual achievement measures, the results of which must yield:  
 (a) A functioning level of two-thirds or below of expected performance; and  
 (b) A functioning level below chronological age/grade.  
 (4) If the results of the above comparison for a particular student indicate a functioning level of two-thirds or below of expected performance and a functioning level below chronological age/grade level in one or more of the seven areas described in WAC 392-171-406, a severe discrepancy has been documented.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-421 DEFINITION AND ELIGIBILITY CRITERIA FOR MENTAL RETARDATION.** Mentally retarded students are those who demonstrate significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affects their educational performance.

(1) Assessment procedures. All students considered for initial placement in special education as mentally retarded shall be assessed and determined eligible for special education and related services according to the following:

(a) A current assessment of intellectual functioning obtained from a standardized individual test designed to measure intellectual functioning, individually administered by a qualified psychologist and interpreted and attested to as to validity by a qualified psychologist; and

(b) A current evaluation which considers and describes adaptive behavior as measured by standardized instrument(s), or professionally recognized scales where there are no known standardized measures, which discusses any implications for educational planning; and

(c) Current assessment of level of academic achievement as measured by standardized tests appropriate to age level and administered individually; and

(d) A developmental history compiled directly from the parent(s), or records, when parents are not available; and

(e) A current vision and hearing screening report.

(2) Eligibility standards. The measured level of functioning is to be classified as follows:

(a) Mild mental retardation. Intellectual functioning (IQ) range from approximately 51 through 75 and the following conditions:

(i) Academic functioning equal to three-fourths or less of chronological age/grade; and

(ii) Adaptive behavior equal to three-fourths or less chronological age/grade.

(b) Moderate mental retardation. Intellectual functioning (IQ) range from 30 to 50 and the following conditions:

(i) Academic functioning equal to one-half or less of chronological age/grade; and

(ii) Adaptive behavior equal to one-half or less of chronological age/grade.

(c) Severe/profound mental retardation. Intellectual functioning (IQ) range under 30 and the following:

(i) Academic functioning equal to one-third or less of chronological age/grade; and

(ii) Adaptive behavior equal to one-third or less of chronological age/grade.

**READOPTED SECTION** (Readopting Order 84-19, filed 6/28/84)

**WAC 392-171-431 DEFINITION AND ELIGIBILITY CRITERIA FOR MULTIHANDICAPPED.** A student shall be considered multihandicapped when there are present and documented two or more handicapping conditions, each of which is so severe as to warrant a special program were that handicapping condition to appear in isolation, and the combination of which causes such severe educational problems that the student requires intensive programming cannot be accommodated in special education programs solely for one of the impairments. Students who are deaf-blind are not included as multihandicapped. (See WAC 392-171-451.) Students who are classified as specific learning disability in combination with another handicapping condition shall not be eligible to be counted for state funding purposes as multihandicapped.

Assessment procedures and eligibility standards: All students considered for initial placement in special education as multihandicapped shall be assessed and determined eligible for special education and related services according to the following:

(1) Assessment procedures for each handicapping condition have been followed, the results of which document eligibility for inclusion in special education were each handicap to appear in isolation; and

(2) Summary statements in the assessment analysis report document that the effect of the multiplicity of handicaps is so severe that the student cannot be accommodated in special education programs solely for one of the impairments.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-436 DEFINITION AND ELIGIBILITY CRITERIA FOR DEAF.** Deaf student are those students who have a documented hearing impairment which is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification, which adversely affects educational performance.

All students considered for initial placement in special education as deaf shall be assessed and determined eligible for special education and related services according to the following:



(1) A current evaluation by a qualified audiologist which describes and confirms that the hearing impairment is so severe that student is impaired in processing linguistic information through hearing, with or without amplification and which prevents the auditory channel from being the primary mode of learning speech and language and adversely affects educational performance;

(2) Current assessment of level of academic achievement as measured by standardized tests appropriate to age level and administered individually;

(3) A current evaluation which considers and describes the student's social and emotional behaviors and which provides any implications for educational planning;

(4) A current assessment of language development as measured by standardized tests or professionally recognized scales appropriate to age level and administered individually; and

(5) A current vision screening report.

#### READOPTED SECTION (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-441 DEFINITION AND ELIGIBILITY CRITERIA FOR HARD OF HEARING. Hard of hearing students are those students who have a hearing impairment, whether permanent or fluctuating, which adversely affects the student's educational performance.

All students considered for initial placement in special education as hard of hearing shall be assessed and determined eligible for special education and related services according to the following:

(1) A current evaluation by a qualified audiologist which describes and confirms that the student:

(a) Has an organic hearing loss in excess of 20 dB better ear average in the speech range (500, 1,000, 2,000 Hz), unaided; or

(b) Has a history of fluctuating hearing loss which has interrupted the normal acquisition of speech and language and continues to be a part of educational planning.

(2) A current assessment of level of academic achievement as measured by standardized tests appropriate to age level and administered individually.

(3) A current evaluation which describes and confirms the student's social and emotional behaviors and which provides any implications for educational planning.

(4) A current assessment of language development as measured by standardized tests or professionally recognized scales appropriate to age level and administered individually.

(5) A current vision screening report.

Each school district shall ensure that the hearing aids worn by deaf and hearing impaired students in school are functioning properly.

#### READOPTED SECTION (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-446 DEFINITION AND ELIGIBILITY CRITERIA FOR VISUALLY HANDICAPPED. Visually handicapped students are those students who have a visual impairment which, even with correction, adversely affects the student's educational performance. The term includes both partially sighted and blind students.

All students considered for initial placement in special education as visually handicapped shall be assessed and determined eligible for special education and related services according to the following:

(1) A current evaluation by a qualified vision specialist or physician which describes and confirms that the student:

(a) Has visual acuity of 20/70 or less in the better eye with correction; or

(b) Has a field of vision which at its widest diameter subtends an angle of no greater than twenty degrees in the better eye with correction.

(2) Current assessment of level of academic achievement as measured by standardized tests appropriate to age level and administered individually.

(3) A current evaluation which considers and describes the student's social and emotional behaviors and which provides any implications for educational planning.

#### READOPTED SECTION (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-451 DEFINITION AND ELIGIBILITY CRITERIA FOR DEAF-BLIND. Deaf-blind students are those whose hearing and vision impairments, in combination, cause such severe communication and other developmental and educational problems

that they cannot be accommodated in special education programs solely for deaf or blind students.

All students considered for initial placement in special education as deaf-blind shall be assessed and determined eligible for special education and related services according to the following:

(1) A current evaluation by a qualified audiologist and vision specialist or physician which describes and confirms that the vision and hearing impairments, in combination, cause such severe communication and other developmental and educational problems that the students cannot be accommodated in special education programs solely for deaf or blind students.

(2) Current assessment of level of academic achievement as measured by standardized tests appropriate to age level and administered individually.

(3) A current evaluation which considers and describes the student's social and emotional behaviors and which provides any implications for educational planning; and

(4) A current assessment of language development as measured by standardized tests or professionally recognized scales appropriate to age level and administered individually.

#### READOPTED SECTION (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-456 MEETINGS. (1) A meeting shall be held within thirty calendar days after the date upon which a student's assessment is completed for the purpose of developing the student's individualized education program. The school district shall initiate and conduct the meeting and shall include the following participants:

(a) A representative of the school district other than the student's teacher who is qualified to provide or supervise the provision of special education and related services;

(b) The student's regular classroom teacher or special education teacher or therapist: PROVIDED, That either the representative of the school district or the teacher or therapist is qualified in the area of the student's suspected disability;

(c) One or both of the parents (in the case of a nonadult student), subject to subsections (2) through (5) of this section;

(d) The student if he or she is an adult student (and in the case of nonadult students, the student, if appropriate);

(e) A member of the student's assessment team; and

(f) Other individuals at the discretion of the district or the parent or the adult student.

(2) Each school district shall take steps to assure (in the case of nonadult students) that one or both parents of the handicapped student are present at each meeting or are afforded the opportunity to participate, including:

(a) Notifying the parent(s) of the meeting early enough to assure his or her participation; and

(b) Scheduling the meeting at a mutually agreed upon place and time.

(3) The notice to the parent(s) shall include the purpose, time, location of the meeting and who will be in attendance.

(4) If a parent cannot attend, the district shall use other methods to assure participation, including individual or conference telephone calls.

(5) A meeting may be conducted (in the case of a nonadult student) without a parent in attendance if the school district is unable to convince the parents they should attend. In such a case the school district shall make a record of its attempts to arrange a mutually agreed upon time and place. The record shall contain such information as:

(a) Detailed records of telephone calls made or attempted and the results of those calls;

(b) Copies of correspondence sent to the parents and any responses received; and

(c) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(6) The school district shall take whatever action is necessary to assure that the parent (or adult student) understands the proceedings at a meeting, including arranging for an interpreter for parents (or adult students) who are deaf or whose native language is other than English.

(7) The district shall document the parent(s)' and other IEP participants' presence at the IEP meeting.

(8) Meetings consistent with this section shall be conducted by the school district at least once a year for the purpose of reviewing and revising as necessary each student's individualized education program. Meetings may be held more frequently.

(9) In the case of students admitted to state residential schools, an assessment and individualized education program must be completed as provided in this chapter within fifty school days of enrollment.

**READOPTED SECTION** (Readopting Order 84-19, filed 6/28/84)

**WAC 392-171-461 INDIVIDUALIZED EDUCATION PROGRAM.** (1) Each handicapped student's individualized education program shall be developed on the basis of assessment analysis and parent input, where it is provided, and shall include:

(a) For each orthopedically impaired and health impaired student under the age of eligibility to first grade, current medical evaluation by a qualified medical practitioner which describes and confirms the student's health circumstance and which provides any medical implications for educational planning;

(b) A statement of the student's present levels of educational performance;

(c) A statement of specific annual goals including short-term instructional objectives which are stated in terms that provide for measurement of progress, expected levels of performance, and the schedules for their accomplishments;

(d) A statement of the specific special education and related services needed by the student, and the extent to which the student will be able to participate in the regular educational program, including physical education. If the student is unable to participate in the regular physical education program, a description of the specially designed physical education to be provided to the student shall be included;

(e) The IEP developed for a handicapped student whose chronological age is fourteen or above shall also include career development and/or vocational education goals and short-term instructional objectives, where appropriate: PROVIDED, That if the career development and/or vocational education is specially designed instruction, goals and short-term instructional objectives shall be included;

(f) The projected dates for the initiation of services and the anticipated duration of the services, including the number of school days, the number of hours per day, and the length of the school year over which such services shall be provided: PROVIDED, That in the event the individualized educational program is the first in the district for such student and the multidisciplinary team has not made a determination as to the need for an extended school year for such child, the individualized educational program team shall make its recommendation on the length of the school year over which such services shall be provided prior to the conclusion of the regular one hundred eighty school days; and

(g) Appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short-term instructional objectives are being met.

(2) The school district shall provide the parent (or the adult student) a copy of the individualized education program.

(3) Nothing in this chapter may be construed as promising or guaranteeing that a handicapped student will in fact achieve the growth projected in his or her annual goals and short-term objectives.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-466 INITIAL EDUCATIONAL PLACEMENT—NOTICE—CONSENT.** (1) Each school district shall provide written notice of a student's proposed, initial special education placement, or of the district's inability or refusal to make a special education placement, at the initial meeting or within ten calendar days after the initial meeting provided for in WAC 392-171-456. The notice shall comply with the notice requirements of WAC 392-171-526. Provided that pupils admitted to state residential schools shall be enrolled in an educational program within ten school days of admission.

(2) The written consent of the parent(s) (or adult student) shall be requested if special education placement is proposed.

(3) The student's proposed special education placement shall commence when either:

(a) Written consent has been given by the parent(s) (or the adult student); or

(b) The refusal of a student's parent(s) (or adult student) to grant consent has been overridden by the school district pursuant to a hearing (or appeal) conducted in accordance with WAC 392-171-521 et seq.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-471 LEAST RESTRICTIVE ENVIRONMENT.** The placement and provision of services to each handicapped student shall be in his or her least restrictive environment as follows:

(1) Educational setting—Each handicapped student shall be placed:

(a) In the regular educational environment with nonhandicapped students to the maximum extent appropriate to his or her needs, unless it can be demonstrated by the school district that the nature or severity of the student's disability is such that his or her education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily; and

(b) In the school which he or she would attend if not handicapped, unless his or her individualized education program requires some other arrangement. If some other arrangement is required, the student shall be placed in the appropriate educational program that is as close to the student's home as is reasonably possible.

(2) Nonacademic settings—Each handicapped student shall be provided nonacademic and extracurricular services and activities conducted by the school district (e.g., meals, recess, recreation, athletics, counseling, transportation, student club activities, etc.) with nonhandicapped students to the maximum extent appropriate to the needs of the student.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-476 CONTINUUM OF ALTERNATIVE PLACEMENTS.** A continuum of alternative placement options shall be made available as is necessary to meet the needs of the district's handicapped students for special education and related services.

The option shall include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions, and shall provide for supplementary services such as resource room or itinerant instruction in conjunction with regular class placement.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-481 PLACEMENT OPTIONS—SELECTION—REQUIRED CONSIDERATIONS.** (1) The placement of each handicapped student shall be determined annually at a meeting conducted pursuant to WAC 392-171-456.

(2) The selection of the appropriate placement option or options for each handicapped student shall be based upon:

(a) The student's individualized education program;

(b) The least restrictive environment requirements of WAC 392-171-471;

(c) The option or combination of options that provides a reasonably high probability of assisting the student to attain his or her annual goals; and

(d) A consideration of any potential harmful effect on the student or on the quality of services which he or she needs.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-486 HOME/HOSPITAL INSTRUCTION.** Home or hospital instruction shall be provided to both handicapped students and other students who are unable to attend school for an estimated period of four weeks or more because of physical disability or illness. As conditions to such services, the parent(s) of a student (or the adult student) shall request the services and provide a written statement to the school district from a qualified medical practitioner that states the student will not be able to attend school for an estimated period of at least four weeks. A student who is not otherwise handicapped pursuant to WAC 392-171-310 who qualifies pursuant to this subsection shall be deemed "handicapped" only for the purpose of home/hospital instructional services and funding and may not otherwise qualify as a handicapped student for the purposes of generating state or federal special education funds. A school district shall not pay the cost of the statement from a qualified medical practitioner for the purposes of qualifying a student for home/hospital instructional services pursuant to this section.

Home-hospital instructional services funded in accordance with the provisions of this section shall not be used for initial or on-going placement of otherwise handicapped students. It shall be limited to placement as is deemed necessary to provide temporary intervention as a result of a physical disability or illness.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-491 CONTRACTUAL SERVICES.** (1) School districts, severally or jointly, shall be authorized to:

(a) Enter into interdistrict agreements with another school district(s) pursuant to RCW 28A.58.075, 28A.58.245, 28A.58.250, and chapter 392-135 WAC; and



(b) Contract with nonpublic and public school agencies for special education and related services for handicapped students: **PROVIDED**, That the school district establishes that it cannot provide an appropriate education for the handicapped student within the district or another school district: **PROVIDED FURTHER**, That in the case of a cooperative placement by a school district of a handicapped student at a center for the furtherance of research and training in handicapping conditions as established pursuant to RCW 28B.20.410 through 28B.20.414, as now or hereafter amended, or other such centers as may be established at other public institutions of higher education, as defined in RCW 28B.10.016, the school districts shall establish that the parent (or adult student) has given written approval for placement of the handicapped student at such center despite the existence of an appropriate education for the handicapped student within the district or another school district and has agreed that such placement would equal or substantially equal the placement available in the school district.

(2) If a handicapped student has special education and related services available in his or her public school district of residence and the child is placed in another public school district or in a public or private school or facility other than pursuant to a contractual arrangement between the student's district of (initial) residence and the entity of placement, the district of (initial) residence shall not be required to pay for the student's education or otherwise be responsible for the education of the student, except to the extent the student may qualify for services as a private school student pursuant to WAC 392-171-646 et seq.

#### **READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-496 APPROVAL OF NONPUBLIC AND PUBLIC SCHOOL AGENCIES.** A school district shall not either place a student in a nonpublic or public school agency or award a contract to a nonpublic or public school agency until the nonpublic or public school agency has been approved by the state board of education. Approval of such agencies shall be made in accordance with the following procedures:

(1) The school district shall establish that all requirements imposed by this chapter for contracting with a nonpublic or public school agency can be met and shall forward the nonpublic or public school agency's application to the superintendent of public instruction or his or her designee;

(2) The superintendent of public instruction or his or her designee shall recommend approval or disapproval of the agency to the state board of education; and

(3) The superintendent of public instruction or his or her designee shall notify the requesting school district and nonpublic or public school agency of approval or disapproval.

#### **READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-501 SCHOOL DISTRICT RESPONSIBILITY WHEN CONTRACTING FOR PLACEMENT IN A NONPUBLIC OR PUBLIC SCHOOL AGENCY.** Any school district contracting with an approved nonpublic or public school agency for special education and/or related services in behalf of a handicapped student shall:

(1) Initiate and conduct a meeting with appropriate personnel and the student's parent(s) for the purpose of developing the student's individualized education program. The district shall assure that a representative of the nonpublic or public school agency attends the meeting or in some other way assure participation by the nonpublic school agency. Meetings to review or revise the student's individualized education program after the student has been placed shall be initiated and conducted by the nonpublic or public school agency at the discretion of the school district. The district shall assure that both the parent(s) (or the adult student) and the nonpublic school agency are represented in any decision concerning the student's individualized education program and agree to proposed changes in the program before those changes are implemented. The responsibility for compliance with this section lies with the school district.

(2) Develop a written contract which shall include, but not necessarily be limited to, the following elements:

(a) Names of the parties involved;

(b) The name of the handicapped student(s) for whom the contract is drawn;

(c) Location and setting;

(d) Description of program administration and supervision;

(e) Designation of coordinator of the services to be provided by the school district and the contractor;

(f) Assurance of compliance with staff licensing/certification requirements;

(g) Periodic student report requirements;

(h) Annual program monitoring procedures and requirements;

(i) Starting date and duration of contract;

(j) Program day and description of student's program;

(k) Charges and reimbursement—Billing and payment procedures;

(l) Total contract cost;

(m) Contract review;

(n) Disposition of materials and equipment upon termination;

(o) School district's responsibility for compliance with due process, individualized education program, and yearly review and determination of placement requirements;

(p) Contractor's policies and procedures covering:

(i) Care of student(s) in emergencies;

(ii) Fire drills;

(iii) Personnel policies;

(iv) Staff duties; and

(v) Board of directors' duties and functions;

(q) Other contractual elements that may be necessary to assure compliance with state and federal rules and clearly define each party's role and functions; and

(r) Signatures of authorized school and contractor officials.

#### **READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-506 OUT-OF-STATE AGENCIES.** In the event the school district within which a handicapped student resides is unable to contract with another district, or a nonpublic or public school agency, or an appropriate state agency, the parent (or adult student) and district may jointly petition the superintendent of public instruction or his or her designee for state and federal special education funds to provide an educational program with an agency in another state or Canada.

Contractual arrangements for an out-of-state educational program shall be approved by the superintendent of public instruction or his or her designee prior to the student's placement in that program. The school district shall be responsible for:

(1) Determining that no appropriate in-state placement option is available and for making the decision that the student should be placed in an out-of-state program;

(2) Determining that the out-of-state educational program is appropriately licensed or approved by that state's authorities and that placement will result in an appropriate education for the student; and

(3) Contracting with the out-of-state agency pursuant to the requirements of WAC 392-171-491 through 392-171-501.

#### **READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-511 ANNUAL REVIEW OF PLACEMENT AND STUDENT PROGRESS—PROGRAM IMPROVEMENT.** (1) Annual placement review—The educational placement of each handicapped student shall be evaluated and redetermined annually at a meeting conducted pursuant to WAC 392-171-456.

(2) Program evaluation—Each school district shall establish a simple and reliable system of evaluating the program established for each handicapped student. Program evaluations shall be based upon a handicapped student's progress toward the accomplishment of the goals and objectives set forth in the student's individualized education program and/or upon the teacher/manager efforts to facilitate change. Specific methods of evaluating and displaying program results shall be determined in accordance with the district's policies and procedures and the student's individualized education program.

(3) The program evaluation system shall assure that the performance measurement is recorded and reported at both in-process and final-result stages, and the results of the evaluation shall be reported to the parent(s) (or the adult student) consistent with policies and procedures of the school district.

(4) Program evaluations shall serve two purposes:

(a) To compare a student's measured performance with established goals and objectives; and

(b) To attempt to identify causal factors that account for significant differences between actual and predicted performance.

(5) Each school district shall develop, in its own format, alternatives designed to improve methods and results that are based upon the performance evaluation of the student. Evaluation of progress shall be

continuing and completed at least annually in order to allow assessment personnel to adjust aims, programs, etc., if the goals and objectives are not met.

**READOPTED SECTION** (Readopting Order 86-1, filed 2/21/86)

**WAC 392-171-512 REASSESSMENT—REQUIREMENT.** Each identified student having a handicapping condition shall be reassessed in accordance with the assessment procedures specified in WAC 392-171-351 through 392-171-366 by the multidisciplinary team provided for in WAC 392-171-351 as follows:

- (1) At a minimum, once every three years or more frequently if required by this chapter.
- (2) Upon request of the student's parent (or adult student), teacher, or individualized education program committee.

**READOPTED SECTION** (Readopting Order 86-1, filed 2/21/86)

**WAC 392-171-513 REASSESSMENT—NOTICE REQUIREMENT.** Ten calendar days prior to conducting the reassessment, the district shall provide written notice to parents (or adult student). Such notice for reassessment, shall include:

- (1) The procedural safeguard requirements provided in WAC 392-171-526 (1)(a) and also shall be issued in compliance with the provisions of WAC 392-171-526 (2) and (3);
- (2) The reasons for reassessment i.e., required three-year reassessment or reassessment upon request. If the reassessment is upon request, the notice shall include the source of and reasons for such request;
- (3) A statement that the student's records will be reviewed as a part of the reassessment and that the parents (or adult student) have the right to submit to the multidisciplinary team any information they deem important to the reassessment;
- (4) A statement that the multidisciplinary team will determine the need, if any, for replication of previous assessment procedures and the need, if any, for additional assessment procedures;
- (5) A list of the disciplines to be represented on the multidisciplinary team as required by WAC 392-171-351.

**READOPTED SECTION** (Readopting Order 86-1, filed 2/21/86)

**WAC 392-171-514 REASSESSMENT—PURPOSES.** The purposes of reassessment of identified students having a handicapping condition are to determine one or more of the following:

- (1) Whether the student is appropriately identified as handicapped—i.e., having or not having a handicapping condition—or appropriately classified—i.e., having one or more particular handicapping conditions specified in WAC 392-171-381 through 392-171-451;
- (2) Whether the program designed for the student is appropriate to meet the student's unique needs, abilities, and limitations; and
- (3) Whether the student meets the continuing eligibility requirement of WAC 392-171-325(3) or 392-171-331.

**READOPTED SECTION** (Readopting Order 86-1, filed 2/21/86)

**WAC 392-171-516 REASSESSMENT—NOTICE OF RESULTS.** Following the completion of the reassessment and based on the reassessment results, the district superintendent or his or her designee shall record in writing one or more of the following decisions:

- (1) Whether the student is appropriately identified as handicapped.
- (2) Whether the student is appropriately classified as having a particular handicapping condition and is in need of special education services.
- (3) Whether the program designed for the student is appropriate to the student's unique needs, abilities, and limitations.
- (4) Whether the student meets the continuing eligibility requirement of WAC 392-171-325(3) or 392-171-331.

In accordance with WAC 392-171-521, the parent (or adult student) shall be notified pursuant to the content of notice prescribed in WAC 392-171-526 of the school district's decision within ten calendar days following the completion of the reassessment. When a determination is made that the program is inappropriate, an individualized education program committee meeting shall be convened in accordance with WAC 392-171-456 through 392-171-466. When special education services are to be discontinued, notice shall be given the parent(s) pursuant to WAC 392-171-521.

**READOPTED SECTION** (Readopting Order 86-1, filed 2/21/86)

**WAC 392-171-517 REASSESSMENT—THREE-YEAR REQUIREMENT.** If the reassessment is the result of the three-year reassessment requirement, the multidisciplinary team based on the professional judgment of the members thereof—i.e., a reasonable degree of professional certainty—shall determine and document the following:

- (1) Whether the student is appropriately identified or appropriately classified. If not, the multidisciplinary team shall follow the procedures specified in WAC 392-171-518.
- (2) Whether the current program is appropriate to the student's unique needs, abilities, and limitations. If not, the multidisciplinary team shall follow the procedures specified in WAC 392-171-519.
- (3) Whether the student meets the continuing eligibility requirement of WAC 392-171-325(3) or 392-171-331. In making such determination, the multidisciplinary team shall document in a written narrative the basis for such determination, including any relevant data or assessment process used for the determination of continuing eligibility.
- (4) Whether assessment procedures should be replicated or conducted by members of the multidisciplinary team or other professionals not represented on the multidisciplinary team to provide reasonable professional certainty that the reassessment results are accurate. In making such determination, members of the multidisciplinary team shall be governed by the generally recognized professional practice standards of their respective disciplines. Members of the multidisciplinary team shall defer to the professional judgment of a team member who requests the replication or conduction of a particular assessment procedure.

**READOPTED SECTION** (Readopting Order 86-1, filed 2/21/86)

**WAC 392-171-518 REASSESSMENT—APPROPRIATE IDENTIFICATION OR CLASSIFICATION.** If the reassessment is upon request of the student's parent (or adult student), teacher, or individualized education program committee and concern is stated that the student is or may be inappropriately identified as handicapped or inappropriately classified as having a particular handicapping condition, the reassessment process shall address each component of the eligibility criteria for the identified or suspected handicapping condition pursuant to WAC 392-171-381 through 392-171-451. The assessment procedures stated therein shall be conducted unless the multidisciplinary team based on a reasonable degree of professional certainty determines that the replication of a particular assessment procedure is not necessary for one or more of the following reasons:

- (1) That previous assessment procedures were conducted accurately;
- (2) That a particular assessment procedure is unnecessary to determine the accuracy of the identification or classification;
- (3) That an alternative assessment procedure is more or equally appropriate to determine the accuracy of the identification or classification.

**READOPTED SECTION** (Readopting Order 86-1, filed 2/21/86)

**WAC 392-171-519 REASSESSMENT—APPROPRIATENESS OF PROGRAM.** If the reassessment is upon the request of the student's parent (or adult student), teacher, or individualized education program committee and concern is stated that the current program is or may be inappropriate to the student's unique needs, abilities, and limitations, then the assessment procedures utilized to determine the appropriateness of the student's special education and related services program, including recommendations for changes therein, shall be determined by the multidisciplinary team. In making such determination the multidisciplinary team shall document in a written narrative the basis for such determination, including any relevant data or assessment procedures utilized.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-521 WHEN NOTICE MUST BE GIVEN.** Written notice in accordance with WAC 392-171-526 shall be given by a school district to the parent(s) of a student (or to the adult student) a reasonable time before the school district:

- (1) Proposes to initiate or change the identification, assessment, or educational placement of the student or the provision of special education and related services to the student pursuant to this chapter; or
- (2) Refuses to initiate or change the identification, assessment, or educational placement of the student or the provision of special education and related services to the student pursuant to this chapter.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-526 CONTENTS OF NOTICE. (1) The notice required by WAC 392-171-521 shall include:

- (a) A full explanation of all of the procedural safeguards available to the parent (or the adult student) that are set forth in this chapter;
- (b) A description of the action proposed or refused by the school district, an explanation of why the district proposes or refuses to take the action, and a description of any options the district considered and the reasons why those options were rejected;
- (c) A description of each assessment procedure, test, record, or report the district used as a basis for the proposal or refusal; and
- (d) A description of any other factors which are relevant to the district's proposal or refusal.

(2) The notice shall be:

- (a) Written in language understandable to the general public; and
- (b) Provided in the native language of the parent (or adult student) or other mode of communication used by the parent (or adult student), unless it is clearly not feasible to do so.

(3) If the native language or other mode of communication of the parent (or adult student) is not a written language, the district shall take steps to assure that:

- (a) The notice is translated orally or by other means to the parent (or adult student) in his or her native language or other mode of communication;
- (b) The parent (or adult student) understands the content of the notice; and
- (c) There is written evidence that the requirements in subparagraphs (a) and (b) of this subsection have been met.

**READOPTED SECTION** (Readopting Order 86-1, filed 2/21/86)

WAC 392-171-531 RIGHT TO INITIATE—PURPOSES. (1) Hearings conducted in accordance with WAC 392-171-521 through 392-171-556 may be initiated in the following cases for the purposes stated:

(a) The parent(s) of a student (or an adult student) or a school district may initiate a hearing to challenge or to show (as the case may be) the appropriateness of a proposal by the school district to initiate or change:

- (i) The identification of the student;
- (ii) The assessment of the student;
- (iii) The educational placement of the student; or
- (iv) The provision of special education and related services to the student pursuant to this chapter;

(b) The parent(s) of a student (or an adult student) or a school district may initiate a hearing to challenge or to show (as the case may be) the appropriateness of the school district's refusal of the parent(s) (or adult student's) request to initiate or change:

- (i) The identification of the student;
- (ii) The assessment of the student;
- (iii) The educational placement of the student; or
- (iv) The provision of special education and related services to the student pursuant to this chapter;

(c) A school district may initiate a hearing to show that its assessment of a student is appropriate if the student's parent(s) (or adult student) disagrees with the assessment results.

(2) A request by a student's parent(s) (or adult student) for a hearing pursuant to this section shall:

- (a) Be in writing;
- (b) Be mailed or provided directly to the superintendent of the school district; and
- (c) Explain the complaint of the parent(s) (or adult student) in general or specific terms.

(3) A request by a school district for a hearing pursuant to this section shall:

- (a) Be in writing;
- (b) Be mailed or provided directly to Office of Superintendent of Public Instruction, Office of Legal Services, Old Capitol Building, Olympia, Washington 98504. A copy of such request, including required attachments shall be transmitted to the student's parent(s) (or adult student);

(c) Have attached to such request a copy of the notice to parent(s) (or adult student) as required by WAC 392-171-521. If the hearing request by the district is in response to a request for an independent educational assessment pursuant to WAC 392-171-371, the district's written request for a hearing also shall have attached a copy of the written notice to the district required by WAC 392-171-371(2).

(4) A notice of a hearing requested by a student's parent(s) (or adult student) or initiated by a school district pursuant to this section shall be provided by the hearing officer and shall include, but not necessarily be limited to:

- (a) The date, time, and place of the hearing;
- (b) The issues to be addressed at the hearing to the extent the issues have been identified at the time of the notice;
- (c) The rights, procedures, and other matters set forth in WAC 392-171-536 through 392-171-576; and
- (d) The right of the parent(s) (or adult student) to seek an independent assessment at public expense pursuant to WAC 392-171-371.

**READOPTED SECTION** (Readopting Order 84-33, filed 9/6/84)

WAC 392-171-533 TRANSMITTAL OF COMPLAINT BY SCHOOL DISTRICT TO SUPERINTENDENT OF PUBLIC INSTRUCTION. Unless the complaint filed with the school district superintendent pursuant to WAC 392-171-531(2) is withdrawn by the complainant in writing within five calendar days from the date of receipt, the school district superintendent shall transmit the complaint to the office of Superintendent of Public Instruction, Office of Legal Services, Old Capitol Building, Olympia, Washington 98504 prior to midnight of such fifth calendar day by depositing such complaint in the United States mail.

**READOPTED SECTION** (Readopting Order 84-33, filed 9/6/84)

WAC 392-171-536 HEARING OFFICERS—SELECTION AND EXPENSES OF—PARENT ASSISTANCE. (1) If a hearing is initiated pursuant to WAC 392-171-531:

(a) The hearing shall be conducted by and at the expense of the superintendent of public instruction.

(b) The superintendent of public instruction shall provide for a court reporter's stenographic record of all testimony and other oral hearing proceedings at the expense of the superintendent of public instruction: PROVIDED, That a court reporter's stenographic record need not be transcribed for any purpose except as provided or required in WAC 392-171-551(e).

(c) The superintendent of public instruction shall inform the parent(s) (or adult student) of any free or low-cost legal and other relevant services available in the area if:

- (i) The parent (or adult student) requests the information; or
- (ii) The school district or the parent (or adult student) initiates a hearing;

(d) The hearing shall be conducted by a qualified person selected and appointed by the chief administrative law judge in the office of administrative hearings pursuant to chapter 10-08 WAC and shall be a person who:

- (i) Is not an employee of a school district which is involved in the education or care of the student; and
- (ii) Does not have a personal or professional interest which would conflict with his or her objectivity in the hearing;

(2) The hearing shall be conducted in accordance with the provisions of WAC 392-101-005 unless modified by this chapter.

**READOPTED SECTION** (Readopting Order 84-33, filed 9/6/84)

WAC 392-171-551 HEARING RIGHTS. (1) Any party to a hearing initiated pursuant to WAC 392-171-531 has the right to:

- (a) Be accompanied and advised by persons with special knowledge or training with respect to the problems of handicapped students;
- (b) Be advised and/or represented by an attorney;

(c) Present evidence, including the opinion(s) of qualified experts, confront, cross-examine, and compel the attendance of witnesses;

(d) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five days before the hearing;

(e) Obtain a written verbatim record of the hearing at a cost no greater than the fee charged by the court reporter for transcribing his or her record of the hearing: PROVIDED, That in the event of an appeal to a court of law by the school district, such district shall bear the cost of transcribing the record for appeal purposes and shall make a copy available to the other party at a cost, if any, which is no greater than the school district's cost of copying the original; and

(f) Obtain written findings of fact, conclusions of law and judgments.

(2) Parents who are a party to a hearing have the right to have the child who is the subject of the hearing present.

(3) Parents (or adult students) who are a party to a hearing have the right to open the hearing to the public.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-556 TIMELINE FOR HEARING OFFICER'S DECISION—TIME AND PLACE OF HEARING.** (1) Not later than forty-five days after the date of receipt of a request for a hearing pursuant to WAC 392-171-531:

(a) A final decision shall be reached based upon a preponderance of the evidence; and

(b) A copy of the decision consisting of the hearing officer's findings of fact, conclusions of law, and judgment shall be mailed or provided directly to each of the parties and to the superintendent of public instruction by the hearing officer, together with a certification of the date of mailing and the parties to whom it was mailed.

(2) The date of mailing or providing a decision to the parties shall be certified to on the first page of the decision by the person(s) who mails or provides the decision to the parties. The decision of the hearing officer shall be drafted in a manner which:

(a) Sets forth the findings of fact, conclusions of law and judgment separately, and numbers each findings of fact and conclusion; and

(b) Avoids the revelation of personally identifiable information that is unnecessary to reaching and understanding the decision reached. The surnames of students and their parents shall be indicated by use of their last initial and shall not be spelled out.

(3) A hearing officer may grant specific extensions of time beyond the period set forth in this section at the request of either party.

(4) Each hearing involving oral arguments shall be conducted at a time and place which is reasonably convenient to the parent(s) and student involved.

**READOPTED SECTION** (Readopting Order 84-33, filed 9/6/84)

**WAC 392-171-559 PROSPECTIVE APPLICATION TO AMENDMENTS IN WASHINGTON ADMINISTRATIVE CODE AFFECTING HEARINGS.** Amendments to the Washington Administrative Code affecting special education hearings and appeals pursuant to chapter 392-171 WAC shall apply prospectively. Complaints filed pursuant to WAC 392-171-531 shall be governed by the chapter 392-171 WAC regulations in effect at the time the complaint is filed.

**READOPTED SECTION** (Readopting Order 84-33, filed 9/6/84)

**WAC 392-171-561 FINAL DECISION—APPEAL TO COURT OF LAW.** A decision made in a hearing initiated pursuant to WAC 392-171-531 is final, unless modified or overturned by a court of law.

**READOPTED SECTION** (Readopting Order 84-33, filed 9/6/84)

**WAC 392-171-576 STUDENT'S STATUS DURING HEARING AND JUDICIAL REVIEW PROCESSES.** (1) During the pendency of any administrative or judicial proceeding regarding a complaint initiated pursuant to WAC 392-171-531, unless the school district and the parent(s) of the student (or the adult student) agree otherwise, the student involved in the complaint shall remain in the educational placement he or she was in at the time the complaint was made.

(2) The student, with the consent of the parent(s) (or the adult student), shall be placed in the regular school program until the completion of all such proceedings if the complaint involves an application for initial admission to the school.

**READOPTED SECTION** (Readopting Order 81-25, filed 9/4/81)

**WAC 392-171-581 SURROGATE PARENTS.** (1) General. Each school district providing a special education program to a non-adult handicapped student shall assure that the rights of the nonadult student are protected when:

(a) No parent (as defined in WAC 392-171-310(4)) can be identified;

(b) The school district, after reasonable efforts, cannot discover the whereabouts of a parent; or

(c) The student is a ward of the state.

(2) Duty of school district. The duty of a school district under this section includes the assignment of a person to act as a surrogate for the parents. This duty includes the establishment of a method:

(a) For determining whether a nonadult student needs a surrogate parent; and

(b) For assigning a surrogate parent to the student.

(3) Criteria for selection of surrogates. Each school district shall assure that a person selected as a surrogate:

(a) Has no interest that conflicts with the interests of the student he or she represents; and

(b) Has knowledge and skills that assure adequate representation of the student.

(4) Nonemployee requirement—Compensation:

(a) A person assigned as a surrogate may not be an employee of a school district and/or other agency which is involved in the education or care of the student; and

(b) A person who otherwise qualifies as a surrogate parent pursuant to this section is not an "employee" of the school district and/or other agency solely because he or she is paid by the school district and/or agency to serve as a surrogate parent.

(5) Responsibilities. A surrogate parent may represent the student in all matters relating to:

(a) The identification, assessment, and educational placement of the student; and

(b) The provision of free special education and related services to the student.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-586 DEFINITION OF "EDUCATION RECORDS" AS USED IN RECORDS RULES.** (1) For the purpose of WAC 392-171-596 through 392-171-641 governing handicapped student records, the term "education records" shall mean those records that:

(a) Are directly related to a student; and

(b) Are maintained by a school district or by a party acting for the school district.

(2) The term "education records" does not include:

(a) Records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which:

(i) Are in the sole possession of the maker thereof; and

(ii) Are not accessible or revealed to any other individual except a substitute. For the purpose of this definition, a "substitute" means an individual who performs on a temporary basis the duties of the individual who made the record and does not refer to an individual who permanently succeeds the maker of the record in his or her position;

(b) Records of a law enforcement unit of a school district which are:

(i) Maintained apart from the records described in subsection (1) of this section;

(ii) Maintained solely for law enforcement purposes; and

(iii) Not disclosed to individuals other than law enforcement officials of the same jurisdiction: PROVIDED, That education records maintained by the school district are not disclosed to the personnel of the law enforcement unit;

(c) Records relating to an individual who is employed by a school district which:

(i) Are made and maintained in the normal course of business;

(ii) Relate exclusively to the individual in that individual's capacity as an employee; and

(iii) Are not available for use for any other purpose: PROVIDED, That this exception from the definition of "education records" does not apply to records relating to an individual in attendance at the school district who is employed as a result of his or her status as a student;

(d) Records relating to an adult student which are:

(i) Created or maintained by a physician, psychiatrist, psychologist, or other recognized professional acting in his or her professional or paraprofessional capacity;

(ii) Created, maintained, or used only in connection with the provision of treatment to the student; and

(iii) Not disclosed to anyone other than individuals providing the treatment: PROVIDED, That the records can be personally reviewed by a physician or other appropriate professional of the student's choice. For the purpose of this definition, "treatment" does not include remedial educational activities or activities which are part of the program of instruction at the school district;

(e) Records of a school district which contain only information relating to a person after that person was no longer a student at the school district. An example would be information collected by a school district pertaining to the accomplishments of its alumni.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-591 DEFINITIONS USED IN RECORDS RULES—"DESTRUCTION"—"NATIVE LANGUAGE"—AND "PARTICIPATING AGENCY." For the purpose of WAC 392-171-596 through 392-171-641 governing handicapped student records:

(1) "Destruction" shall mean physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

(2) "Native language" has the meaning given that term by section 703 (a)(2) of the Bilingual Education Act, which provides essentially as follows:

The term "native language," when used with reference to a person of limited English-speaking ability, means the language normally used by that person, or in the case of a nonadult student, the language normally used by the parents of the student.

(3) "Participating agency" means any agency or institution which collects, maintains, or uses personally identifiable information or from which information is obtained pursuant to this chapter.

**READOPTED SECTION** (Readopting Order 84-48, filed 10/2/84)

WAC 392-171-596 ACCESS RIGHTS. (1) Each school district shall permit parents of handicapped students (or adult students) to inspect and review during school business hours any education records relating to their children or ward (or the adult student) which are collected, maintained, or used by the district under this chapter. The district shall comply with a request promptly and before any meeting regarding an individualized education program or hearing relating to the identification, evaluation, or placement of the student.

(2) The right to inspect and review education records under this section includes:

(a) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;

(b) The right to request that the school district provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(c) The right to have a representative of the parent (or adult student) inspect and review records.

(3) A school district may presume that a parent has authority to inspect and review records relating to his or her child or ward unless the district has been advised that the parent does not have the authority under applicable state law governing such matters as guardianship, separation, and divorce.

**READOPTED SECTION** (Readopting Order 84-48, filed 10/2/84)

WAC 392-171-601 RECORD OF ACCESS. Each participating agency shall keep a record of parties obtaining access to education records collected, maintained, or used under this chapter (except access by parents, adult students, and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-606 RECORDS ON MORE THAN ONE STUDENT. If any education record includes information on more than one student, the parent(s) of those students (and/or adult students) shall have the right to inspect and review only the information relating to their child or ward (or themselves) or to be informed of that specific information.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-611 LIST OF TYPES AND LOCATIONS OF INFORMATION. Each participating agency shall provide parents (and adult students) on request a list of the types and locations of education records collected, maintained, or used by the agency.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-616 FEES. (1) A participating education agency may charge a fee for copies of records which are made for parents (or adult students) under this chapter if the fee does not effectively prevent

the parents (or adult students) from exercising their right to inspect and review those records.

(2) A participating agency may not charge a fee to search for or to retrieve information under this chapter.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-621 AMENDMENT OF RECORDS AT THE REQUEST OF A PARENT OR ADULT STUDENT. (1) A parent of a handicapped student (or an adult student) who believes that information in education records collected, maintained, or used under this chapter is inaccurate or misleading or violates the privacy or other rights of the student may request the participating agency which maintains the information to amend the information.

(2) The agency shall decide whether to amend the information in accordance with the request within a reasonable period of time after receipt of the request.

(3) If the agency decides to refuse to amend the information in accordance with the request it shall inform the parent (or adult student) of the refusal and advise the parent (or adult student) of the right to a hearing pursuant to WAC 392-171-626.

(4) The participating agency, on request, shall provide the parent (or adult student) an opportunity for a hearing to challenge information in education records to insure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student.

(5) If, as a result of the hearing, the participating agency decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall amend the information accordingly and so inform the parent (or adult student) in writing.

(6) If, as a result of the hearing, the participating agency decides that the information is not inaccurate, misleading or otherwise in violation of the privacy or other rights of the student, it shall inform the parent(s) (or adult student) of the right to place in the records it maintains on the student a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

(7) Any explanation placed in the records of the student pursuant to this section shall:

(a) Be maintained by the participating agency as part of the records of the student as long as the record or contested portion is maintained by the participating agency; and

(b) Also be disclosed to any party to whom the records of the student (or the contested portion thereof) are disclosed.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-626 HEARING PROCEDURES REGARDING RECORDS. A hearing initiated pursuant to WAC 392-171-621 to challenge information in education records shall be conducted according to procedures which include at least the following elements:

(1) The hearing shall be held within a reasonable period of time after the participating agency has received the request;

(2) The parent (or adult student) shall be given notice of the date, place, and time reasonably in advance of the hearing;

(3) The hearing may be conducted by any party, including an official of the participating agency, who does not have a direct interest in the outcome of the hearing;

(4) The parent (or adult student) shall be afforded a full and fair opportunity to present evidence relevant to the issues raised pursuant to WAC 392-171-621 and may be assisted or represented by individuals of his or her choice at his or her own expense, including an attorney;

(5) The participating agency shall provide a written decision to the parent (or adult student) within a reasonable period of time after the conclusion of the hearing; and

(6) The decision of the participating agency shall:

(a) Be based solely upon the evidence presented at the hearing; and

(b) Include a summary of the evidence and the reasons for the decision.

**READOPTED SECTION** (Readopting Order 83-1, filed 3/30/83)

WAC 392-171-631 CONSENT. (1) Consent of a parent (or adult student) shall be obtained before personally identifiable information is:

(a) Disclosed to anyone other than officials of participating agencies collecting or using the information under this chapter subject to subsection (2) of this section; or

(b) Used for any purpose other than meeting a requirement imposed by this chapter.

(2) No school district shall release information from education records to participating agencies without the consent of a parent (or adult student) except in those cases in which a release of information without consent is permitted by the rules that implement the federal Privacy Rights of Parents and Students Part 99 of 34 Code of Federal Regulations (CFR) 34 sections 99.1 et seq. See 34 CFR 99.31 (when prior consent not required), 34 CFR 99.35 (disclosure to state and federal officials) and 34 CFR 99.37 (directory information).

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-636 SAFEGUARDS. (1) Each participating agency shall protect the confidentiality of personally identifiable information at the collection, storage, disclosure, and destruction stages.

(2) One official at each participating agency shall be designated as the individual responsible for assuring the confidentiality of any personally identifiable information.

(3) All persons collecting or using personally identifiable information shall receive training or instruction regarding:

(a) The policies and procedures on protection of the confidentiality of personally identifiable information set forth in the state's annual program plan; and

(b) 45 CFR 99.1 et seq. (the "Buckley Amendment" rules).

(4) Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-641 DESTRUCTION OF INFORMATION. Each school district shall inform parents (and adult students) when personally identifiable information collected, maintained, or used pursuant to this chapter is no longer needed to provide educational services to the student. The information shall thereafter be destroyed at the request of the parent(s) (or adult student). However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed and year completed may be maintained without time limitation.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-646 DEFINITION—"PRIVATE SCHOOL HANDICAPPED STUDENT(S)." For the purpose of WAC 392-171-651 through 392-171-686 "private school handicapped student(s)" means handicapped students enrolled in private schools or agencies but not as the result of a contractual arrangement between a public school district and the private school or agency.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-651 SCHOOL DISTRICT RESPONSIBILITY FOR PRIVATE SCHOOL HANDICAPPED STUDENTS. Subject to the provisions of WAC 392-171-656 through 392-171-686:

(1) Each school district shall provide special education and related services designed to meet the needs of private school handicapped students who reside in the school district.

(2) Each school district shall provide private school handicapped students with genuine opportunities to participate in special education and related services consistent with the number of those students and their needs.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-656 DETERMINATION OF NEEDS, NUMBERS OF STUDENTS AND TYPES OF SERVICES. The needs of private school handicapped students, the number who will participate, and the types of special education and related services which the school district will provide them shall be determined after consultation with persons knowledgeable of the needs of these students on a basis comparable to that used in providing for the participation under this chapter of handicapped students enrolled in public schools.

**READOPTED SECTION** (Readopting Order 83-1, filed 3/30/83)

WAC 392-171-661 SERVICE ARRANGEMENTS. (1) Special education and related services to private school handicapped students may be provided through such arrangements as dual enrollment pursuant to chapter 392-134 WAC, educational radio and television, and the provision of mobile educational services and equipment.

(2) No services, material, or equipment of any nature shall be provided to or on the site of any private school or agency subject to sectarian (i.e., religious) control or influence.

(3) Handicapped students enrolled in any private school or agency subject to sectarian control or influence shall be provided services in a manner that:

(a) Maintains a physical and administrative separation between the private and the public school programs; and

(b) Does not benefit the private school at public expense, e.g., pursuant to dual enrollment or shared time arrangements in accordance with chapter 392-134 WAC.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-666 PERSONNEL IN PRIVATE SCHOOLS AND AGENCIES. (1) School district personnel may be made available to nonsectarian private schools and agencies only to the extent necessary to provide services required by the handicapped student for whose needs those services were designed and only when those services are not normally provided by the nonsectarian private school or agency.

(2) Each school district providing services to students enrolled in nonsectarian private schools or agencies shall maintain continuing administrative control and direction over those services.

(3) Services to private school handicapped students shall not include the payment of salaries of teachers or other employees of private schools or agencies, except for services performed outside regular hours of the school day and under public supervision and control.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-671 EQUIPMENT—CONSTRUCTION. (1) Equipment used in the care of students with handicapping conditions in a private school or agency may be placed on nonsectarian private school or agency premises for a limited time, but title to and administrative control over all equipment must be retained and exercised by the school district.

(2) Records shall be kept of equipment and an accounting made of the equipment which shall assure that the equipment is used solely for the purposes of the program.

(3) The equipment shall be removed from the private school or agency if necessary to avoid its being used for other purposes or if it is no longer needed for the purposes of the program or project.

(4) Funds shall not be used to construct facilities for private schools or agencies.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-676 PROHIBITION OF SEGREGATION. Programs or projects carried out in public facilities, and involving joint participation by handicapped students otherwise enrolled in private schools or agencies and handicapped students enrolled in public schools, shall not include classes that are separated on the basis of school enrollment or the religious affiliations of the students.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-681 FUNDS AND PROPERTY NOT TO BENEFIT PRIVATE SCHOOLS. Public funds provided and property derived from those funds shall not inure to the benefit of any private school or agency.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-686 EXISTING LEVEL OF INSTRUCTION. Provisions for serving private school handicapped students shall not include the financing of the existing level of instruction in a private school or agency.

**READOPTED SECTION** (Readopting Order 83-1, filed 3/30/83)

**WAC 392-171-691 ANNUAL APPLICATIONS—CONTENTS.** As a condition to the receipt and expenditure of federal special education funds, a school district shall annually submit an application to the superintendent of public instruction or his or her designee on or before such date is announced and conduct its special education and related services program in compliance therewith. The applications shall be made pursuant to forms developed and distributed by the superintendent or his or her designee. Application forms shall include, but not necessarily be limited to, the following assurance(s) and types of information:

(1) An assurance that:

(a) The school district is in compliance with the provisions of this chapter and the rules implementing PL 94-142 (34 CFR 300.1 et seq.) that may supplement this chapter;

(b) That the district shall remain in compliance with this chapter and any such supplemental rules for the entire school year; and

(c) That the funds applied for shall be expended in compliance with the application, this chapter, and any such supplemental federal rules;

(2) The information and assurances required by 34 CFR 300.220 through 34 CFR 300.240 and any other pertinent federal rules;

(3) Identification of the local district designee responsible for child identification activities and confidentiality of information;

(4) A description of the procedures and/or activities to be implemented or continued to provide for:

(a) Identification, location and evaluation of handicapped children not currently receiving special education and related services;

(b) Assurance of confidentiality of personally identifiable information;

(c) Implementation of a system for personnel development;

(d) Involvement of parents of handicapped children;

(e) Participation of handicapped students with nonhandicapped students;

(f) Placement of handicapped students in the least restrictive environment;

(g) Development of individualized education programs for each eligible handicapped student;

(h) Availability of career development and vocational education programs for handicapped students;

(i) A description of the numbers and types of handicapped students receiving special education and related services by placement option within the district's continuum of alternative placements;

(j) A description of the kind of and number of facilities, personnel, and services necessary to meet the district's full educational opportunity goal, including a detailed timetable for reaching that goal; and

(k) A description of the use of funds received under PL 94-142 (34 CFR 300.1 et seq.).

(5) Any other pertinent information requested by the superintendent of public instruction which is necessary for the management of the special education program.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-696 DENIAL OF APPLICATIONS—OPPORTUNITY FOR HEARING.** (1) In the event the superintendent of public instruction or his or her designee proposes to deny, in whole or part, the annual application of a district for federal special education funds, the district shall be provided notice pursuant to RCW 34.04.090 of:

(a) Intent to deny the application of the district; and

(b) The district's opportunity for a hearing before the superintendent of public instruction or his or her designee prior to a denial of the application.

(2) The district's application may be denied, in whole or part, in the event the district fails to request a hearing or the hearing decision upholds the proposed basis for denial.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-701 STAFF QUALIFICATIONS.** All employees of a school district funded in whole or part with state or federal excess cost funds shall be qualified, as follows:

(1) All employees shall hold such credentials, certificates or permits as are now or hereafter required by the state board of education for

the particular position of employment and shall meet such supplemental standards as may be established by the school district of employment. Supplemental standards established by a district may exceed, but not be less than, those established by this section.

(2) In addition to the requirement of subsection (1) of this section, all teachers shall possess "substantial professional training" and/or "successful prior experience" and support personnel shall meet standards established under the educational staff associate rules of the state board of education, as now or hereafter amended.

(a) "Successful prior professional experience" as used in this section shall mean at least three full school years of employment as a professional staff member in an approved special education program within the five year period immediately preceding the school year of employment in a position supported in whole or part by excess cost apportionment funds.

(b) "Substantial professional training" as used in this section shall mean and be evidenced by either an appropriate special education endorsement or recommended placement upon the teaching certificate of an employee issued by the superintendent of public instruction or completion of teacher education program designed to prepare teachers of students with handicapping conditions offered by an institution approved by the state board of education for teacher certification purposes.

(3) Classified staff shall present evidence of either formal and/or adequate in-service training or successful experience in working with handicapped students.

(4) The assignment of personnel shall be consistent with training and experience appropriate to the age level (preschool, elementary, secondary) and type of program in which teaching will be performed. District reorganization, reductions in force, and reassignments shall be made in a manner consistent with the requirements of this section.

(5) The superintendent of public instruction or his or her designee may grant an exception to compliance with any of the staff qualifications imposed by this section which are above and beyond certification requirements imposed by the state board of education, only upon the request of a school district and the provision of satisfactory assurances by the district that noncompliance:

(a) Is unavoidable;

(b) Will be temporary and not extend beyond the school year for which the exception is requested; and

(c) Will not likely result in a significant reduction in the quality of the district's special education program.

(6) Notwithstanding any staff qualification requirement of this section to the contrary, employees of a school district which possess credentials as required by the state board of education and who were employed during and serving as of termination of the 1974-75 school year in the special education program of the district shall be deemed qualified for purposes of state program approval so long as they continue in such employment with that particular district.

**READOPTED SECTION** (Readopting Order 86-1, filed 2/21/86)

**WAC 392-171-706 TRANSPORTATION.** (1) Methods. Transportation options for handicapped students shall include the following categories and shall be exercised in the following sequence:

(a) A scheduled school bus;

(b) Contracted transportation, including public transportation; and

(c) Other transportation arrangements, including that provided by parents: PROVIDED, That board and room cost in lieu of transportation may be provided whenever the above stated transportation options are not feasible because of the need(s) of a handicapped student or because of the unavailability of adequate means of transportation, in accordance with rules of the superintendent of public instruction.

(2) Welfare of the student. The transportation of a handicapped student shall be in accordance with rules of the superintendent of public instruction governing transportation by public school districts.

(3) Bus aides and drivers. Training and supervision of bus aides and drivers shall be the responsibility of the school district superintendent or his or her designee.

(4) Special equipment. Special equipment may include lifts, wheel chair holders, restrainers, and two-way radios. All such special equipment shall comply with specifications contained in the specifications for school buses as now or hereafter established by the superintendent of public instruction.

(5) Transportation time on bus. Wherever reasonably possible, no student should be required to ride more than sixty minutes one way.



(6) Discipline of handicapped students during transportation. The discipline of a handicapped student during his or her transportation shall be the responsibility of the transporting district.

(7) Transportation for state residential school students to and from the residential school and the sites of the educational program shall be the responsibility of the department of social and health services and each state residential school pursuant to law.

(8) Transportation for a state residential school student, including students attending the state school for the deaf and the state school for the blind, to and from such school and the residency of such student shall be the responsibility of the district of residency only if the student's placement was made by such district—i.e., an appropriate placement in the least restrictive environment.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-711 FACILITIES.** Construction of special facilities or the remodeling of present facilities in order to meet the special education and related services needs of any handicapped student shall be provided in accordance with rules of the superintendent of public instruction and the state board of education which govern the construction and/or financing of school district facilities: PROVIDED, That all educational facilities required for handicapped students in residential school programs shall be the responsibility of department of social and health services as provided by RCW 28A.58.774.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-716 COMPARABLE FACILITIES.** If a school district, in compliance with this chapter, operates a facility that is identifiable as being for handicapped students, the district shall assure that the facility and the services and activities provided therein are comparable in quality to the district's facilities, services, and activities for nonhandicapped students.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-721 PROGRAM LENGTH.** The length of the education program for handicapped students shall be at least as long as the education program for nonhandicapped students in terms of both the number of school days in the regular school year and the average number of hours per school day. If a handicapped student cannot attend school a full school day, the reason shall be documented in his or her education or medical records.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-726 ADMINISTRATION OF MEDICATION.** (1) Medication may be administered to a handicapped student by school district personnel subject to the state professional licensing laws and the following conditions:

- (a) The medication shall be administered pursuant to a written order and written instruction from the student's physician; and
- (b) The medication shall be supplied by the student's parent(s) (or the adult student).

(2) The orders and instructions shall be current, obtained at least yearly, and reviewed and updated whenever there is a significant change in the student's school activity program, in accordance with policies adopted by the school district.

**READOPTED SECTION** (Readopting Order 84-19, filed 6/28/84)

**WAC 392-171-731 MONITORING.** (1) The superintendent of public instruction or his or her designee shall annually monitor selected local school district special education programs. The purposes of monitoring shall be:

- (a) To determine the school district's compliance with this chapter and the federal regulations implementing 20 USC Section 1401 et seq. (PL 94-142) and federal and state handicapped laws including validation of information included in school district applications for federal funds;
  - (b) To provide the school district with technical assistance for improving the quality of its special education program.
- (2) The superintendent of public instruction or his or her designee shall develop procedures (including specific timelines) for monitoring school districts. These procedures shall include:
- (a) Collection of data and reports;
  - (b) Conduct of on-site visits;

(c) A review of state and federal special education fund utilization; and

(d) Comparison of a sampling of individualized education programs with the programs actually provided.

(3) Following a monitoring visit, a written monitoring report shall be submitted to the school district. The monitoring report shall include, but not be limited to:

- (a) Findings of noncompliance, if any; and
- (b) Required corrective actions for remediation of any such instance(s) of noncompliance.

(4) The school district shall have thirty calendar days after the date of its receipt of the monitoring report to provide the office of superintendent of public instruction with:

- (a) Supplemental arguments and/or facts which may serve as a basis for alteration of the monitoring report;
- (b) A written action plan which sets forth the measures the district shall take and time period(s) within which the district shall act in order to remediate the instance(s) of noncompliance;

(c) In the event that the district submits supplemental arguments and/or facts which may serve as a basis for alteration of the monitoring report, the office of superintendent of public instruction shall within thirty calendar days provide the district with a determination as to the alteration of the monitoring report. The school district shall, within thirty calendar days of receipt of the determination, provide the office of superintendent of public instruction a written action plan, if any, pursuant to that determination.

(5) The superintendent of public instruction or his or her designee either shall approve the plan as submitted or shall request the school district to make such modifications as are considered necessary. Once an approvable plan has been submitted, the district shall be provided written notice of:

- (a) Approval;
- (b) The performance expected of the district; and
- (c) The schedule for periodic review or verification of the district's progress toward remediation of the instance(s) of noncompliance.

(6) If the school district fails to submit an approvable corrective action plan pursuant to WAC 392-171-731(4) or fails to comply with a corrective action plan approved pursuant to WAC 392-171-731(5), the superintendent of public instruction or his or her designee shall institute procedures to insure corrective action or prompt response to a monitoring report. Such procedures may include one or more of the following:

- (a) Verification visits by OSPI staff to:
  - (i) Determine whether the school district is taking the required corrective action;
  - (ii) Expedite the school district's response to a monitoring report;
  - (iii) Provide any necessary technical assistance to the school district in its efforts to comply.
- (b) Withhold, in whole or part, a specified amount of state and/or federal special education funds, pursuant to WAC 392-171-696 and 392-171-746.

(c) Initiate request for OSPI audit pursuant to WAC 392-171-736 through 392-171-756 which may result in the recovery of unlawfully received or expended of state and/or federal special education funds.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-736 DEFINITION OF "UNLAWFULLY RECEIVED OR EXPENDED FUNDS."** For the purpose of WAC 392-171-741 through 392-171-756, "unlawfully received or expended funds" shall mean any state or federal special education funds received and held or expended by a school district in a manner or for a purpose that is in violation of any provision of:

- (1) State statute or rule, including this chapter; or
- (2) Any federal rule or condition to funding that may now or hereafter supplement this chapter.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-741 AUDITS.** (1) The superintendent of public instruction or his or her designee shall conduct fiscal/program audits of school district special education programs. The purposes of such audits shall be:

- (a) To determine compliance or noncompliance with:
  - (i) A school district's application(s) for state and federal excess cost funds;
  - (ii) The provisions of this chapter; and



(iii) Any supplemental federal conditions to funding as may now or hereafter exist.

(b) To establish a factual basis for:

(i) The recovery of unlawfully received or expended state or federal special education funds; or

(ii) The initiation of fund withholding proceedings;

(2) Preliminary audit report—Following an audit, a preliminary written audit report shall be submitted to the school district for review and comment. The preliminary audit report shall include, but not be limited to:

(a) Findings of noncompliance which could include comparisons to findings of noncompliance as a result of monitoring, if any; and

(b) Recommendations for remediation of any such instance(s) of noncompliance.

(3) The school district shall have fifteen days after the date of its receipt of the preliminary audit report to provide the superintendent of public instruction or his or her designee a written reply setting forth any supplemental arguments and/or facts that may serve as a basis for alteration of the preliminary finding(s) of noncompliance.

(4) Final audit report—A final written audit report shall be provided to the school district after review of the supplemental arguments and/or facts submitted by the district. The final audit report shall include, but not necessarily be limited to:

(a) Findings of noncompliance, if any; and

(b) Recommendations for remediation of any such instance(s) of noncompliance.

(5) The school district shall have fifteen days after the date of its receipt of the final audit report to provide the superintendent of public instruction or his or her designee a written plan which sets forth the measures the district shall take and time period(s) within which the district shall act in order to remedy the instance(s) of noncompliance.

(6) The superintendent of public instruction or his or her designee shall either approve the plan as submitted or request the school district to make such modifications as are considered necessary. Once an approvable plan has been submitted the district shall be provided written notice of:

(a) Approval;

(b) The performance expected of the district; and

(c) The schedule for periodic review or audit of the district's progress toward remediation of the instance(s) of noncompliance.

#### READOPTED SECTION (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-746 FUND WITHHOLDING. (1) In the event a school district fails to submit an approvable remediation plan pursuant to WAC 392-171-741 or fails to submit an approvable corrective action plan pursuant to WAC 392-171-731 or fails to comply with a remediation plan approved pursuant to WAC 392-171-741 or fails to comply with a corrective action plan pursuant to WAC 392-171-731, the superintendent or his or her designee shall provide the school district notice pursuant to RCW 34.04.090 of:

(a) Intent to withhold a specified amount of state and/or federal special education funds; and

(b) The district's opportunity for a hearing before the superintendent of public instruction or his or her designee prior to commencement of the withholding.

(2) Funds may be withheld in whole or part in the event the district fails to request a hearing or the hearing decision upholds the final audit or monitoring in whole or part.

#### READOPTED SECTION (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-751 RECOVERY OF FUNDS. (1) If a preliminary audit conducted pursuant to WAC 392-171-741 indicates that a district has unlawfully received and/or expended either state or federal special education funds, the superintendent of public instruction or his or her designee shall provide the school district with an opportunity for an informal conference prior to the final audit report.

(2) If the final audit report sets forth one or more instances of unlawful receipt or expenditure of either state or federal special education funds, the superintendent of public instruction or his or her designee shall take such action as he or she deems necessary to recover the funds including, but not limited to, a reduction in future allocations of any amount of any state funds and/or any amount of federal special education funds to the district.

(3) No right to a hearing in connection with the recovery of funds unlawfully received and/or expended is granted by this chapter.

#### READOPTED SECTION (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-756 FUND WITHHOLDINGS TO ENFORCE PARENT APPEAL DECISIONS. The superintendent of public instruction or his or her designee may withhold any amount of state funds and/or any amount of federal special education funds as he or she deems necessary to enforce a decision made on appeal pursuant to WAC 392-171-566 and 392-171-571 without any necessity of a further hearing on the matter.

#### READOPTED SECTION (Readopting Order 88-18, filed 7/11/88)

WAC 392-171-761 RIGHT TO REGISTER AND PROCESS COMPLAINTS. (1) Any person, entity, or organization may register and process complaints alleging one or more violations of this chapter as provided for in chapter 392-168 WAC.

#### READOPTED SECTION (Readopting Order 6-76, filed 5/17/76)

WAC 392-190-005 PURPOSE—ELIMINATION OF SEX DISCRIMINATION. The purpose of this chapter is to establish rules and regulations which implement chapter 28A.85 RCW. The referenced enactment prohibits discrimination on the basis of sex in grades K-12 of the Washington public schools. Broad federal regulations implementing Title IX of the Education Amendments of 1972 similarly prohibit sex discrimination in federally-assisted education programs or activities. As a result, several substantive areas have been similarly identified and addressed by both state and federal enactments.

It is the intent of this chapter to encompass those similar substantive areas addressed by the Title IX regulations and in some aspects extend beyond the Title IX regulations. Accordingly, compliance with this chapter should constitute compliance with those similar substantive areas treated in the Title IX regulations, but school districts should be aware that compliance with the Title IX regulations alone may not constitute compliance with this chapter.

Although chapter 28A.85 RCW and the balance of this chapter prohibit sex discrimination in grades K-12 only, the superintendent of public instruction hereby declares pursuant to the authority vested in the superintendent by Article 3, section 22 of the state Constitution that it shall be unlawful for any public school district to discriminate on the basis of sex with regard to any activity conducted by or in behalf of a school district including, but not limited to, preschool, adult education, community education and vocational-technical program activities.

#### READOPTED SECTION (Readopting Order 80-26, filed 7/9/80)

WAC 392-190-010 COUNSELING AND GUIDANCE SERVICES—CAREER OPPORTUNITIES—INTERNAL PROCEDURES. (1) No school district shall engage in discrimination against any person on the basis of sex in the counseling or guidance of students in grades K-12.

(2) Each school district shall devise and use materials, orientation programs, and counseling techniques that will encourage participation in all school programs and courses of study based on factors other than sex and that encourage students to explore subjects and activities not heretofore traditional for their sex.

(3) Each school district which uses testing and other materials for appraising or counseling students shall not use different materials for students on the basis of their sex or use materials which permit or require different treatment of students on such basis unless (a) such different materials cover the same occupations and interest areas and (b) the use of such different materials is demonstrated to be essential to eliminate sex bias.

(4) Each school district shall develop and use internal procedures for ensuring that all tests and appraisal instruments, career and vocational guidance materials, work/study programs and opportunities, and educational scheduling and/or placement do not discriminate on the basis of sex: PROVIDED, That where the use of such instruments or materials or such programs or activities results in a substantially disproportionate number of members of one sex in any particular course of study or classification, the school district shall take such immediate action as is necessary to assure itself that such disproportion is not the result of discrimination in the program or activity or in the instrument or material or its application: PROVIDED FURTHER, That where a school district finds that a particular class contains a substantially disproportionate number of individuals of one sex, the district shall take such immediate action as is necessary to assure itself that such disproportion is not the result of discrimination on the basis of sex in tests

and appraisal instruments, career and vocational guidance materials, work/study programs and opportunities, and educational scheduling and/or placement or by counselors.

**READOPTED SECTION** (Readopting Order 6-76, filed 5/17/76)

**WAC 392-190-015 COUNSELING AND GUIDANCE—DUTY OF CERTIFICATED AND CLASSROOM PERSONNEL—COORDINATION OF EFFORT.** (1) All certificated and classroom personnel shall encourage students to explore and develop their individual interests in career and vocational technical programs and employment opportunities without regard to sex, including reasonable efforts encouraging students to consider and explore "nontraditional" occupations for men and women: **PROVIDED**, That all certificated and classroom personnel within each local school district shall have access to an educational staff associate (ESA) certificated school counselor(s) or such other appropriate person(s), designated by the school district superintendent to coordinate compliance with the requirements of this section.

(2) All certificated and classroom personnel shall comply fully and immediately with the requirements of this section. The superintendent of each school district shall make the designation(s) required by this section immediately.

**READOPTED SECTION** (Readopting Order 6-76, filed 5/17/76)

**WAC 392-190-020 INSERVICE TRAINING—SEX BIAS AWARENESS.** Each school district should include sex bias awareness and sex bias elimination training sessions in such inservice training programs as are conducted or provided for certificated and/or classroom personnel.

**READOPTED SECTION** (Readopting Order 6-76, filed 5/17/76)

**WAC 392-190-025 RECREATIONAL AND ATHLETIC ACTIVITIES—EQUAL OPPORTUNITY—SEPARATE TEAMS.** (1) No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, club or intramural athletics or recreational activity offered by a school district, and no school district shall provide any such athletics or recreational activity separately on such basis. Sports teams and programs offered by a school district shall, regardless of their nature, be equally open to participation by qualified members of both sexes: **PROVIDED**, That in the case of sports and recreational activities offered for students in grades 7 through 12, a school district may maintain separate teams for members of each sex if (a) it can clearly be shown, under the factual circumstances involved in the particular case, that the maintenance of separate teams for boys and girls truly constitutes the best method of providing both sexes, as a whole, with an equal opportunity to participate in the sports or games of their choice and (b) at the same time, a test of substantial equality between the two programs can be found to have been met.

(2) For the purpose of this section and **WAC 392-190-050(2)** "substantial equality" shall be determined by considering factors including but not limited to the following:

- (a) The relationship between the skill and compensation of coaching staffs;
- (b) The size of their budgets;
- (c) The quality of competition and game schedules;
- (d) Uniforms;
- (e) Equipment and facilities; and
- (f) Sufficient numbers of participants to warrant separate teams.

**READOPTED SECTION** (Readopting Order 6-76, filed 5/17/76)

**WAC 392-190-030 GENERAL—RECREATIONAL AND ATHLETIC ACTIVITIES—EQUAL OPPORTUNITY FACTORS CONSIDERED.** Each school district shall evaluate its recreational and athletic program at least once each year to ensure that equal opportunities are available to members of both sexes with respect to interscholastic, club or intramural athletics which are operated, sponsored, or otherwise provided by the school district.

In determining whether equal opportunities are available to members of both sexes with respect to interscholastic, club or intramural athletics, each school district conducting an evaluation required by this section, and the office of superintendent of public instruction upon receipt of a complaint pursuant to **WAC 392-190-075**, shall consider

several factors, including but not limited to the following where provided by a school district:

(1) Whether the selection of sports and levels of competition effectively accommodates the interests and abilities of members of both sexes;

- (2) The provision of equipment and supplies;
- (3) The scheduling of games and practice times including the use of playfields, courts, gyms, and pools;
- (4) Transportation and per diem allowances, if any;
- (5) The opportunity to receive coaching and academic tutoring;
- (6) The assignment and compensation of coaches, tutors, and game officials;
- (7) The provision of medical and training facilities and services including the availability of insurance;
- (8) The provision of housing, laundry, and dining facilities and services, if any; and
- (9) Publicity and awards.

Unequal aggregate expenditures within a school district for members of each sex or unequal expenditures for separate male and female teams will not alone constitute noncompliance with this chapter, but the failure to provide the necessary funds for recreational and athletic activities for members of one sex may be considered in assessing the equality of opportunity for members of each sex.

**READOPTED SECTION** (Readopting Order 80-26, filed 7/9/80)

**WAC 392-190-035 RECREATIONAL AND ATHLETIC ACTIVITIES—COMPLIANCE TIMETABLE—ELEMENTARY AND SECONDARY LEVEL.** (1) Each school district which operates, sponsors, or otherwise provides interscholastic, club or intramural athletics at the elementary school level (K-6) shall provide equal opportunity and encouragement for physical and skill development to all students in the elementary grades consistent with this chapter.

(2) Each school district which operates, sponsors, or otherwise provides interscholastic, club or intramural athletics at the secondary school level (7-12) shall provide equal opportunity and encouragement for physical and skill development to all students in the secondary grades consistent with this chapter.

**READOPTED SECTION** (Readopting Order 80-26, filed 7/9/80)

**WAC 392-190-040 RECREATIONAL AND ATHLETIC ACTIVITIES—STUDENT INTEREST—REQUIRED SURVEY INSTRUMENT.** (1) The superintendent of public instruction shall develop a survey instrument to assist each school district in the determination of student interest for male/female participation in specific sports.

(2) A survey instrument shall be administered by each school district at all grade levels where interscholastic, intramural and other sports and recreational activities are conducted. The results of the survey shall be considered in the program planning and development in the area of recreational and athletic activities offered within the school district.

(3) A survey instrument developed pursuant to this section shall be administered at least once every three years within each school district: **PROVIDED**, That the content of the survey instrument may be modified or amended as deemed appropriate to clarify and assist in the evaluation of student interest.

**READOPTED SECTION** (Readopting Order 80-26, filed 7/9/80)

**WAC 392-190-045 RECREATIONAL AND ATHLETIC ACTIVITIES—FACILITIES.** A school district which provides athletic facilities for members of one sex including showers, toilets, and training room facilities for athletic purposes shall provide comparable facilities for members of the opposite sex: **PROVIDED**, That such facilities may be provided as either separate facilities or shall be scheduled and used separately by members of each sex: **PROVIDED FURTHER**, That this section shall not be interpreted to require the construction of additional facilities.

**READOPTED SECTION** (Readopting Order 80-26, filed 7/9/80)

**WAC 392-190-050 COURSE OFFERINGS—GENERALLY—SEPARATE SESSIONS OR GROUPS PERMISSIBLE.** No school district shall provide any course or otherwise carry out any of its education programs or activities separately on the basis of sex, or require or refuse participation therein by any of its students on such basis, including but not limited to health, physical education, industrial arts,

business, vocational-technical, and home economics courses: **PROVIDED**, That this section shall not be construed to prohibit:

(1) The grouping of students in physical education classes and activities by demonstrated ability as assessed by objective standards of individual performance developed and applied without regard to sex: **PROVIDED**, That where use of a single standard of measuring skill or progress in a physical education class has an adverse effect on members of one sex, the school district shall immediately implement appropriate standards which do not have such effect;

(2) The separation of students by sex within physical education classes or activities offered for students in grades 7 through 12 if (a) it can clearly be shown under the factual circumstances involved in the particular case, that the maintenance of a separate physical education class or activity for boys and girls truly constitutes the best method of providing both sexes, as a whole, with an equal opportunity to participate in such class or activity and (b) at the same time, a test of substantial equality between the two classes or activities can be found to have been met;

(3) The conduct of separate sessions for boys and girls with respect to those portions of classes which deal exclusively with human sexuality; and

(4) The conduct of classes and/or activities within which a school district may establish or maintain requirements based on vocal range or quality which may result in a chorus or choruses of one or predominantly one sex.

**READOPTED SECTION** (Readopting Order 80-26, filed 7/9/80)

**WAC 392-190-055 TEXTBOOKS AND INSTRUCTIONAL MATERIALS—SCOPE—ELIMINATION OF SEX BIAS—COMPLIANCE TIMETABLE.** (1) It is the intent of this section to eliminate sex bias in connection with any form of instruction provided by a school district.

(2) The instructional materials policy of each school district required by RCW 28A.58.103 shall incorporate therein, as part of the selection criteria, a specific statement requiring the elimination of sex bias in all textbooks and instructional materials including reference materials and audio-visual materials.

(3) The instructional materials committee of each school district shall establish and maintain appropriate screening criteria designed to identify and eliminate sex bias in all textbooks and instructional materials including reference materials and audio-visual materials: **PROVIDED**, That such selection criteria shall be consistent with the selection criteria endorsed by the state board of education dated December 6, 1974, WAC 180-48-010, as now or hereafter amended, and WAC 180-46-005 through 180-46-060, as now or hereafter amended. One of the aids to identification of sex bias in instructional materials consists of the Washington Models for the Evaluation of Bias Content in Instructional Materials published by the superintendent of public instruction.

(4) In recognition of the fact that current instructional materials which contain sex bias may not be replaced immediately, each school district should acquire supplemental instructional materials or aids to be used concurrent with existing materials for the purpose of countering the sex bias content thereof.

(5) Nothing in this section is intended to prohibit the use or assignment of supplemental instructional materials such as classic and contemporary literary works, periodicals and technical journals which, although they contain sex bias, are educationally necessary or advisable.

**READOPTED SECTION** (Readopting Order 6-76, filed 5/17/76)

**WAC 392-190-060 COMPLIANCE—LOCAL SCHOOL DISTRICT—DESIGNATION OF RESPONSIBLE EMPLOYEE—NOTIFICATION.** (1) The superintendent of each school district shall immediately designate at least one employee who shall be responsible directly to the superintendent for monitoring and coordinating the district's compliance with this chapter. The employee designated pursuant to this section shall also be charged with the responsibility to investigate any complaint(s) communicated to the school district pursuant to WAC 392-190-065.

(2) Each school district shall, once each year or more often as deemed necessary, publish notice in a manner which is reasonably calculated to inform all students, students' parents, and employees of the name, office address and telephone number of the employee or employees appointed pursuant to this section and the appeal procedure set forth in WAC 392-190-065, WAC 392-190-070 and WAC 392-190-075 as now or hereafter amended.

**READOPTED SECTION** (Readopting Order 6-76, filed 5/17/76)

**WAC 392-190-065 COMPLIANCE—COMPLAINT PROCEDURE—DISTRICT SUPERINTENDENT.** (1) Upon receipt of a complaint by a school district in the manner herein described, the employee or employees designated pursuant to WAC 392-190-060 shall investigate the allegations set forth and shall institute such other reasonable procedures to effect a prompt resolution of the complaint: **PROVIDED**, That each complaint communicated to the school district shall be (a) written, (b) signed by the complaining party, and (c) set forth specific acts, conditions, or circumstances alleged to be violative of this chapter or the specific acts, conditions, or circumstances that would be prohibited by this chapter.

(2) Upon completion of the investigation required by this section in connection with a complaint communicated to the school district, the designated employee or employees shall provide the district superintendent with a full written report of the complaint and the results of the investigation. The district superintendent shall respond in writing to the complaining party as expeditiously as possible but in no event later than thirty calendar days following receipt of such complaint by the school district.

(3) The response of the school district superintendent required by this section shall clearly state either (a) that the school district denies the allegations contained in the complaint received pursuant to this section, or (b) the nature of such reasonable corrective measures deemed necessary to eliminate any such act, condition, or circumstance within the school district: **PROVIDED**, That any such corrective measures deemed necessary shall be instituted as expeditiously as possible but in no event later than thirty calendar days following the school district superintendent's mailing of a written response to the complaining party required by this section.

(4) The complaint procedure required by this section shall not prohibit the processing of grievances by an employee bargaining representative and/or a member of a bargaining unit pursuant to grievance procedures established at the school district level by local bargaining agreement.

**READOPTED SECTION** (Readopting Order 6-76, filed 5/17/76)

**WAC 392-190-070 COMPLIANCE—APPEAL PROCEDURE—LOCAL SCHOOL BOARD.** (1) In the event a complainant remains aggrieved as a result of the action or inaction of the superintendent in resolving a complaint as provided in WAC 392-190-065, said complainant may appeal to the school district board of directors by filing a written notice of appeal with the secretary of the school board on or before the tenth day following (a) the date upon which the complainant received the superintendent's response or (b) the expiration of the thirty day response period provided by WAC 392-190-065, whichever occurs first.

(2) An appeal to the board of directors pursuant to this section shall require the board of directors to schedule a hearing to commence on or before the twentieth day following the filing of the written notice of appeal. Both parties shall be allowed to present such witnesses and testimony as the board deems relevant and material. The board of directors shall render a written decision on or before the tenth day following the termination of the hearing, and shall provide a copy to all parties involved.

**READOPTED SECTION** (Readopting Order 80-26, filed 7/9/80)

**WAC 392-190-075 COMPLIANCE—CONTESTED CASE—DUTY OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION.** (1) In the event a complainant remains aggrieved with the decision of a school district board of directors rendered pursuant to WAC 392-190-070, the complainant may appeal the board's decision to the superintendent of public instruction. Upon the receipt of a notice of appeal filed in compliance with this section, the superintendent of public instruction shall schedule a hearing to commence on or before the fortieth day thereafter.

(2) A notice of appeal must be received by the superintendent on or before the tenth day following the date upon which the complainant received written notice of the school board's decision. Furthermore, the notice must be in writing and must set forth (a) a concise statement of the portion or portions of the school board's decision which is appealed from, and (b) the relief requested by the complainant/appellant.

(3) Appeals to the superintendent shall be conducted de novo pursuant to the state Administrative Procedure Act (chapter 34.04 RCW).

The complainant/appellant shall have the responsibility for prosecuting his or her case and the school district/respondent shall have the duty of defending the decision or portion thereof appealed.

**READOPTED SECTION** (Readopting Order 6-76, filed 5/17/76)

**WAC 392-190-080 COMPLIANCE—VIOLATIONS—PERMISSIBLE SANCTIONS.** In the event a school district is found to be in violation of the requirements of this chapter, the superintendent of public instruction may, by appropriate order pursuant to chapter 34.04 RCW, impose an appropriate sanction or institute appropriate corrective measures, including but not limited to (a) the termination of all or part of state apportionment or categorical moneys to the offending school district, (b) the termination of specified programs wherein such violation or violations are found to be flagrant in nature, (c) the institution of a mandatory affirmative action program within the offending school district, and (d) the placement of the offending school district on probation with appropriate sanctions until such time as compliance is achieved or is assured, whichever is deemed appropriate in the particular case by the superintendent of public instruction.

**READOPTED SECTION** (Readopting Order 80-8, filed 4/15/80)

**WAC 392-137-001 PURPOSES.** The purposes of this chapter are: (1) To implement RCW 28A.58.240 by setting forth arrangements deemed approved by the superintendent of public instruction under which nonresident and resident students may attend the preschool through twelfth grade programs of any school district without tuition charge;

(2) To implement RCW 28A.58.240 by establishing a reasonable tuition charge for nonresident and resident students whose attendance arrangements in preschool through twelfth grade programs have not been deemed approved by the superintendent of public instruction; and

(3) To implement RCW 28A.58.242 by establishing procedures for filing and conducting appeals from the decision of a resident school district to deny the release of a student to a nonresident district.

**READOPTED SECTION** (Readopting Order 80-8, filed 4/15/80)

**WAC 392-137-002 ARRANGEMENTS DEEMED APPROVED—RETENTION AND FILING OF.** Any arrangement for the attendance of students which is documented in writing and consistent with this chapter shall be deemed approved by the superintendent of public instruction.

Attendance agreements and district policies required by this chapter shall be retained by each district as public records and submitted to the superintendent of public instruction upon request.

**READOPTED SECTION** (Readopting Order 80-8, filed 4/15/80)

**WAC 392-137-003 NONRESIDENT ATTENDANCE EXEMPT FROM CHAPTER PROVISIONS.** The following nonresident attendance arrangements are exempt from the provisions of this chapter:

(1) Interdistrict cooperation programs conducted in accordance with RCW 28A.58.075(7) and chapter 392-135 WAC;

(2) Programs temporarily conducted in behalf of another school district in accordance with RCW 28A.58.225; and

(3) Reciprocity programs with contiguous out-of-state school districts conducted pursuant to RCW 28A.58.250.

Nonresident attendance arrangements exempted from the provisions of this chapter by this section, as now or hereafter amended, are governed by the statutes and rules referenced above and by the rules or policies of a school district that supplement the referenced rules or statutes.

**READOPTED SECTION** (Readopting Order 83-11, filed 8/18/83)

**WAC 392-137-010 DEFINITIONS.** As used in this chapter, the term: (1) "Residence" shall mean the physical location of a student's principal abode—i.e., the home, house, apartment, etc., within which the student lives the majority of the time. The mailing address of the student—e.g., parent's address or post office box—may be different than the student's principal abode.

(2) "Resident student" shall mean a student:

(a) Whose residence is within the school district of attendance; or

(b) Whose residence is within the boundaries of any military, naval, lighthouse, other United States reservation, national park, national forest, or Indian reservation (provided the student resides upon rented

or leased undeeded lands within the Indian reservation) which is contiguous to the school district of attendance; or

(c) Whose residence is within a school district which does not carry the grades for which the student is eligible to enroll (e.g., a non-high school district).

(3) "Nonresident student" shall mean any student other than a resident student whose residence is within the state of Washington.

(4) "Resident district" shall mean the Washington state school district or districts of which a student is considered to be a resident.

(5) "Nonresident district" shall mean any school district other than a resident school district.

**READOPTED SECTION** (Readopting Order 7-75, filed 12/22/75)

**WAC 392-137-015 PERSONS ENTITLED TO ATTEND—TUITION-FREE.** A resident student as defined in WAC 392-137-010(2) who is between the ages of four and twenty-one is entitled as a matter of right to attend grades kindergarten through twelve conducted by or in cooperation with the district or districts considered to be his or her resident district tuition-free: PROVIDED, That the student is otherwise eligible to enroll.

**READOPTED SECTION** (Readopting Order 84-37, filed 10/2/84)

**WAC 392-137-020 NONRESIDENT STUDENTS UNDER THE AGE OF TWENTY-ONE—MUTUAL AGREEMENT BETWEEN RESIDENT AND NONRESIDENT DISTRICT REQUIRED.** (1) A nonresident student who is under the age of twenty-one may be admitted tuition free (but see permissive tuition in WAC 392-137-045(1)) by a nonresident district only pursuant to an agreement between the student's resident district and the nonresident district or pursuant to an order of the superintendent of public instruction pursuant to RCW 28A.58.242 and WAC 392-137-065 or pursuant to an order of a court of law. In the event the student is considered to be a resident of more than one district pursuant to the definition of "resident student" set forth in WAC 392-137-010(2), the agreement shall be between the nonresident district and the district in which the student was last enrolled and is considered to be a resident.

(2) A student's attendance shall be credited in all cases to the school district of enrollment unless:

(a) The superintendent of public instruction is notified by order of the board of directors of a student's resident district provided for in subsection (1) that the student is a resident of its district and is attending a nonresident district without authorization pursuant to an agreement or order of the superintendent or a court of law releasing the student, and

(b) it is established that the student is a resident of the district and that neither such an agreement nor order of the superintendent or a court of law exists.

(3) In the event a district claims that a student attending another district is a resident of its district, the board of directors of such district, in its order, shall set forth the correct residence of the student and the facts upon which such determination was made. A copy of such order shall be provided to the student and the district of enrollment. If the student or the district of enrollment protests the correctness of the student's residence, the board of directors of the district of enrollment shall cause the matter to be investigated and determine within forty-five calendar days whether the student is a resident of the district of enrollment and the district thereby is entitled to claim the student for apportionment purposes. The superintendent of public instruction shall consider the decision of the board of directors of the district of enrollment final unless set aside by a court of law.

(4) In the event it is so established that a student is enrolled in a nonresident district without authorization, the basic education allocation and other state payments in connection with the student's enrollment shall be discontinued until:

(a) The student enrolls in a resident district,

(b) An agreement required by subsection (1) is entered into, or

(c) The superintendent or a court of law orders the release of the student.

(5) In the event an agreement is entered into or the superintendent of public instruction or a court of law orders the release of the student, the basic education entitlement shall be allocated to the nonresident district for the period of the agreement or the order which may be retroactive to the month in which such entitlement was discontinued.

**READOPTED SECTION** (Readopting Order 7-75, filed 12/22/75)

WAC 392-137-025 **NONRESIDENT STUDENTS TWENTY-ONE YEARS OF AGE OR OLDER—AGREEMENT BETWEEN STUDENT AND NONRESIDENT DISTRICT REQUIRED.** A nonresident student who is twenty-one years of age or older may be admitted by a nonresident district only pursuant to an agreement between the nonresident student and the nonresident district.

**READOPTED SECTION** (Readopting Order 7-75, filed 12/22/75)

WAC 392-137-030 **RESIDENT STUDENTS TWENTY-ONE YEARS OF AGE OR OLDER—AGREEMENT BETWEEN STUDENT AND RESIDENT DISTRICT REQUIRED.** A resident student who is twenty-one years of age or older may be admitted only pursuant to an agreement between the resident student and the resident district.

**READOPTED SECTION** (Readopting Order 7-75, filed 12/22/75)

WAC 392-137-035 **CONTENTS OF AGREEMENTS.** Agreements required by WAC 392-137-020, 392-137-025, and 392-137-030 shall set forth:

- (1) The name, age, and grade level of attendance of the student;
- (2) The duration of the agreement;
- (3) A finding that the student, if a nonresident, will be best accommodated in the nonresident district; and
- (4) Such other terms and conditions as the parties deem advisable and as are consistent with this chapter.

**READOPTED SECTION** (Readopting Order 83-11, filed 8/18/83)

WAC 392-137-040 **DISTRICT POLICIES—PROCEDURES AND CRITERIA FOR RELEASE OF RESIDENT STUDENTS AND ADMISSION OF NONRESIDENT STUDENTS.** Each school district board of directors shall adopt policies which specify the procedures and criteria pursuant to which resident students under the age of twenty-one may be released to nonresident districts and nonresident students and resident students twenty-one years of age or older may be admitted.

Districts shall grant requests for the release of resident students and requests for the admission of nonresident and resident students only on the basis of the order in which such requests are made and without preference: **PROVIDED**, That preference may be granted in those cases in which the attendance requested would likely alleviate to a significant extent an existing or probable special hardship or detrimental condition of a financial, educational, safety, or health nature affecting the student or the student's immediate family or custodian: **PROVIDED FURTHER**, That if a student, or in the case of a minor, the student's parent(s), guardian, or custodian requests a hearing before the board of directors of the resident district and the resident district fails to provide such a hearing within sixty calendar days of receipt of such request for a hearing, the resident district, for the purposes of this chapter, shall be deemed to have released such student to attend the nonresident district.

**READOPTED SECTION** (Readopting Order 83-11, filed 8/18/83)

WAC 392-137-045 **TUITION—ENROLLMENT IN COMPLIANCE OR NONCOMPLIANCE WITH AN ARRANGEMENT.**

(1) The tuition for nonresident students and for resident students twenty-one years of age or older who are enrolled pursuant to the provisions within this chapter or pursuant to an order of the superintendent of public instruction or a court of law releasing the student from his or her resident district, if any tuition is charged, shall be established by the school district of enrollment. In order to avoid infringements upon an individual's right to equal protection of the law, in the event tuition is charged any such student, tuition should be charged all nonresident students and resident students twenty-one years of age or older on the basis of a uniform rate or on the basis of a uniformly applied formula (e.g., tuition based upon the difference between the cost of educating a student in the district or at the grade level of attendance and state and federal funds accruing to the district as a result of the student's enrollment and/or attendance).

(2) In the event it is established by the school district of enrollment or by the superintendent of public instruction pursuant to WAC 392-137-020(2) that a student under twenty-one years of age has been enrolled in a nonresident district without an arrangement prescribed by this chapter, the district of enrollment shall have no discretion as to the

tuition to be charged such student. In all such cases, the arrangements for the student's enrollment shall be considered disapproved by the superintendent of public instruction and tuition equal to the per pupil cost of the district of enrollment for the previous school year as computed on Form F-196, Part II, shall be charged the student or if the district has established a higher charge for any nonresident student or resident student twenty-one years of age or older, then an amount equal to such higher charge shall be charged the student for a full school year. Any such tuition charge, however, may be ratably reduced in the event the student is enrolled part-time and/or for less than a full school year.

**READOPTED SECTION** (Readopting Order 80-8, filed 4/15/80)

WAC 392-137-051 **RIGHT OF APPEAL.** Any student eighteen years of age or more but less than twenty-one years of age, or, in the case of a minor, the student's parent(s), guardian(s), or custodian(s) may appeal the decision of the school district within which the student resides, or the decision of the school district within which the student was last enrolled and is considered to be a resident for attendance purposes by operation of law, to deny the student's request for release to a nonresident school district made pursuant to this chapter to the superintendent of public instruction.

**READOPTED SECTION** (Readopting Order 83-11, filed 8/18/83)

WAC 392-137-055 **APPEAL NOTICE.** (1) Requests for appeal shall be written, signed, and directed to the superintendent of public instruction. Any such notice of appeal shall set forth or be accompanied by the following information:

(a) The name, age, grade level, and residence address of the student and the name, mailing address, and the legal relationship of the person, if any, filing the notice of appeal on behalf of the student;

(b) The school district of residence on the date of the school district's decision to deny a release;

(c) The date of the school district's decision to deny a release;

(d) Either a copy of the minutes of the board of directors of the resident school district which establishes that the board has denied a request to release the student or a written statement by the superintendent of the resident district that the board has taken action denying such a request;

(e) Either a copy of the minutes of the board of directors of the nonresident school district to which a release has been requested that establishes the nonresident district is willing to accept the student or a written statement of the superintendent of the nonresident district that the board has taken action accepting the student or that the board has established a policy accepting all students who are released by an order of the superintendent of public instruction or the court;

(f) An explanation of the special hardship or detrimental condition of a financial, educational, safety, or health nature affecting the student or the student's immediate family or custodian that exists or would exist as a result of the student's attendance in the resident district;

(g) An explanation of how attendance in the nonresident district would allegedly alleviate such special hardship or detrimental condition to a significant extent.

(2) Upon receipt of a notice of appeal which complies with subsection (1) the superintendent of public instruction or his or her designee shall schedule a hearing and provide a notice as required by RCW 34.04.090(1) to the appellant and the school district that denied the student's release.

**READOPTED SECTION** (Readopting Order 87-6, filed 4/28/87)

WAC 392-137-060 **HEARING.** The hearing provided for in WAC 392-137-055(2) shall be conducted in compliance with chapter 392-101 WAC.

**READOPTED SECTION** (Readopting Order 83-11, filed 8/18/83)

WAC 392-137-065 **GROUND FOR ORDER OF RELEASE.**

(1) It shall be the policy of the superintendent of public instruction to order the release of a student to a nonresident district only in those cases in which the evidence establishes:

(a) That a special hardship or detrimental condition of the nature and effect identified in WAC 392-137-055 (1)(f) exists; and

(b) That such special hardship or detrimental condition is likely to be alleviated to a significant extent in the event the student's release is ordered.

(2) It shall not be the policy of the superintendent of public instruction to order the release of a student to a nonresident district for the purpose of providing enrichment of educational opportunity unless the evidence also establishes:

(a) That a particular student has a unique need for the enrichment of educational opportunity;

(b) That the lack of enrichment of educational opportunity is a special hardship or detrimental condition of the nature and effect identified in WAC 392-137-055 (1)(f) for a particular student; and

(c) That such special hardship or detrimental condition is likely to be alleviated to a significant extent for that particular student in the event the student's release is ordered.

READOPTED SECTION (Readopting Order 83-11, filed 8/18/83)

WAC 392-137-070 PER SE SPECIAL HARDSHIP OR DETRIMENTAL HARDSHIPS. The following conditions are judged by the superintendent of public instruction to constitute a special hardship or detrimental condition, the proof of which is a per se condition for the order of a release:

(1) A student who was enrolled the previous school year in a nonresident district who will complete in the same nonresident district during the current school year the highest grade offered in the resident district; and

(2) A student who has completed two or more school years in a nonresident district without a release but with the knowledge of such nonresident attendance by the superintendent or any member of the board of directors of the resident district.

**WSR 89-16-013**

**PROPOSED RULES**

**SUPERINTENDENT OF PUBLIC INSTRUCTION**

[Filed July 21, 1989, 4:00 p.m.]

Original Notice.

Title of Rule: Chapter 392-196 WAC, School personnel—Teacher assistance program.

Purpose: To set forth policies and procedures for a teacher assistance program.

Statutory Authority for Adoption: RCW 29A.67.240 [28A.67.240].

Name of Agency Personnel Responsible for Drafting: Richard M. Wilson, Old Capitol Building, 753-2298; and Implementation: Doyle Winter, Old Capitol Building, 753-1880.

Name of Proponent: Superintendent of Public Instruction, governmental.

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

Proposal does not change existing rules.

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

Hearing Location: Wanamaker Conference Room, Old Capitol Building, Olympia, Washington, on September 8, 1989, at 9:00 a.m.

Date of Intended Adoption: September 8, 1989.

July 21, 1989

Judith A. Billings  
Superintendent of  
Public Instruction

AMENDATORY SECTION (Amending Order 87-13, filed 11/5/87)

WAC 392-196-011 DEFINITION—TEACHER(=~~DEFINITION~~). As used in this chapter the term "teacher" means any school employee possessing any one of the certificates issued by the superintendent of public instruction under RCW 28A.70.005: PROVIDED,

That such employees who hold administrator credentials and are employed as administrators shall not be included for purposes of this chapter.

AMENDATORY SECTION (Amending Order 85-12, filed 10/15/85)

WAC 392-196-015 DEFINITION—MENTOR TEACHER(=~~DEFINITION~~). As used in this chapter, the term "mentor teacher" shall mean a classroom teacher who has been selected by a school district to provide continuing and sustained support to a beginning teacher, both in and outside the classroom.

AMENDATORY SECTION (Amending Order 88-20, filed 8/31/88)

WAC 392-196-020 DEFINITION—MENTOR TEACHER STIPEND(=~~DEFINITION~~). As used in this chapter, the term "mentor teacher stipend" shall mean an amount paid by a school district to a mentor teacher for services as a mentor teacher including three days attendance at the (~~superintendent of public instruction sponsored beginner-mentor teacher~~) required workshops or training sessions. Such stipend, including the amount and conditions applicable, shall be set forth in a supplemental contract in accordance with and subject to the provisions of RCW 28A.67.074.

AMENDATORY SECTION (Amending Order 85-12, filed 10/15/85)

WAC 392-196-025 (~~(MENTOR TEACHER STIPEND—MINIMUM AMOUNT)~~) DEFINITION—BEGINNING TEACHER. (~~The minimum amount per school year of the mentor teacher stipend shall be nine hundred fifty dollars.~~) As used in this chapter, the term "beginning teacher" shall mean a teacher with fewer than ninety consecutive school days of certificated teaching experience in either a public or private school in any grade, preschool through twelve, and who is employed by the district for ninety consecutive school days or more.

AMENDATORY SECTION (Amending Order 87-13, filed 11/5/87)

WAC 392-196-030 (~~(MENTOR TEACHER QUALIFICATIONS FOR NOMINATION)~~) DEFINITION—BEGINNING TEACHER/EXPERIENCED TEACHER STIPEND. (~~In order to be nominated to serve as a mentor teacher pursuant to WAC 392-196-035, the teacher shall meet the following minimum qualifications:~~

(1) Be employed full-time primarily as a teacher.

(2) Have been employed primarily as a teacher for one school year within the district and two additional school years within any public or private school in any grade, preschool through twelve.

(3) Hold a valid continuing certificate issued pursuant to chapter 180-79 WAC or be eligible for conversion to such certificate pursuant to WAC 180-79-045.) As used in this chapter, the term "beginning teacher stipend" shall mean an amount paid by a school district to a beginning teacher/experienced teacher for three days of attendance at the required workshops or training sessions. Such stipend, including the amount and conditions applicable, shall be set forth in a supplemental contract in accordance with and subject to the provisions of RCW 28A.67.074.

AMENDATORY SECTION (Amending Order 85-12, filed 10/15/85)

WAC 392-196-035 (~~(MENTOR TEACHER SELECTION PROCESS)~~) DEFINITION—EXPERIENCED TEACHER. (~~Mentor teachers shall be selected by the district. If a bargaining unit, certified pursuant to RCW 41.59.090 exists within the district, classroom teachers representing the bargaining unit shall participate in the mentor teacher selection process.~~) As used in this chapter, the term "experienced teacher" means a teacher not included in the "beginning teacher" population, as defined in WAC 392-196-040.

AMENDATORY SECTION (Amending Order 87-13, filed 11/5/87)

WAC 392-196-040 (~~(BEGINNING TEACHER)~~) DEFINITION—EDUCATIONAL SERVICE DISTRICT SPONSORED WORKSHOP. As used in this chapter, the term (~~"beginning teacher"~~) shall mean a teacher with fewer than ninety consecutive school days of certificated teaching experience in either a public or private school in



any grade, preschool through twelve, and who is employed by the district for ninety consecutive school days or more)) "educational service district sponsored workshop" shall mean an in-service training program sponsored by the educational service district for the purpose of providing professional training for beginning/experienced teachers and mentors with particular emphasis upon improving communications skills and developing support teams. Such workshops shall be no more than one day in length and shall not be held during school hours.

**AMENDATORY SECTION** (Amending Order 88-20, filed 8/31/88)

WAC 392-196-045 ((~~BEGINNING TEACHER STIPEND~~)) **DEFINITION—SCHOOL DISTRICT WORKSHOPS.** As used in this chapter, the term ("~~beginning teacher stipend~~" shall mean an amount paid by a school district to a beginning teacher for two days of attendance at the superintendent of public instruction sponsored beginner-mentor teacher workshops. Such stipend, including the amount and conditions applicable, shall be set forth in a supplemental contract in accordance with and subject to the provisions of RCW 28A.67.074)) "school district workshops" shall mean an in-service training program sponsored or approved by the school district for the purpose of providing professional training for the mentors and the beginning or participating experienced teachers in one or more of the following:

- (1) Communication skills;
- (2) Teacher effectiveness; and/or
- (3) School district policies and procedures.

Such workshops shall be no longer than two days in length, but need not be consecutive days, and shall not be held during school hours. School districts will be provided fifty dollars per team, per workshop to support the costs associated with providing two days of training.

**AMENDATORY SECTION** (Amending Order 88-20, filed 8/31/88)

WAC 392-196-050 ((~~BEGINNING~~)) **MENTOR TEACHER STIPEND—MINIMUM AMOUNT.** The minimum amount per school year of the ((~~beginning~~)) mentor teacher stipend shall be ((~~one~~)) nine hundred ((~~sixty~~)) fifty dollars.

**AMENDATORY SECTION** (Amending Order 88-20, filed 8/31/88)

WAC 392-196-055 ((~~SPI SPONSORED BEGINNING AND MENTOR TEACHER WORKSHOP—DEFINITION~~)) **MENTOR TEACHER—QUALIFICATIONS FOR NOMINATION.** ((As used in this chapter, the term "superintendent of public instruction sponsored beginning and mentor teacher workshop" shall mean an in-service training program sponsored by the superintendent of public instruction for the purpose of providing professional training for mentor and beginning teachers in the methods and procedures for performing such roles with particular emphasis upon providing continuing and sustained support by the mentor teacher to a beginning teacher. Such workshops shall be no more than three days in length for the mentor and two days in length for the beginner, but need not be consecutive days, and shall not be held during school hours.)) In order to be nominated to serve as a mentor teacher pursuant to WAC 392-196-035, the teacher shall meet the following minimum qualifications:

- (1) Be employed full time primarily as a teacher.
- (2) Have been employed primarily as a teacher for one school year within the district and two additional school years within any public or private school in any grade, preschool through twelve.
- (3) Hold a valid continuing certificate issued pursuant to chapter 180-79 WAC or be eligible for conversion to such certificate pursuant to WAC 180-79-045.

**AMENDATORY SECTION** (Amending Order 88-20, filed 8/31/88)

WAC 392-196-060 ((~~SCHOOL DISTRICT APPLICATION TO SPI FOR PARTICIPATION IN THE TEACHER ASSISTANCE PROGRAM~~)) **MENTOR TEACHER—SELECTION PROCESS.** ((Any district may apply to the superintendent of public instruction for participation in the teacher assistance program. The application shall require the superintendent of the district to provide the following assurances:

- (1) The board of directors of the district has reviewed the requirements of this chapter and has agreed to the conditions therein.
- (2) The mentor teacher shall be paid a mentor teacher stipend.
- (3) The beginning teacher shall be paid a beginning teacher stipend.

(4) The mentor and beginning teacher shall be required to attend and shall be reimbursed by the district for travel expenses for attendance at the superintendent of public instruction sponsored beginner-mentor teacher workshops.

(5) The mentor teacher, the beginning teacher, and the experienced teacher shall be released from teaching responsibilities in order to jointly or separately observe each other or observe colleagues in teaching situations.

(6) The total released time from classroom teaching as required by subsection (5) of this section shall be at least twenty-four scheduled instructional hours per school year but no more than twenty-four scheduled instructional hours shall be paid for with funds made available under this chapter.

(7) Mentor teachers shall not be involved in evaluations of their beginning or experienced teachers conducted pursuant to RCW 28A.67.065.

(8) The mentor teacher, beginning teacher, and experienced teacher shall be required to complete and forward to the superintendent of public instruction such evaluation reports of the teacher assistance program as requested by the superintendent of public instruction.

(9) Mentor teachers shall periodically inform their principals respecting the contents of training sessions and other program activities.

(10) The superintendent of the district shall supply the superintendent of public instruction, at times specified by the superintendent of public instruction, such information as requested regarding the teacher assistance program.)) Mentor teachers shall be selected by the district. If a bargaining unit, certified pursuant to RCW 41.59.090 exists within the district, classroom teachers representing the bargaining unit shall participate in the mentor teacher selection process.

**NEW SECTION**

WAC 392-196-066 **BEGINNING TEACHER/EXPERIENCED TEACHER STIPEND—MINIMUM AMOUNT.** The minimum amount of the beginning teacher/experienced teacher stipend shall be two hundred forty dollars.

**AMENDATORY SECTION** (Amending Order 88-20, filed 8/31/88)

WAC 392-196-070 ((~~SCHOOL DISTRICT SELECTION PROCESS AND STATE PRIORITIES~~)) **EXPERIENCED TEACHER PARTICIPATION.** ((The selection process and priorities shall be as follows for the 1988-89 school year:

(1) Beginning teacher and mentor teams will be selected on the following basis:

- (a) Beginning teacher and mentor assigned to the same building and teaching in the same endorsement area.
- (b) Beginning teacher and mentor assigned to the same building and teaching in a related endorsement area (e.g., social studies-English or mathematics-science).
- (c) Beginning teacher and mentor assigned to different buildings, but teaching in the same endorsement area.

(2) The process used to select beginner and mentor teacher teams shall be as follows:

(a) Applications received between July 15 and August 15 that meet the priority criteria set forth in subsection (1)(a) and (b) of this section will be accepted in accordance with the priority and the date the application is received in the office of the superintendent of public instruction subject to availability of funds.

(b) If funds are still available after the initial application period, a second application period will be established from August 15 to September 25. Selection priorities will remain the same as set forth herein.)) "Experienced teachers" shall not be required to participate in this program. Districts shall be reimbursed for up to twenty-four hours substitute teacher expenses (per team) associated with participation of experienced teachers if such funds are available after all nominated beginning teachers have been included.

**AMENDATORY SECTION** (Amending Order 88-20, filed 8/31/88)

WAC 392-196-075 ((~~ANNUAL AMOUNT FOR DISTRIBUTION TO PARTICIPATING SCHOOL DISTRICTS~~)) **EXPERIENCED TEACHER—SELECTION CRITERIA.** ((The superintendent of public instruction annually shall establish a dollar amount per beginning teacher-mentor teacher team for distribution to districts for support of the teacher assistance program. Such distribution shall be used by the district exclusively for the following:

- (1) Mentor teacher stipends.

(2) Travel expenses of the mentor and beginning teachers for attendance at the superintendent of public instruction beginner-mentor teacher workshops.

(3) Substitute teacher salaries for released time for mentor, beginner, and experienced teachers.

(4) Beginning teacher stipends.

(5) Appropriate fringe benefits associated with mentor and beginning teacher stipends:)) "Experienced" teachers who meet one of the following criteria may be nominated for participation in the teacher assistance program:

(1) Teachers assigned to a different subject area or grade level from previous assignment(s).

(2) Teachers reentering the teaching profession.

(3) Teachers who have substitute taught ninety consecutive days or more, but have not had a regular contract.

(4) Teachers newly hired by the school district.

#### AMENDATORY SECTION (Amending Order 88-20, filed 8/31/88)

WAC 392-196-080 ((~~DISTRIBUTION OF STATE MONEYS FOR~~) SCHOOL DISTRICT APPLICATION TO SPI FOR PARTICIPATION IN THE TEACHER ASSISTANCE PROGRAM. ((The superintendent of public instruction shall issue grant awards for the 1988-89 school year for a maximum of one thousand six hundred dollars per mentor-beginning teacher team:)) Any district may apply to the superintendent of public instruction for participation in the teacher assistance program. The application shall require the superintendent of the district to provide the following assurances:

(1) The board of directors of the district has reviewed the requirements of this chapter and has agreed to the conditions therein.

(2) The mentor teacher shall be paid a mentor teacher stipend.

(3) The beginning/experienced teacher shall be paid a beginning/experienced teacher stipend.

(4) The beginning/experienced teacher and mentor shall be required to attend and shall be reimbursed by the district for travel expenses for attendance at the educational service district sponsored workshops or training sessions.

(5) The mentor teacher, the beginning teacher, and the experienced teacher shall be released from teaching responsibilities in order to jointly or separately observe each other or observe colleagues in teaching situations.

(6) The district shall provide for or approve two days of workshops as training sessions as defined in WAC 392-196-045. The mentor and beginning or participating experienced teacher shall be required to attend together and shall be reimbursed by the district for expenses for attendance at the two school district sponsored or approved workshops or training sessions.

(7) The total released time from classroom teaching as required by subsection (5) of this section shall be at least twenty-four scheduled instructional hours per school year but no more than twenty-four scheduled instructional hours shall be paid for with funds made available under this chapter.

(8) Mentor teachers shall not be involved in evaluations of their beginning or experienced teachers conducted pursuant to RCW 28A.67.065.

(9) The mentor teacher, beginning teacher, and experienced teacher shall be required to complete and forward to the superintendent of public instruction such evaluation reports of the teacher assistance program as requested by the superintendent of public instruction.

(10) Mentor teachers shall periodically inform their principals respecting the contents of training sessions and other program activities.

(11) The superintendent of the district shall supply the superintendent of public instruction, at times specified by the superintendent of public instruction, such information as requested regarding the teacher assistance program, including agendas and evaluation material from each district sponsored or approved workshop or training session.

#### AMENDATORY SECTION (Amending Order 87-13, filed 11/5/87)

WAC 392-196-085 ((~~CARRYOVER PROHIBITION~~) SELECTION PROCESS. ((State moneys distributed to districts for the teacher assistance program shall be subject to the carryover prohibition of WAC 392-122-900:)) Nominations for the teacher assistance

program must be received by the office of the superintendent of public instruction by 5:00 p.m. September 15, 1989.

A maximum of nine hundred beginning teacher and mentor teams and a maximum of one hundred experienced teacher and mentor teams will be selected. Applications will be accepted based upon date of receipt at the office of the superintendent of public instruction until funding is depleted.

#### AMENDATORY SECTION (Amending Order 87-13, filed 11/5/87)

WAC 392-196-090 ((~~MAXIMUM CONTROL FACTOR-PRORATION~~) SUPERINTENDENT OF PUBLIC INSTRUCTION CONSULTATION. ((State moneys distributed to districts for the teacher assistance program shall be subject to the proration provision of WAC 392-122-905 if the current appropriation to the superintendent of public instruction for the beginning teacher assistance program is adversely affected by action of the legislature after the commencement of the ensuing school year:)) The superintendent of public instruction hereby establishes a teacher assistance task force of no more than twelve members representing teachers, educational staff associates, administrators, educational service districts, colleges and universities, and school directors. The superintendent shall:

(1) Appoint task force members from nominations submitted by the professional groups eligible to be represented on the task force;

(2) Consult with the task force for the purpose of obtaining their advice about teacher assistance program policies, operations, and evaluations;

(3) Convene the task force at least once annually.

#### NEW SECTION

WAC 392-196-095 ANNUAL AMOUNT FOR DISTRIBUTION TO PARTICIPATING SCHOOL DISTRICTS. The superintendent of public instruction annually shall establish a dollar amount per beginning teacher-mentor teacher team for distribution to districts for support of the teacher assistance program. Such distribution shall be used by the district exclusively for the following:

(1) Mentor teacher stipends.

(2) Travel expenses of the beginning/experienced teachers and mentors for attendance at the educational service district workshops or training sessions.

(3) Two days of school district sponsored or approved training workshops for the mentor and beginning and experienced teachers and expenses for the workshops.

(4) Substitute teacher salaries for released time for mentor, beginner, and experienced teachers.

(5) Beginning teacher stipends.

(6) Appropriate fringe benefits associated with mentor and beginning teacher stipends.

#### NEW SECTION

WAC 392-196-100 DISTRIBUTION OF STATE MONEYS FOR THE TEACHER ASSISTANCE PROGRAM. The superintendent of public instruction shall issue grant awards for the 1989-90 school year for a maximum of one thousand seven hundred thirty dollars per mentor-beginning teacher team.

#### NEW SECTION

WAC 392-196-105 CARRYOVER PROHIBITION. State moneys distributed to districts for the teacher assistance program shall be subject to the carryover prohibition of WAC 392-122-900.

#### NEW SECTION

WAC 392-196-110 MAXIMUM CONTROL FACTOR-PRORATION. State moneys distributed to districts for the teacher assistance program shall be subject to the proration provision of WAC 392-122-905 if the current appropriation to the superintendent of public instruction for the beginning teacher assistance program is adversely affected by action of the legislature after the commencement of the ensuing school year.



**WSR 89-16-014****PROPOSED RULES****SUPERINTENDENT OF PUBLIC INSTRUCTION**

[Filed July 21, 1989, 4:01 p.m.]

## Original Notice.

Title of Rule: Chapter 392-202 WAC, School personnel—Excellence in education awards.

Purpose: To set forth procedures and rules for granting annual excellence awards.

Statutory Authority for Adoption: RCW 29A.03.532 [28A.03.532].

Statute Being Implemented: RCW 28A.03.532.

Summary: Amendments include award to administrators and changes numbers of awards per category.

Reasons Supporting Proposal: Legislative enactment, chapter 75, Laws of 1989.

Name of Agency Personnel Responsible for Drafting: Richard M. Wilson, Old Capitol Building, 753-2298; Implementation: Doyle Winter, Old Capitol Building, 753-1880; and Enforcement: Warren Burton, Old Capitol Building, 753-1880.

Name of Proponent: Superintendent of Public Instruction, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: To set forth policies, selection, criteria, and administrative procedures of establishing an annual Washington award for excellence in education to teachers, principals, superintendents, and school boards.

Proposal Changes the Following Existing Rules: The proposed rule includes awards to administrators and they change the number of awardees per category.

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

Hearing Location: Wanamaker Conference Room, Old Capitol Building, Olympia, Washington, on September 8, 1989, at 9:00.

Date of Intended Adoption: September 8, 1989.

July 21, 1989

Judith A. Billings  
Superintendent of  
Public Instruction

**AMENDATORY SECTION** (Amending Order 87-15, filed 11/5/87)

WAC 392-202-003 **AUTHORITY.** The authority for this chapter is RCW 28A.03.532 which authorizes the superintendent of public instruction to adopt rules relating to administration of a Washington award for excellence in education for teachers, principals, administrators, superintendents, and school boards.

**AMENDATORY SECTION** (Amending Order 87-15, filed 11/5/87)

WAC 392-202-005 **PURPOSE.** The purpose of this chapter is to set forth policies, selection, criteria, and administrative procedures for establishing an annual Washington award for excellence in education to teachers, principals, administrators, superintendents, and school boards.

**AMENDATORY SECTION** (Amending Order 87-15, filed 11/5/87)

WAC 392-202-010 **TEACHER—DEFINITION.** As used in this chapter, the term "teacher" means ~~((a certified person with classroom instructional responsibilities))~~ one of the following:

- (1) A person certified under chapter 180-75 WAC; or

- (2) An educational staff associate certified under chapter 180-75 WAC.

**AMENDATORY SECTION** (Amending Order 87-15, filed 11/5/87)

WAC 392-202-015 **PRINCIPAL/ADMINISTRATOR—DEFINITION.** As used in this chapter, the term "principal/administrator" means ~~((a school building-level administrator))~~ one of the following:

- (1) A person certified under chapter 180-75 WAC; or  
(2) A person with supervisory responsibilities at the school building/central office level.

**AMENDATORY SECTION** (Amending Order 87-15, filed 11/5/87)

WAC 392-202-070 **SELECTION OF RECIPIENTS—~~((ELIGIBILITY))~~ ANNUAL RECOGNITION.** ~~((Eligibility))~~ Annual recognition criteria are as follows:

- (1) ~~((In order for teachers and principals to be eligible for nomination to receive this award for a particular congressional district, the teacher or principal shall be employed by a school district with its district superintendent's office located within the boundaries of the congressional district. The employee's home address shall not be considered in determining eligibility. A teacher or principal whose teaching or administrative duties encompass multiple grade levels or buildings or who works in a K-12 building may be nominated for any of the appropriate levels.~~

- (2) ~~Any local school district superintendent and any local school board of directors in Washington state shall be eligible to be nominated.~~

- (3) ~~A person nominated and selected to receive the award in a particular category shall subsequently be ineligible for nomination in that category, but shall be eligible to be nominated for the award in another category in any subsequent year.)~~ Five teachers from each congressional district of the state. One individual must be an elementary teacher, one must be a junior high or middle school level teacher, and one must be a secondary teacher;

- (2) Five principals or administrators from each congressional district of the state;

- (3) One school district superintendent from the state; and

- (4) One school district board of directors from the state.

Not more than five teachers and five principals or administrators from each congressional district and one superintendent and one school board from the state may be recognized and receive awards in any school year.

**AMENDATORY SECTION** (Amending Order 87-15, filed 11/5/87)

WAC 392-202-075 **SELECTION OF RECIPIENTS—NOMINATION.** Nomination of persons shall be as follows:

- (1) Any person may nominate a teacher, principal, administrator, superintendent, or school board for the award by submitting the form provided by the superintendent of public instruction for that purpose. The nomination form and information about the awards program shall be disseminated to the public, to educators, and to members of professional education associations through newsletters, bulletins, and other media which the superintendent of public instruction may deem appropriate.

- (2) The nomination form shall include at a minimum:

- (a) The name of the person/board nominated.  
(b) The school building/district name and address where the person works.  
(c) The congressional district in which the district is located.  
(d) The grade level and category, where appropriate, for which the nomination is made.  
(e) The address to which the form should be returned and the date by which it must be received.

**AMENDATORY SECTION** (Amending Order 87-15, filed 11/5/87)

WAC 392-202-080 **SELECTION OF RECIPIENTS—APPLICATION.** Selection of recipients shall require submission of an application as follows:

- (1) Candidates nominated on forms provided by and returned to the superintendent of public instruction shall receive an application form from the superintendent of public instruction to be completed and returned if the candidate wishes to be considered for the award. The application shall be adapted to each category of award, — i.e., teacher, principal, or administrator, superintendent, and school board, — and

shall require that the candidate provide evidence of leadership in, and contributions and commitment to educational excellence.

(2) Teacher award applications shall include recommendations from a superintendent, a community member, and a student or parent/guardian.

(3) Principal or administrator award applications shall include recommendations from a member of the staff in his or her building, a superintendent, and a student or parent or guardian.

(4) Superintendent award applications shall include recommendations from a community representative, chair of the school board, and a member of the school district staff.

(5) School board award applications shall include recommendations from the local education association president, the superintendent, and a representative of a parent support group.

#### AMENDATORY SECTION (Amending Order 87-15, filed 11/5/87)

WAC 392-202-085 SELECTION OF RECIPIENTS—REVIEW COMMITTEE. Recipients shall be selected as follows:

(1) A committee composed of eighteen members representative of the eight congressional districts shall be appointed by the superintendent of public instruction to review applications and select the recipients for each category, grade level and congressional district using the criteria established in WAC 392-202-090. Committee members shall be:

(a) Six teachers, including representatives.

(b) Three principals or administrators including representatives of elementary, middle(;) school or junior high, and senior high school.

~~((b))~~ (c) Three superintendents.

~~((c))~~ (d) Three school board members.

~~((d) Three principals including representatives of elementary, middle school or junior high, and senior high school.))~~

(e) Three currently active members of parent-teacher-student organizations.

(2) Prior to receipt of applications pursuant to WAC 392-202-080, the review committee shall establish a final selection procedure consistent with this chapter that is fair, timely and provides for breaking ties in a predetermined, objective manner.

(3) Recipients shall be selected and awards presented no later than June 1 of each year.

#### AMENDATORY SECTION (Amending Order 87-15, filed 11/5/87)

WAC 392-202-095 SELECTION CRITERIA—PRINCIPALS OR ADMINISTRATORS. The three broad criteria of leadership, commitment, and contribution to educational excellence shall be adapted to principals as follows:

The Excellence in Education Award to principals shall require:

(1) Leadership evidenced by clear understanding of the wishes and needs of building staff, students, and community, and by fostering the progress of the school's educational program;

(2) Commitment evidenced by recent efforts to increase personal and professional effectiveness and to promote educational excellence in the community, state or nation; and

(3) Contributions such as curriculum development within the school and significant staff achievements fostered by the principal's or administrator's leadership.

#### AMENDATORY SECTION (Amending Order 87-15, filed 11/5/87)

WAC 392-202-110 AWARDS FOR TEACHERS ~~((AND))~~, PRINCIPALS, AND ADMINISTRATORS. The award for educational excellence for teachers ~~((and))~~, principals, and administrators shall include:

(1) A certificate presented by the governor and superintendent of public instruction in public ceremony(ies); and

(2) The recipients' choice of one of the following:

(a) A waiver of tuition and fees for one full academic year of study at any Washington state institution of higher education plus a stipend of not more than one thousand dollars to cover costs incurred in taking courses, or

(b) A grant not to exceed one thousand dollars, which shall be used for educational purposes.

#### AMENDATORY SECTION (Amending Order 87-15, filed 11/5/87)

WAC 392-202-115 NOTIFICATION AND APPLICATION FOR AWARD—TEACHERS AND PRINCIPALS/ADMINISTRATORS. (1) The superintendent of public instruction shall notify

the recipients that an election must be made in a timely fashion, including appropriate forms for making the election; and recipients shall notify the superintendent of public instruction in writing within one year of receipt of the award of the option they have chosen.

(2) Recipients shall apply for the educational grant within one year after receipt of the award and shall expend the funds provided under the grant within one year after submission of the application.

(3) Recipients choosing ~~((the waiver shall begin to use the))~~ waiver after January 1989 shall apply for the waiver and stipend within one year after receipt of the award and shall expend the funds provided under the waiver and stipend within three years after the receipt of the award.

## WSR 89-16-015

### PERMANENT RULES

### SUPERINTENDENT OF PUBLIC INSTRUCTION

[Order 89-04—Filed July 21, 1989, 4:02 p.m.]

I, Judith A. Billings, Superintendent of Public Instruction, do promulgate and adopt at Olympia, Washington, the annexed rules relating to WAC 392-121-415 Finance—General apportionment—Basic education allocation—Deductible revenues.

This action is taken pursuant to Notice No. WSR 89-12-039 filed with the code reviser on June 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 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 July 21, 1989.

By Judith A. Billings  
Superintendent of  
Public Instruction

#### AMENDATORY SECTION (Amending Order 88-8, filed 1/11/88)

WAC 392-121-415 BASIC EDUCATION ALLOCATION—DEDUCTIBLE REVENUES. In addition to those funds appropriated by the legislature for basic education allocation purposes, ~~((the deductible revenues expressly identified in RCW 28A.41.130 and))~~ the following ~~((deductible))~~ locally available general fund revenues shall be included in the computation of the total annual basic education allocation of each school district pursuant to RCW 28A.41.130 and 28A.41.140 and shall be deducted from payments made pursuant to WAC 392-121-400:

(1) ~~((Proceeds from the sale of tax title real property managed by a county or of property rights appurtenant thereto;~~

~~((2)))~~ Proceeds from the sale, rental or lease of stone, minerals, timber, forest products, other crops and matter, and improvements from or on tax title real property managed by a county pursuant to RCW 36.35.040;

~~((3))~~ (2) Proceeds from state forests pursuant to RCW 76.12.030 and 76.12.120;

~~((4))~~ (3) Federal in lieu of tax payments made pursuant to RCW 84.72.020; and

(4) Proceeds from the sale of lumber, timber, and timber products on military reservations or facilities in accordance with U.S.C. § 2665, Title 10, and P.L. 97-99.

(5) ~~((County))~~ Local in lieu of tax payments including but not limited to payments made pursuant to RCW 35.82.210, 35.83.040, and 79.66.100.

Otherwise deductible revenues from any of the foregoing sources received by a school district due solely to the district's levy of a capital projects fund or debt service fund excess tax levy shall constitute nongeneral fund revenues and shall not be deducted in the computation of the district's annual basic education allocation for that school year.

### WSR 89-16-016

#### EMERGENCY RULES

#### SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed July 21, 1989, 4:07 p.m.]

Date of Adoption: July 15, 1989.

Purpose: To comply with new APA requirements.

Citation of Existing Rules Affected by this Order: Readopting chapters 392-101, 392-168, 392-171, 392-190 and 392-137 WAC.

Statutory Authority for Adoption: Readoption under RCW 34.05.220(A) [34.05.220 (1)(a)] and 34.05.250.

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

Reasons for this Finding: Readoption necessary to maintain current practices of agency and prevent disruption of services. Deviation from APA procedures required by federal law.

Effective Date of Rule: Immediately.

July 21, 1989

Judith A. Billings  
Superintendent of  
Public Instruction

READOPTED SECTION (Readopting Order 83-5, filed 8/17/83)

WAC 392-101-001 **AUTHORITY.** The authority for this chapter is RCW 34.04.020 which authorizes the superintendent of public instruction to adopt rules governing the formal and informal procedures prescribed or authorized by chapter 34.04 RCW.

READOPTED SECTION (Readopting Order 83-5, filed 8/17/83)

WAC 392-101-005 **ADMINISTRATIVE PRACTICES REGARDING HEARINGS AND RULE**

**PROCEEDINGS.** The superintendent of public instruction is governed by the state Administrative Procedure Act, chapter 34.04 RCW, the Washington State Register Act, chapter 34.08 RCW, and the state office of Administrative Hearings Act, chapter 34.12 RCW. These acts govern the conduct of "rule" making proceedings and the conduct of "contested case" hearings as these terms are defined in RCW 34.04.010 (2) and (3). Appearances in representative capacities before the superintendent of public instruction; the procedures and conditions governing petitions for declaratory rulings or the adoption, amendment, or repeal of a rule; and, the standards, procedures and conditions governing the conduct of contested case hearings and proceedings by or before the superintendent of public instruction shall be as set forth in rules of the state code reviser and the office of administrative hearings as now or hereafter amended. The rules of the code reviser are currently set forth in chapters 1-08 and 1-12 WAC. The rules of the office of administrative hearings are currently set forth in chapter 10-08 WAC.

All other regulatory actions and hearings conducted by the superintendent of public instruction may be conducted informally at the discretion of the superintendent.

READOPTED SECTION (Readopting Order 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.

READOPTED SECTION (Readopting Order 88-13, filed 4/18/88)

WAC 392-168-105 **AUTHORITY.** The authority for this chapter is RCW 28A.02.100 which authorizes the superintendent of public instruction to receive and administer federal funds on behalf of school districts of the state of Washington in compliance with applicable rules and regulations.

READOPTED SECTION (Readopting Order 88-13, filed 4/18/88)

WAC 392-168-110 **PURPOSE.** The purpose of this chapter is to ensure compliance by the state of Washington with 34 CFR 76.780 through 782, Department of Education regulations governing state-administered federal grant programs, and with the Hatch Amendment.

READOPTED SECTION (Readopting Order 88-13, filed 4/18/88)

WAC 392-168-115 **APPLICABILITY.** This chapter shall apply to federal programs administered by the superintendent of public instruction and listed in 34 CFR 76.1(b):

(1) Title III-A of the National Defense Education Act of 1958, Strengthening Instruction in Academic Subjects in Public Schools;

(2) Title IV of Public Law 96-511, Emergency Immigrant Education Program;

(3) Title II, Sections 201-206, 208-211, and 213 of the Education for Economic Security Act, State Grants for Strengthening the Skills of Teachers and Instruction in Mathematics, Science, Foreign Languages, and Computer Learning;

(4) Part B of the Education of the Handicapped Act, Assistance to States for Education of Handicapped Children;

(5) Section 619 of the Education of the Handicapped Act, Incentive Grants;

(6) Part A of Title I of the Vocational Education Act, State Vocational Education Program;

(7) Career Education Incentive Act (except Sections 10, 11, and 12) Career Education—State Allotment Program; and

(8) Adult Education Act (except Sections 309, 314, 317, and 318), State Adult Education Program;

(9) **PROVIDED,** That pursuant to 34 CFR 76.1(c), this chapter shall not apply to programs authorized under Chapter 1 and Chapter 2 of the Education Consolidation and Improvement Act of 1981:

(a) Chapter 1—Financial Assistance to Local Educational Agencies to Meet the Special Educational Needs of Educationally Deprived Children, Grants to State Educational Agencies for Program to Meet the Special Educational Needs of Migratory Children, Grants to State Agencies for Programs to Meet the Special Education Needs of Children in Institutions for Neglected or Delinquent Children, State-operated Programs for Handicapped Children; and

(b) Chapter 2—Consolidation of Federal Programs for Elementary and Secondary Education:

(10) **PROVIDED FURTHER,** That any additional complaint procedure requirements of particular programs shall be applicable to those programs in addition to the basic citizen complaint procedure described in this chapter.

READOPTED SECTION (Readopting Order 88-13, filed 4/18/88)

WAC 392-168-120 **DEFINITION—HATCH AMENDMENT.** As used in this chapter, the term the "Hatch Amendment" means section 439 of the General Education Provisions Act (GEPA), "Protection of Pupil Rights" which provides that:

(1) Parents or guardians of children involved in a research or experimentation project supported with federal funds shall have a right to inspect instructional materials used in connection with the project; and

(2) No student in such a project shall be required to submit to psychiatric or psychological examination, testing, or treatment which might reveal specified personal information without the consent of an adult or emancipated minor student or, for other minor students, without prior written parental consent.

READOPTED SECTION (Readopting Order 88-13, filed 4/18/88)

WAC 392-168-125 **DEFINITION—COMPLAINT.** As used in this chapter, the term "complaint" means a written allegation, signed by the complainant, that the state, a local school district, an educational service district, or other subgrantee receiving federal funds has systematically violated a federal statute or regulation or a state regulation that applies to a federal program covered under this chapter.

READOPTED SECTION (Readopting Order 88-13, filed 4/18/88)

WAC 392-168-130 **DEFINITION—OTHER SUBGRANTEE.** As used in this chapter, the term "other subgrantee" means the government, nonprofit, or other legal entity to which the state as grantee awards a subgrant, and which is accountable to the state for the use of the funds provided. The subgrantee is the entire legal entity even if only a particular component of the entity is designated in the subgrant award document.

READOPTED SECTION (Readopting Order 88-13, filed 4/18/88)

WAC 392-168-135 **RIGHT TO REGISTER A COMPLAINT.** Any individual, entity, or organization may register a complaint: **PROVIDED,** That a complaint filed pursuant to the Hatch Amendment may be filed only by a student or parent or guardian of a student directly affected by the alleged violation: **PROVIDED FURTHER,** That if a parent or adult student has also filed an individualized complaint which constitutes the basis in whole or in part for initiation of a due process special education hearing pursuant to WAC 392-171-531, a citizen complaint by such person regarding systemic noncompliance shall be held in abeyance until the hearing has been concluded.

READOPTED SECTION (Readopting Order 88-13, filed 4/18/88)

WAC 392-168-140 **CONTENTS OF COMPLAINT.** A complaint filed under this chapter shall be in writing, signed by the complainant, and shall include:

(1) A statement that the state, a local school district, an educational service district, or other subgrantee has violated one or more requirements of federal statutes or regulations or state regulations that apply to a federal program;

(2) The facts on which the statement is based;

(3) The name and address of the complainant; and

(4) In the case of a complaint alleging a violation by an entity other than the state and filed directly with the

superintendent of public instruction, the name and address of the allegedly offending entity.

**READOPTED SECTION** (Readopting Order 88-13, filed 4/18/88)

**WAC 392-168-145 PROCEDURE FOR FILING A COMPLAINT.** The procedure for filing a complaint shall be as follows:

(1) A complaint alleging a violation by a local school district, an educational service district, or other subgrantee shall be filed directly with a responsible official of the local school district, an educational service district, or other subgrantee: **PROVIDED**, That a complaint alleging a violation by an entity other than the state may be filed directly with the superintendent of public instruction at the complainant's discretion.

(2) A complaint against a local school district, an educational service district, or other subgrantee filed directly with the superintendent of public instruction shall be referred back to the allegedly offending entity for action pursuant to this chapter.

**READOPTED SECTION** (Readopting Order 88-13, filed 4/18/88)

**WAC 392-168-150 COMPLAINT DIRECTED TO A SCHOOL DISTRICT, AN EDUCATIONAL SERVICE DISTRICT, OR OTHER SUBGRANTEE AND DESIGNATION OF RESPONSIBLE EMPLOYEE.** The chief officer of each local school district, an educational service district, or other subgrantee shall designate at least one employee to monitor and coordinate the entity's compliance with this chapter. Such employee shall also be charged with the responsibility for investigating any complaint(s) communicated to the entity pursuant to WAC 392-168-145.

**READOPTED SECTION** (Readopting Order 88-13, filed 4/18/88)

**WAC 392-168-155 INVESTIGATION OF AND RESPONSE TO COMPLAINTS AGAINST A SCHOOL DISTRICT, EDUCATIONAL SERVICE DISTRICT, OR OTHER SUBGRANTEE.** Investigation of and response to a complaint shall be as follows:

(1) Upon receipt of a properly filed complaint, the employee(s) designated pursuant to WAC 392-168-150 shall investigate the alleged violations.

(2) Upon completion of the investigation, the designated employee(s) shall provide the responsible official of the entity with a written report of the results of the investigation. Said officials shall respond in writing to the complainant no later than twenty calendar days after the date of receipt by the entity of such complaint.

(3) The response to the complainant shall clearly state either:

(a) That the entity denies the allegations contained in the complaint and the basis for such denial; or

(b) The reasonable corrective action deemed necessary to correct the violation: **PROVIDED**, That any such corrective measures shall be instituted as expeditiously as possible but in no event later than thirty calendar

days following the date of the response to the complainant.

**READOPTED SECTION** (Readopting Order 88-13, filed 4/18/88)

**WAC 392-168-160 APPEAL TO THE SUPERINTENDENT OF PUBLIC INSTRUCTION OF A LOCAL SCHOOL DISTRICT, EDUCATIONAL SERVICE DISTRICT, OR OTHER SUBGRANTEE DECISION.** The complainant shall have the following right of appeal:

(1) In the event a complainant remains aggrieved with the written decision of a local school district, an educational service district, or other subgrantee, or upon failure or refusal of such entity to respond to a properly filed complaint, the complainant may, in writing, appeal the decision to the superintendent of public instruction or, in the case of a failure or refusal to respond, may register the complaint directly with the superintendent: **PROVIDED**, That upon the refusal of the local school district, educational service district, or other subgrantee to grant a request of the parent (or adult student) for a due process special education hearing made in conformance with WAC 392-171-531, the parent (or adult student) may register the complaint with the superintendent of public instruction.

(2) The written notice of appeal must be received by the superintendent of public instruction on or before the fifteenth day after the date the complainant received the written response of the local school district, educational service district, or other subgrantee pursuant to WAC 392-168-155; or in the case of a failure or refusal to respond to a complaint, a written notice registering the complaint must be received by the superintendent of public instruction on or before the thirty-fifth day after the citizen registered the complaint with the entity.

(3) In the case of a local school district, an educational service district, or other subgrantee's refusal to grant a request of a parent (or adult student) for a special education hearing made in conformance with WAC 392-171-531, a written notice registering the complaint must be received by the superintendent of public instruction on or before either the fifteenth day after the date the parent (or adult student) received notice of such entity's refusal to grant a hearing or on or before the fifteenth day after the expiration of the time period for rendering a final decision pursuant to a request for a hearing (i.e., forty-five days after the date of receipt of a request for a hearing), whichever occurs first.

**READOPTED SECTION** (Readopting Order 88-13, filed 4/18/88)

**WAC 392-168-165 CONTENT OF APPEAL NOTICE.** The appeal notice shall set forth:

(1) A statement of the portion(s) of the local school district, educational service district, or other subgrantee's decision which is appealed or, in the case of a failure or refusal to respond, a statement so indicating; and

(2) The relief or remedy requested by the complainant/appellant.

READOPTED SECTION (Readopting Order 88-13, filed 4/18/88)

WAC 392-168-170 ACTIONS BY SUPERINTENDENT OF PUBLIC INSTRUCTION IN RESPONSE TO NOTICES OF APPEAL AND NOTICES REGISTERING COMPLAINTS. The superintendent of public instruction shall respond in the following manner to appeals and direct complaints:

(1) The superintendent of public instruction shall investigate the allegation(s) contained in a written notice of appeal or a written notice registering the complaint that is deemed to be of substance and make a decision no later than fifteen calendar days after the receipt of a written appeal or no later than sixty calendar days after receipt of a complaint registered directly with the superintendent of public instruction by a citizen. Investigations carried out pursuant to this section may be performed on-site as necessary.

(2) If the investigation reveals that there is merit to the allegation(s), the superintendent of public instruction shall provide for negotiations, or technical advice and assistance, or other remedial action in an attempt to ensure compliance with this chapter and/or state and/or federal laws and regulations: PROVIDED, That any corrective measures deemed necessary shall be instituted no later than ten calendar days following the decision of the superintendent of public instruction.

(3) If compliance by a local school district, educational service district, or other subgrantee is not achieved pursuant to subsection (2) of this section, the superintendent of public instruction shall initiate funding withholding, fund recovery, or any other sanction deemed appropriate.

(4) In the event a complainant, local school district, educational service district, or other subgrantee remains aggrieved with the decision of the superintendent of public instruction, either party may appeal the decision to the secretary, department of education.

READOPTED SECTION (Readopting Order 88-13, filed 4/18/88)

WAC 392-168-175 COMPLAINTS AGAINST THE SUPERINTENDENT OF PUBLIC INSTRUCTION—DESIGNATION OF RESPONSIBLE EMPLOYEE(S). (1) A complaint alleging a violation by the superintendent of public instruction shall be filed directly with the superintendent of public instruction in the form specified in WAC 392-168-140.

(2) The superintendent of public instruction shall designate at least one office of the agency to monitor and coordinate the agency's compliance with this chapter, which shall include ensuring that investigation of any complaint is conducted expeditiously and thoroughly.

READOPTED SECTION (Readopting Order 88-13, filed 4/18/88)

WAC 392-168-180 COMPLAINTS AGAINST THE SUPERINTENDENT OF PUBLIC INSTRUCTION—INVESTIGATION OF AND RESPONSE TO COMPLAINTS. (1) The staff responsible for investigating the alleged violation shall commence investigation

within ten days of receipt of the complaint by the superintendent of public instruction.

(2) Investigation by the superintendent of public instruction may include on-site investigations as appropriate.

(3) Upon completion of the investigation, investigating staff shall provide the superintendent of public instruction with a written report on the results of the investigation.

(4) The superintendent of public instruction shall respond in writing to the complainant as expeditiously as possible but in no event later than sixty calendar days after the date of receipt of such complaint by the superintendent of public instruction.

(5) The response shall clearly state either:

(a) That the complaint is without merit, the allegations are denied, and the basis for such denial; or

(b) The reasonable corrective measures deemed necessary to correct any violation: PROVIDED, That any such corrective measures deemed necessary shall be instituted as expeditiously as possible but in no event later than thirty calendar days following the date of the response to the complainant.

READOPTED SECTION (Readopting Order 88-13, filed 4/18/88)

WAC 392-168-185 WAIVER OF TIMELINES.

(1) Timelines established in this chapter may be waived by mutual consent in writing of both complainant and local school district or other subgrantee. Such waiver of timelines shall be communicated within ten days to the appropriate division, superintendent of public instruction, by the entity named in the complaint.

(2) An extension of time limits applicable to actions by the superintendent of public instruction shall be waived by mutual consent of the complainant and the superintendent of public instruction: PROVIDED, That if exceptional circumstances exist with respect to a particular complaint, the superintendent of public instruction may unilaterally extend the timelines for cause upon written notice to the parties.

READOPTED SECTION (Readopting Order 88-13, filed 4/18/88)

WAC 392-168-190 APPEAL TO THE SECRETARY OF EDUCATION IN COMPLAINTS AGAINST THE SUPERINTENDENT OF PUBLIC INSTRUCTION. In the event that a complainant remains aggrieved with the response of the superintendent of public instruction, the complainant may file an appeal directly with the secretary, Department of Education.

READOPTED SECTION (Readopting Order 84-19, filed 6/28/84)

WAC 392-171-295 AUTHORITY. The authority for this chapter is RCW 28A.13.070(7) which authorizes the superintendent of public instruction to promulgate rules and regulations to implement chapter 28A.13 RCW. Such authority is supplemented by RCW 28A-.02.100 which authorizes the superintendent of public

instruction to receive federal funds in accordance with the provisions of federal law.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-300 PURPOSES.** The purposes of this chapter are:

(1) To implement chapter 28A.13 RCW in a manner that is compatible also with the federal Education for All Handicapped Children Act, 20 United States Code (USC) section 1401 et seq. (PL 94-142);

(2) To assure that all handicapped students as defined in this chapter have an opportunity for a free and appropriate education at public expense (i.e., free special education and related services) to meet their unique needs;

(3) To assure that the rights of handicapped students and their parents are protected;

(4) To assist school districts and others to provide for the education of all handicapped students;

(5) To assess and assure the effectiveness of efforts to educate handicapped students; and

(6) To be applicable to all handicapped education programs established pursuant to law and operated by the common school districts or on behalf of the common school districts, including the state residential school programs established and operated pursuant to RCW 28A.58.770 et seq.

**READOPTED SECTION** (Readopting Order 11-78, filed 10/31/78)

**WAC 392-171-305 ADVISORY COUNCIL.** (1) Council established—The special education state advisory council is hereby established in order to help facilitate the provision of special education and related services to meet every handicapped student's unique needs, abilities, and limitations.

(2) Membership—The membership of the council shall include at least one representative of each of the following groups or entities:

- (a) Handicapped individuals;
- (b) Teachers of handicapped students;
- (c) Parents of handicapped students;
- (d) Local administrators of special education programs;
- (e) Support services personnel;
- (f) Superintendents;
- (g) Principals;
- (h) Nonpublic schools serving handicapped students;
- (i) School directors;
- (j) Institutions of higher education;
- (k) Department of social and health services;
- (l) The medical profession; and
- (m) Other individuals or groups as may hereafter be designated and approved by the superintendent of public instruction.

(3) Functions—The council's purposes are:

(a) To advise the superintendent of public instruction and make recommendations on all matters related to

special education and specifically advise the superintendent of unmet needs within the state in the education of handicapped students;

(b) Comment publicly on the state's annual program plan, state rules regarding the education of handicapped students, and the procedures for distribution of funds; and

(c) Assist the state in developing and reporting such information and evaluations as may assist the federal government.

(4) Organization—The council shall conduct its affairs in accordance with bylaws approved by the superintendent of public instruction. To assure that maximum information and recommendations are provided to the superintendent of public instruction, the state advisory council shall have the authority to recommend the design of its organization and to appoint subcommittees from its membership for carrying out council responsibilities. Ad hoc subcommittees with membership other than council members may be appointed: PROVIDED, That the superintendent of public instruction or his or her designee has given prior approval for such appointments.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-310 DEFINITIONS OF "FREE APPROPRIATE, PUBLIC EDUCATION," "ADULT STUDENT," "HANDICAPPED STUDENT," "PAR-ENT," AND "SCHOOL DISTRICT."** As used in this chapter:

(1) "Free appropriate, public education" means special education and related services which:

(a) Are provided at public expense, under local school district supervision and direction, and without charge;

(b) Meet the standards of the state educational agency, including the requirements of this chapter; and

(c) Are provided in conformity with an individualized education program which meet the requirements of WAC 392-171-461.

(2) "Adult student" means a handicapped student or a student who is eighteen, nineteen, or twenty years of age, except as provided for in WAC 392-171-331, and who has not been judged incompetent by a court of law or otherwise judged by a court of law as being incapable of assuming and exercising the rights, duties and responsibilities otherwise granted to and imposed upon parents by this chapter (a student shall assume and be entitled to exercise all rights, duties and responsibilities otherwise granted to or imposed upon parents by this chapter upon attaining the age of eighteen and shall retain and be entitled to exercise the same until he or she has been judged incompetent or otherwise incapable of exercising the same by a court of law).

(3) "Handicapped student" and "student" (depending upon the context in which the terms are used) mean:

(a) A person under the age of twenty-one, except as provided for in WAC 392-171-331, who has been determined pursuant to this chapter to have one or more of the disabilities set forth in WAC 392-171-381 through 392-171-451 and to be in need of special education and related services; or



(b) A person under the age of twenty-one who has become a focus of concern and who may have one or more of the disabilities set forth in WAC 392-171-381 through 392-171-451 in the judgment of the school district superintendent or his or her designee, or the parent(s), or the adult student; or

(c) A person under the age of twenty-one, except as provided for in WAC 392-171-331, who resides in a residential school for the handicapped in accordance with RCW 28A.58.770 et seq.

(d) The foregoing categories of persons—notwithstanding the fact the person(s) may not be enrolled in or attending school in the normal sense of the term "student."

(4) "Parent" means a natural parent, a legal guardian, an adult person acting as a parent, or a surrogate parent who has been appointed in accordance with WAC 392-171-581, who represents a nonadult student. The term does not include the state if the child is a ward of the state.

(5) "School district" means:

(a) Each public school district in the state;

(b) Each educational service district that provides special education or related services to one or more handicapped students; and

(c) Each public or private organization or entity or person who provides special education and/or related services to one or more handicapped students in behalf of a public school district—even though such public school district, educational service district, or public or private organization or entity or person does not receive federal funds made available for the purposes of the Education for All Handicapped Children Act.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-311 DEFINITIONS OF "ASSESSMENT," "CURRENT ASSESSMENT," "REASSESSMENT," AND "CONSENT." As used in this chapter:

(1) "Assessment" means procedures used in accordance with WAC 392-171-346 through 392-171-366 and 392-171-516 to determine whether a student is handicapped and/or the nature and extent of the special education and related services that the student needs. The term means procedures used selectively with an individual student and does not include basic tests administered to or procedures used with all students in a school, grade, or class.

The purposes of assessment are to:

(a) Measure the student's present level of educational performance to identify the student's unique needs, abilities and limitations;

(b) Draw conclusions regarding the significance of the findings as related to the student's instructional program;

(c) Provide appropriate personnel with information for determining appropriate placement and developing the individualized education program in accordance with WAC 392-171-461;

(d) Assure appropriate identification of the handicapping condition; and

(e) Determine the student's eligibility for funding for special education and related services.

(2) "Current assessment" means:

(a) Intellectual assessment data shall be considered current if obtained during a one calendar year period prior to the formal assessment or if obtained during the formal assessment period.

(b) Academic assessment data, including perceptual assessment data, shall be considered "current" if obtained during a ninety calendar day period prior to formal assessment or if obtained during the formal assessment period.

(c) Psychological and social assessment data shall be considered "current" if obtained during a thirty calendar day period prior to formal assessment or if obtained during the formal assessment period.

(d) Adaptive behavior assessment data, including vocational and career assessment data, shall be considered "current" if obtained during a ninety calendar day period prior to formal assessment or if obtained during the formal assessment period.

(e) Speech/language (communication skills) assessment data shall be considered "current" if obtained during a ninety calendar day period prior to formal assessment or if obtained during the formal assessment period.

(f) Vision/hearing screening data shall be considered "current" if obtained during a one calendar year period prior to formal assessment or if obtained during the formal assessment period.

(g) Medical assessment data shall be considered "current" if obtained during a one hundred eighty calendar day period prior to formal assessment or if obtained during the formal assessment period.

(3) "Reassessment" means procedures used in accordance with WAC 392-171-346 through 392-171-366 to determine the student's eligibility for and need for continuing special education and related services pursuant to WAC 392-171-516.

(4) "Consent" means that:

(a) The parent (or the adult student) has been fully informed of all information relevant to the activity for which consent is sought in his or her native language or other mode of communication, including being informed of existing assessment data to be used within the definitions of current assessment;

(b) The parent (or the adult student) understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) which will be released and to whom; and

(c) The parent (or the adult student) understands that the granting of consent is voluntary on the part of the parent (or the adult student) and may be revoked at any time.

**READOPTED SECTION** (Readopting Order 86-1, filed 2/21/86)

WAC 392-171-315 DEFINITION OF "SPECIAL EDUCATION." As used in this chapter "special education" means specially designed instruction, at no cost to the parent or the student, to meet the unique needs,



abilities, and limitations of a student having a handicapped condition, including classroom and itinerant instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions. The term includes communication disorders services, physical and occupational therapy, orientation and mobility instruction, and audiology. The term also includes career development and vocational education if either consists of specially designed instruction, at no cost to the parents or the student, to meet the unique needs of a handicapped student.

The terms in the definition of "special education" are defined as follows:

(1) "Specially designed instruction" means organized and planned teaching and/or training activities provided by certificated and/or licensed special education personnel, including therapists, designed to facilitate progress toward specific written objectives and which occurs repeatedly over a given period of time during regularly scheduled sessions. The term does not include diagnostic or assessment activities, related services per se, consultative services, or materials preparation.

(2) "At no cost" means that all specially designed instruction is provided without charge, but does not preclude incidental fees which are normally charged to nonhandicapped students or their parents as a part of the regular education program.

(3) "Physical education" means the development of:

- (a) Physical and motor fitness;
- (b) Fundamental motor skills and patterns; and
- (c) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports).

The term includes special physical education, adapted physical education, movement education, and motor development.

(4) "Career development" means instructional activities infused into a student's education program which make provision for career awareness, career exploration and career preparation for all occupations.

(5) "Vocational education" means a planned series of learning experiences, the specific objective of which is to prepare persons to enter, continue in, or upgrade themselves in gainful employment in recognized occupations not designated as professional or requiring a baccalaureate or higher degree.

(6) "Audiology" means the provision of habilitative activities related to a hearing impairment, such as language habilitation, auditory training, speech reading (lip reading), training for hearing evaluation, and speech conservation.

(7) "Occupational therapy" means improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation; improving ability to perform tasks for independent functioning when functions are impaired or lost; and preventing through early intervention, initial or further impairment or loss of function.

(8) "Orientation and mobility instruction" means the provision of training/instruction in orientation and mobility for visually handicapped students.

(9) "Physical therapy" means seeking to relieve disability or pain, developing or restoring motor function

and maintaining appropriate performance commensurate with the student's unique needs, abilities, and limitations.

(10) "Communication disorders services" mean the provision of speech and language services for the habilitation or prevention of communication disorders.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-320 DEFINITION OF "RELATED SERVICES." As used in this chapter "related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a handicapped student to benefit from special education, and includes communication disorders services and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in students, counseling services, medical services for diagnostic or assessment purposes, and orientation and mobility services. The term also includes school health services, social work services in schools, parent counseling and training, and classified staff services.

The terms used in the definition of "related services" are defined as follows:

(1) "Audiology" includes:

- (a) Identification of students with hearing loss;
- (b) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;
- (c) Creation and administration of programs for prevention of hearing loss;
- (d) Counseling and guidance of students, parents, and teachers regarding hearing loss; and
- (e) Determination of the student's need for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

(2) "Counseling services" means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

(3) "Early identification" means the implementation of a formal plan for identifying a disability as early as possible in a student's life.

(4) "Medical services" means services provided by a licensed physician to determine a student's medically related handicapping condition which results in the student's need for special education and related services.

(5) "Occupational therapy" includes:

- (a) The identification and assessment of the student's physical and self-care status;
- (b) Determination of the student's need for occupational therapy; and
- (c) Related counseling and guidance of parents, students, and staff regarding the provision of occupational therapy.

(6) "Orientation and mobility services" includes:

- (a) Identification and assessment of the student's mobility status;
- (b) Determination of the student's need for orientation and mobility services; and

(c) Related counseling and guidance of parents, students and staff regarding orientation and mobility services.

(7) "Parent counseling and training" means assisting parents in understanding the special needs, abilities, and limitations of their child or ward and providing parents with information about child/student development.

(8) "Physical therapy" includes:

(a) Identification and assessment of the student's physical status;

(b) Determination of the student's need for physical therapy; and

(c) Related counseling and guidance of parents, students and staff regarding physical therapy services.

(9) "Psychological services" includes:

(a) Administering psychological and educational tests, and other assessment procedures;

(b) Interpreting assessment results;

(c) Obtaining, integrating, and interpreting information about child/student behavior and conditions relating to learning;

(d) Consulting with other staff members in planning school programs to meet the special needs of students as indicated by psychological tests, interviews, and behavioral evaluations; and

(e) Planning and managing a program of psychological services, including psychological counseling for students and parents.

(10) "Recreation" includes:

(a) Assessment of leisure function;

(b) Therapeutic recreation services;

(c) Recreation programs in school and community agencies; and

(d) Leisure education.

(11) "School health services" means services provided by a qualified school nurse or other qualified person.

(12) "Social work services in schools" include:

(a) Preparing a social or developmental history on a handicapped student;

(b) Group and individual counseling with the student and family;

(c) Working with those problems in a student's living situation (home, school, and community) that affect the student's adjustment in school; and

(d) Mobilizing school and community resources to enable the student to receive maximum benefit from his or her educational program.

(13) "Communication disorders services" includes:

(a) Identification of students with communication disorders;

(b) Diagnosis and appraisal of specific communication disorders;

(c) Referral for medical or other professional attention necessary for the habilitation of communication disorders; and

(d) Counseling and guidance of parents, students, and staff regarding communication disorders.

(14) "Transportation" includes:

(a) Travel to and from school and between schools;

(b) Travel in and around school buildings; and

(c) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a handicapped student.

(15) "Classified staff services" includes:

(a) Services provided by classified staff which provide for the handicapped student's safety and/or personal care and instructional assistance (e.g. interpreter services and braille services); and

(b) Services provided by classified staff which provide assistance for handicapped students and certificated staff to achieve placement in the least restrictive environment.

READOPTED SECTION (Readopting Order 84-19, filed 6/28/84)

WAC 392-171-325 STUDENTS' RIGHTS TO SPECIAL EDUCATION PROGRAMS. (1) Each school district shall provide every handicapped student between the age of three and twenty-one a free and appropriate educational program consisting of special education and related services. The date of eligibility to begin receiving such services shall be the child's birthdate: PROVIDED, That handicapped children between the age of three and four need not be served until the 1985-86 school year.

(2) School districts may provide special education and related services to handicapped students in the zero to one, one, two, three and/or four year old age groups without being obligated to extend preschool programs to nonhandicapped children. However, if a school district provides an education to any nonhandicapped child in the zero to three year old age group, the district shall make special education and related services available pursuant to this chapter to all its handicapped students of the same age: PROVIDED, That school districts that do not offer services to all eligible three year old handicapped children in the 1984-85 school year shall be subject to this nondiscriminatory service requirement.

(3) Any student made a focus of concern shall qualify pursuant to the disability definitions and criteria set forth in this chapter in order to receive state or federal special education funding. A handicapped student shall remain eligible for special education and related services until: (a) The student has met high school graduation requirements established by the school district pursuant to rules of the state board of education; or (b) the student has reached age twenty-one; or (c) the student is no longer in need of special education and related services as judged by the student's multidisciplinary team based upon a reassessment of the student, whichever occurs first. The student may continue to receive special education and related services: PROVIDED, That a reassessment of the student concludes that, notwithstanding the fact that the student no longer meets the initial eligibility criteria, the student's performance is or will be adversely affected if he or she is terminated from special education.

READOPTED SECTION (Readopting Order 84-19, filed 6/28/84)

WAC 392-171-331 CONTINUING ELIGIBILITY. (1) Any student whose eligibility was established

pursuant to rules in effect at a time of prior assessment but before September 1, 1984, shall continue to remain eligible for special education and related services under the authority and provisions of such prior rules unless:

(a) The student has met high school graduation requirements established by the school district pursuant to the rules of the state board of education; or

(b) The student reaches age twenty-one; or

(c) The student is no longer in need of special education and related services: **PROVIDED**, That the determination that the student needs to receive special education and related services is based on a reassessment of the student which concludes that, notwithstanding the fact that the student no longer meets the initial eligibility criteria, the student's performance is or will be adversely affected if he or she is terminated from special education. Any such student shall be reassessed pursuant to WAC 392-171-346 through 392-171-366 and the applicable section(s) of WAC 392-171-381 through 392-171-451.

(2) Any student made a focus of concern for the first time and/or assessed for the first time after September 1, 1984, shall be assessed and determined eligible pursuant to WAC 392-171-346 through 392-171-366 and the applicable section(s) of WAC 392-171-381 through 392-171-451.

(3) Effective September 1, 1984, and thereafter, every handicapped student shall remain eligible for special education and related services only so long as the student has not yet met high school graduation requirements established by the school district pursuant to rules of the state board of education or the student has not reached age twenty-one, or the student no longer requires special education and related services as judged by the student's multidisciplinary team based on a reassessment of the student.

(4) The student whose twenty-first birthday occurs during the school year shall continue to be eligible for special education and related services for the remainder of the school year.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-336 **CHILDFIND**. The local district shall conduct childfind activities to locate and identify students with a suspected handicapping condition who are residing within the boundaries of the district and not currently receiving special education services. Childfind activities shall apply to students age 0 to 21 and may include, but are not necessarily limited to: Pre-school developmental screening, local media informational campaigns, liaison with public health and other medical and social agencies, public or private, questionnaire for first-time enrolling students, screening of district-wide group standardized test results, inservice education to teaching staff, and cooperation as requested with state childfind programs.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-341 **STUDENT AS FOCUS OF CONCERN—PREASSESSMENT PROCEDURES—TIMELINE**. (1) A student shall become a focus of concern when the student is brought to the attention of a school district superintendent or his or her designee because of a suspected handicapping condition(s). Such concern for a student may be originated by or transmitted through any source, including: Parents, medical personnel, school district personnel, community agencies, civil authorities, district screening procedures, and other identified, interested persons.

(2) When the possibility of a student's need for special education and related services has been brought to the attention of the school district superintendent or his or her designee, the superintendent or his or her designee shall act on the referral by promptly:

(a) Recording the circumstance by date, origin, and reason for concern; and

(b) Providing the student's parent(s) (or the adult student) written notice that the student has been referred because of a suspected handicapping condition and that within fifteen school days the district will determine whether or not there is good reason to believe that the student is a candidate for assessment.

(3) The superintendent or his or her designee shall, within fifteen school days after the date of referral, review the referral, collect and examine existing school, medical and other records in the possession of the school district and make a determination that there is or is not good reason to believe that the student is a candidate for assessment. This decision shall be in writing and shall set forth the date and the name of the person making the decision. The superintendent or his or her designee shall, within ten school days after the date of such decision, direct a written notice to the student's parent(s) (or the adult student) that complies with the notice requirements of WAC 392-171-526.

(4) In the event the decision is that there is good reason to believe that the student is a candidate for assessment, the school district shall fully assess the student and arrive at a decision pursuant to WAC 392-171-376 within:

(a) Thirty-five school days (also referred to as the formal assessment period) after the date written consent for an assessment has been provided by the parent(s) (or the adult student); or

(b) Thirty-five school days (also referred to as the formal assessment period) after the date the refusal of the parent(s) (or the adult student) to grant consent has been overridden pursuant to a hearing (or appeal) in accordance with WAC 392-171-521 et seq.; or

(c) Such other time period as may be agreed to by the parent(s) (or the adult student) and school authorities.

(5) The school district shall request the parent to sign consent form(s) for the mutual exchange of pertinent information where such information is available between the school, other agencies, and/or professionals.

(6) If temporary (not to exceed thirty school days) special education programming is necessary for diagnostic reasons during the assessment period, the district shall obtain written permission for such diagnostic placement from the parent(s) prior to making the placement.

(7) In the case of students admitted to state residential schools, an assessment and individualized education program must be completed as provided in this chapter within fifty school days of enrollment.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-346 GENERAL AREAS OF ASSESSMENT.** The assessment of a student shall be in all areas related to the suspected disability. The assessment procedures outlined in WAC 392-171-381 through 392-171-451 are to be considered minimal, required procedures. Where concerns are indicated, as judged by the multidisciplinary team, additional or more in depth assessment in each of the following areas shall be conducted.

(1) Scholastic assessment. This area may include assessment of the intellectual, language and communication, academic and cognitive development of the student and any other scholastic area as deemed appropriate by the multidisciplinary team.

(2) Physical assessment. This area may include a review of the general health status of the student, vision and hearing screening, oral-peripheral examination, evaluation of musculo-skeletal, neurological, and developmental modalities, and any other physical area as deemed necessary by the multidisciplinary team.

(3) Adjustment assessment. This area may include assessment of the social skills and emotional status of the student, career and vocational assessment, and assessment of adaptive behaviors (e.g., self-help, interpersonal communication, survival skills, and practical application of academic skills).

**READOPTED SECTION** (Readopting Order 86-1, filed 2/21/86)

**WAC 392-171-351 GENERAL ASSESSMENT SAFEGUARDS—PERSONNEL, MATERIALS AND PROCEDURES.** Every student who is assessed or reassessed shall be assessed according to the procedures established in this chapter.

(1) The initial assessment of a student (except one with a suspected communication disorder) shall be made by a multidisciplinary team (i.e., a group of professionals) including at least one special education teacher and at least one person qualified to conduct individual diagnostic assessment in the area of suspected disability. In a reassessment of a student, the multidisciplinary team also shall consist of a representative from each professional area involved in identified deficits or other eligibility criteria pertinent to the classification of such student in the most recent assessment of the student and such other professional areas as recommended by any professional involved in the reassessment. Each member of the team shall be licensed, registered, credentialed, or

certificated according to his or her professional standards in accordance with state statutes and rules: **PROVIDED**, That in assessing or reassessing a student suspected of having a specific learning disability, each school district shall include on the multidisciplinary team at least three members:

(a) The student's regular education teacher or, if the student does not have a regular education teacher, a regular education teacher qualified to teach a student of his or her age;

(b) A special education teacher having experience with learning disabled students; and

(c) A school psychologist.

(2) No single test instrument or single procedure shall be the sole criterion for determining a student's eligibility or handicapping condition and/or for determining the appropriate educational program for a student.

(3) Assessment materials, procedures, and instruments used for the purpose of assessment and placement shall be selected and administered so as not to be racially or culturally discriminatory.

(4) All tests and other evaluation materials shall have been validated for the specific purpose for which they are used and shall accurately reflect whatever factors the tests purport to measure. If properly validated tests are unavailable, the professional judgment of each member of the multidisciplinary team shall determine eligibility for special education based on other evidence of the existence of a specific handicap and need. This professional judgment shall be documented in a written narrative.

(5) All tests and other evaluation materials shall be administered by qualified personnel in conformance with the instructions of their producer. Tests designed to measure intellectual functioning shall be administered and interpreted by a qualified psychologist: **PROVIDED**, That cognitive tests for developmentally delayed students other than an intelligence quotient test shall be administered by a qualified psychologist or by professionals with other titles who have considerable training and experience in individual psychological or psychoeducational assessment.

(6) Assessment materials, procedures or instruments shall be provided and administered in a student's primary language or mode of communication, unless it is clearly not feasible to do so. Tests shall be selected and administered so as to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors the test purports to measure).

(7) In conducting assessment activities, appropriate assessment team members shall:

(a) Collect and review all available existing school, medical, and other records pertinent to the suspected handicapping condition(s) of the student, including previous screening and assessment results, health reports, relevant cumulative records and recommendations of related service providers; and

(b) Conduct current assessment activities required by this chapter and in accordance with the procedures specified herein; and

(c) Collect such other data as needed to verify the results of standardized testing, including but not limited to parent and/or teacher interviews and current classroom performance data.

(8) Assessment data shall be summarized in writing, dated, and signed by each person conducting an assessment. Information used to support the assessment, but which is not incorporated into the file, (e.g., review of health record), shall be referenced as to date of record, location, and source person. The summaries shall specify the procedures and instruments used, the results obtained, and the apparent significance of findings as related to the student's instructional program, including a description of the specific factors which are interfering with the student's educational performance and the special education and related services needed to assist the student in benefiting from his or her educational placement, including the need, if appropriate, of scheduling such services over a period of time that exceeds the regular one hundred eighty day school calendar: **PROVIDED**, That in the event the assessment is an initial assessment by the district, the recommendation regarding the appropriateness of an extended school year for a particular student need not be made until May of the school year in which the initial assessment was made.

**READOPTED SECTION** (Readopting Order 86-1, filed 2/21/86)

**WAC 392-171-358 COMMUNICATION DISORDERED STUDENTS—ASSESSMENT.** Students who are suspected of having a communication disorder as their only handicap shall be assessed by a qualified communication disorder specialist who shall use procedures appropriate for the diagnosis and appraisal of communication disorders. The student shall be referred for additional assessment needs for appropriate placement. The assessment results required in this section shall be summarized as provided in WAC 392-171-351(8).

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-361 MEDICAL EVALUATION.**

(1) A medical evaluation is required when:

(a) It is necessary to meet the eligibility criteria for funding; or

(b) Voice training is being considered in the presence of hoarseness; or

(c) Whenever a qualified health professional suspects a student under consideration as a possible handicapped student of having a health problem which may affect his or her educational program.

(2) Medical evaluations at the expense or otherwise in behalf of a school district shall be obtained only:

(a) At the direction of or with the prior approval of the school district superintendent or his or her designee (except in the case of an independent assessment pursuant to WAC 392-171-371);

(b) In accordance with criteria established by the school district including, but not limited to, the location of the evaluation and the report required; and

(c) When the student's parent(s) (or the adult student) agrees in advance to the type of examination and the choice of medical examiner;

(d) When, except in the case of an adult student, the student's parent(s) is present at the time of the examination or has agreed that his or her presence is not required; and

(e) When the evaluation is conducted by the student's personal physician or if conducted by another physician, when the student's personal physician has been involved in the planning with the permission of the student's parent(s) (or the adult student).

(4) Medical evaluation services necessary to a determination of the educational needs of residential school students, shall be the responsibility of the department of social and health services pursuant to RCW 28A.58.774.

**READOPTED SECTION** (Readopting Order 86-1, filed 2/21/86)

**WAC 392-171-366 SUMMARY ANALYSIS OF ASSESSMENT DATA.** (1) The leader of a student's assessment team shall review and analyze the summaries of assessment data provided for in WAC 392-171-351(8) and any other available data in each of the areas assessed. The conclusions, recommendations, and the facts and/or reasons resulting in the eligibility decision pursuant to WAC 392-171-376 shall:

(a) Describe the discrepancy which exists between the student's actual performance and his or her expected performance;

(b) Identify the handicapping condition(s), if any, that qualifies the student as a handicapped student;

(c) Set forth the nature and extent of the special education and related services that the student needs, if any;

(d) Reconcile any inconsistent or contradictory information and/or opinions evidenced in the assessment data, if any, supporting conclusion(s) with appropriate data;

(e) Relate the apparent significance, as appropriate, of such factors as test measurement error or cultural, environmental, economic, and behavioral factors to the assessment results.

Where specific test results obtained in any assessment do not appear to the multidisciplinary team to accurately reflect a student's expected performance the multidisciplinary team shall apply professional judgment to determine eligibility for special education and related services. In such event, the multidisciplinary team shall document in a written narrative the basis for such determination, the instruments used, and the data used for a determination of eligibility.

(f) Make recommendations to the individualized education program committee regarding placement, special education and related services needed (including the need, if appropriate, of scheduling such services over a period of time that exceeds the regular one hundred eighty school days), needs for specialized materials or

equipment, learning modalities (e.g., auditory), and student management strategies (e.g., reinforcement schedules, etc.), as determined by the multidisciplinary team to be significant to the student's program. If the multidisciplinary team at the time of the student's initial assessment by the district for professionally sound reasons is unable to make a recommendation regarding the need for an extended school year for a particular student, the multidisciplinary team shall make its recommendation regarding an extended school year prior to the May following initial assessment; and

(g) Provide any necessary professional judgment(s) and the facts or reasons in support of the judgment(s).

(2) The summary analysis shall be signed and dated by both the team leader and the school district's special education director or his or her designee.

(3) Provided that, in the case of a student suspected of having a specific learning disability, the summary analysis shall also include a statement of:

(a) The relevant behavior noted during observation(s) of the student, including the relationship of that behavior to the student's academic problem(s) in the regular education program;

(b) A summary, if applicable, of previous intervention attempts and results; and

(c) The educationally relevant medical findings, if any, including the results of a current vision and hearing screening.

(4) Each multidisciplinary team member shall certify in writing whether the summary analysis reflects his or her conclusion. If it does not reflect his or her conclusion, the team member must submit a separate statement presenting his or her conclusion(s) and the reasons therefor.

**READOPTED SECTION** (Readopting Order 86-1, filed 2/21/86)

**WAC 392-171-371 INDEPENDENT EDUCATIONAL ASSESSMENT.** (1) General.

(a) The parent(s) of a student (or the adult student) made a focus of concern and assessed or any student reassessed has the right to obtain an independent educational assessment, subject to subsections (3) and (4) of this section.

(b) Each school district shall provide to parents, (or adult students) on request, information about where an independent educational assessment may be obtained.

(c) For the purposes of this section:

(i) "Independent educational assessment" means an assessment conducted by a qualified examiner who is not employed by the school district responsible for the education of the student in question; and

(ii) "Public expense" means that the school district either pays for the full cost of the assessment or assures that the assessment is otherwise provided at no cost to the parent (or to the adult student).

(2) Parent/adult student right to assessment at public expense. A parent (or the adult student) has the right to an independent educational assessment at public expense if the parent (or the adult student) disagrees with the assessment results obtained by the school district, as follows:

(a) The parent(s) (or the adult student) shall provide a written notice to the school district superintendent or special education director which:

(i) Specifies the portion(s) of the assessment results with which the parent(s) (or the adult student) disagrees; and

(ii) Requests an independent educational assessment at public expense;

(b) The school district shall have the prior opportunity to initiate and conduct a hearing pursuant to WAC 392-171-531 et seq. to show that its assessment is appropriate: PROVIDED, That the school district shall provide the parent(s) (or the adult student) written notice of the election to initiate a hearing no later than the tenth day after the date of receipt of the parent's (or adult student's) notice of disagreement;

(c) If the final decision pursuant to WAC 392-171-521 et seq. is that the school district's assessment is appropriate, the parent (or adult student) still has the right to an independent educational assessment, but not at public expense; and

(d) If the district elects not to hold a hearing or is not upheld by the final decision, the parent's (or adult student's) request for an independent assessment shall be provided at public expense in accordance with the same criteria which the district uses when it initiates an assessment including, but not limited to, the location of the assessment and the qualifications of the examiner.

(3) Parent/adult student initiated assessment. If the parent (or adult student) obtains an independent educational assessment at private expense, the results of the assessment:

(a) Shall be considered by the school district in any decision made with respect to the provision of special education and related services to the student; and

(b) May be presented as evidence at such hearings regarding that student as may be conducted pursuant to WAC 392-171-521 et seq.

(4) Requests for assessment by hearing officers. If a hearing officer requests an independent educational assessment as part of a hearing, the cost of the assessment shall be at public expense.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-376 SCHOOL DISTRICT DECISION.** The school district superintendent or his/her designee shall, based on the preceding procedures (WAC 392-171-341 through 392-171-366), arrive at one of the following decisions.

(1) The student does not have a handicapping condition(s); or

(2) The student does have a handicapping condition(s) and is in need of special education and related services.

The school district superintendent or his or her designee shall duly record in writing the decision as to the handicapping condition(s) of a student brought to the school's attention. Whatever decision is made, the information from the procedures for making the determination shall be filed in school district records. Within ten calendar days of the decision that the student does not have a handicapping condition, the parents or legal



guardian of the student shall be informed in writing of the assessment findings in compliance with notice requirements of WAC 392-171-521. If the decision is that the student has a handicapping condition(s), the school district shall request the parent(s) to participate in the IEP conference (individualized education program) pursuant to WAC 392-171-456. Upon the request of the parent (or the adult student) the school district shall provide the parent (or the adult student) a copy of the summary analysis prior to the IEP meeting: PROVIDED, That the parent (or the adult student) may request a meeting with the school district to explain the summary analysis.

**READOPTED SECTION** (Readopting Order 84-19, filed 6/28/84)

**WAC 392-171-381 DEFINITION AND ELIGIBILITY CRITERIA FOR DEVELOPMENTALLY HANDICAPPED.** Definition and eligibility criteria for developmentally handicapped are as follows:

(1) As used in this chapter, the term "developmentally handicapped" shall mean children under the age of eligibility to the first grade who meet the definition and eligibility criteria for one of the following:

- (a) WAC 392-171-382, Developmentally delayed;
- (b) WAC 392-171-396, Orthopedically impaired;
- (c) WAC 392-171-401, Health impaired;
- (d) WAC 392-171-436, Deaf;
- (e) WAC 392-171-441, Hard of hearing;
- (f) WAC 392-171-446, Visually handicapped; and
- (g) WAC 392-171-451, Deaf-blind;

(2) The term "developmentally handicapped" does not include children under the age of eligibility for entry to the first grade who qualify solely for communications disorder services under WAC 392-171-391.

**READOPTED SECTION** (Readopting Order 84-19, filed 6/28/84)

**WAC 392-171-382 DEFINITION AND ELIGIBILITY CRITERIA FOR DEVELOPMENTALLY DELAYED.** Definition and eligibility criteria for developmentally delayed are as follows:

(1) Developmentally delayed, birth to three years. As used in this chapter, the term "developmentally delayed, birth to three years" shall mean those children under three years of age who demonstrate a 1.5 standard deviation or twenty-five percent delay in the developmental delay area of cognitive (WAC 392-171-383(1)), communication (WAC 392-171-383(2)), fine motor (WAC 392-171-383(3)), gross motor (WAC 392-171-383(4)), or motor which for the purpose of this section shall be a combined delay area of fine motor (WAC 392-171-383(3)) and gross motor (WAC 392-171-383(4)). Such children in order to continue to be eligible for special education and related services after reaching three years of age shall meet the entry eligibility criteria for developmentally delayed, three to six years or one of the other eligibility criteria specified in WAC 392-171-381;

(2) Developmentally delayed, three to six years. As used in this chapter, the term "developmentally delayed, three to six years" shall mean those children between

three years and the age of eligibility for entry to the first grade who receive a score on a standardized norm referenced test, with a test-retest or split-half reliability of .80 that is at least:

(a) Two standard deviations below the mean in one or more of the five developmental delay areas defined in WAC 392-171-383; or

(b) One and one-half standard deviations below the mean in two or more of the five developmental delay areas defined in WAC 392-171-383.

**READOPTED SECTION** (Readopting Order 84-19, filed 6/28/84)

**WAC 392-171-383 AREAS OF DEVELOPMENTAL DELAY—DEFINITIONS.** The five developmental delay areas for the purpose of applying eligibility criteria to developmentally delayed children are:

(1) Cognitive: Comprehending, remembering, and making sense out of one's experience. Cognitive ability is the ability to think and is often thought of in terms of intelligence;

(2) Communication: The ability to effectively use or understand, age-appropriate language, including vocabulary, grammar, and speech sounds;

(3) Fine motor: Motor skills requiring precise, coordinated use of the small muscles;

(4) Gross motor: Motor skills used for body control such as standing, walking, balance and climbing; and

(5) Social/emotional: The ability to develop and maintain functional interpersonal relationships and to exhibit age appropriate social and emotional behaviors.

**READOPTED SECTION** (Readopting Order 84-19, filed 6/28/84)

**WAC 392-171-384 DISTINCTION BETWEEN DEVELOPMENTALLY HANDICAPPED AND COMMUNICATION DISORDER—REASSESSMENT OF DEVELOPMENTALLY DELAYED UPON ENTRY TO FIRST GRADE.** (1) Except for children who qualify solely for communications disorder services under WAC 392-171-391, children under the age of eligibility for entry to first grade, in order to be eligible for special education and related services, shall meet the eligibility criteria for one of the handicapping conditions specified in WAC 392-171-381.

(2) Children under the age of eligibility to first grade, who qualify for special education as developmentally delayed under WAC 392-171-382 shall not qualify for special education and related services upon entry to first grade until a reassessment is conducted and a determination is made that the student qualifies under the provisions of one of the other handicapping conditions in this chapter.

**READOPTED SECTION** (Readopting Order 84-19, filed 6/28/84)

**WAC 392-171-386 DEFINITION AND ELIGIBILITY CRITERIA FOR SERIOUSLY BEHAVIORALLY DISABLED.** (1) Seriously behaviorally disabled students are those who exhibit one or more of the following characteristics over a long period of time and to a

marked degree, which adversely affects their own educational performance:

(a) An inability to learn which cannot be explained by intellectual, sensory, or health factors;

(b) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

(c) Inappropriate types of behavior or feelings under normal circumstances;

(d) A general pervasive mood of unhappiness or depression; or

(e) A tendency to develop physical symptoms or fears associated with personal or school problems.

(2) The term includes students who are schizophrenic. The term does not include students who are socially maladjusted, unless it is determined that they are also seriously behaviorally disabled. Students whose primary disability is identified in another handicapping category do not qualify as seriously behaviorally disabled.

(3) All students considered for initial placement in special education as seriously behaviorally disabled shall be assessed by a multidisciplinary team including at least one school psychologist or school social worker and determined as eligible for special education and related services according to the following:

(a) A current school district evaluation which concludes that the student has a serious behavioral disability and which considers and describes the student's social and emotional behaviors and provides any implications for educational planning.

(b) For the purposes of establishing that the student has a behavioral disability, the evaluation shall describe behaviors which distinguish between common disciplinary problem behaviors and serious behavioral disabilities. Common disciplinary problem behaviors (e.g., truancy, smoking, breaking school conduct rules) may exist in conjunction with serious behavioral disabilities, but cannot be used as the sole criteria for recommending special education and related services.

The evaluation shall include:

(i) Dated and signed documented anecdotal records of behavioral observations made by two or more persons at separate times and places, each of which cite and corroborate specific behaviors which, in the aggregate, provide foundation for probable concern for serious behavioral disability. Multiple settings are required (e.g., in addition to the classroom setting consider playground, cafeteria, school bus, hallway, etc.); and

(ii) Dated and signed documented evidence of at least two intervention techniques that have been tried and the effect of each. These interventions may include, but are not limited to, changes in student's regular class schedule, curriculum, and/or teacher, school counseling, community agency therapy, or counseling; and

(iii) A social or developmental history compiled directly from the parent(s) and/or records, when parents are not available.

(c) Current assessment of level of academic or cognitive achievement as measured by standardized tests appropriate to age level and administered individually.

(d) A current vision and hearing screening report.

(e) In the event that the required academic assessment and vision and hearing screening are completed

and there are documented and dated anecdotal records of behavioral observations showing that the student's disability is evident in the school environment, the following evaluation reports may be substituted for the school district's evaluation:

(i) A current psychiatric evaluation which considers and describes the student's social and emotional behaviors, which concludes and describes a serious behavioral disability and where implications for educational planning are provided. The multidisciplinary team shall consider these implications in planning and implementing the student's educational program; or

(ii) A current psychological evaluation by a nonpublic school mental health professional who holds a graduate degree in a recognized mental health specialty that considers and describes the student's social and emotional behaviors, which concludes that the student has a serious behavioral disability, the consequences of which entail the necessity for active, on-going therapy and/or counseling, and where implications for educational planning are provided. The multidisciplinary team shall consider these implications in planning and implementing the student's educational program.

**READOPTED SECTION** (Readopting Order 84-19, filed 6/28/84)

**WAC 392-171-391 DEFINITION AND ELIGIBILITY CRITERIA FOR COMMUNICATION DISORDERED.** A student shall be considered to have a communication disorder if there is present a documented communication disorder such as stuttering, voice disorder, language impairment, and/or impaired articulation which adversely affects a student's educational performance. The assessment procedures and eligibility standards outlined in this section apply to those students whose only handicapping condition is a communication disorder.

All students considered for initial placement in special education as communication disordered shall be assessed and determined eligible for special education and related services according to the following:

(1) A current hearing screening report;

(2) A current description of the level of educational or cognitive development as provided by the classroom teacher, or where available, by standardized tests in those areas affected by the speech and/or communication problem(s) including discussion of the existing or potential impact of the problem(s) on educational performance; and

(3) A current assessment of the level of speech and/or language development as measured by standardized tests or professionally recognized procedures, scales, or checklists appropriate to the student's age level and mode of communication, individually administered, and which considers the student's sex, dialect norms, social-cultural environment, and behaviors: **PROVIDED**, That for children under the age of eligibility for entry to the first grade the assessment shall include development acquisition of speech and language. Such measures shall result in one or more of the following findings that the student:



(a) Achieves a rating of moderate or severe on a standardized articulation test that yields a severity rating and/or misarticulates in comparison to developmental norms five or more unrelated phonemes each in two or more positions (initial, medial, or final) for children under the age of eligibility for entry to the first grade, three or more unrelated phonemes for students age six through age seven, or one or more for students over age seven, with consideration given to the student's speech intelligibility, physical ability, and/or therapy history.

(b) Has a delay in receptive and/or expressive language such that functioning is one year or more below chronological age for students up through age eight or functioning is two-thirds of chronological age or below for students over age eight.

(c) Has interruptions or dysfluencies in more than one speaking situation such as repetitions, prolongations, blockage in flow of speech, struggle, or avoidance behaviors which interfere with communication or are inconsistent with age or development.

(d) Has a deviation in voice quality, pitch, or loudness characterized by abusive vocal habits, or interference with communication, or is inconsistent with age or development, or demonstrates chronic hoarseness of duration of three weeks or more.

Whenever appropriate, referral for medical and/or psychological and/or other evaluations shall be made and the results considered in the assessment of the student's suspected handicapping condition.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-396 DEFINITION AND ELIGIBILITY CRITERIA FOR ORTHOPEDICALLY IMPAIRED.** Orthopedically impaired students are those who lack normal function of muscles, joints or bones due to congenital anomaly, disease or permanent injury, and such condition adversely affects their educational performance.

All students considered for initial placement in special education as orthopedically impaired shall be assessed and determined eligible for special education and related services according to the following:

(1) A current medical evaluation by a qualified medical practitioner which describes and confirms the student's health circumstances and which provides any medical implications for educational planning;

(2) Current assessment of level of academic achievement as measured by standardized tests appropriate to age level and administered individually;

(3) A current evaluation which considers and describes the student's social and emotional behaviors and which provides any implications for educational planning, including an evaluation of adaptive behavior as measured by standardized instrument(s) or professionally recognized scales where there are no known standardized measures, which addresses the student's self-help and interpersonal communication skills in relation to chronological age/grade peers;

(4) A current physical therapy and/or occupational therapy evaluation which considers and describes implications for therapy as a part of educational planning; and

(5) A current vision and hearing screening report.

**READOPTED SECTION** (Readopting Order 84-19, filed 6/28/84)

**WAC 392-171-401 DEFINITION AND ELIGIBILITY CRITERIA FOR HEALTH IMPAIRED.** Health impaired students are those who have chronic or acute health problems—such as students with serious congenital heart defect, other congenital syndrome(s), other disorders of the cardiorespiratory systems, disorders of the central nervous system including epilepsy or neurological impairment, autism or other profound health circumstances or degenerative condition(s)—which adversely affect or with a high degree of professional certainty will affect their educational performance.

All students considered for initial placement in special education as health impaired shall be assessed and determined eligible for special education and related services according to the following:

(1) A current medical evaluation by a qualified medical practitioner which describes and confirms the student's health circumstances and which provides any medical implications for educational planning;

(2) Current assessment of level of academic achievement as measured by standardized tests appropriate to age level and administered individually;

(3) A current evaluation which considers and describes the student's social and emotional behaviors and which provides any implications for educational planning which may include an evaluation of adaptive behaviors as measured by standardized instrument(s) or professionally recognized scales addressing the student's self-help and interpersonal communication skills in relation to chronological age/grade peers; and

(4) A current vision and hearing screening report.

**READOPTED SECTION** (Readopting Order 84-19, filed 6/28/84)

**WAC 392-171-406 SPECIFIC LEARNING DISABILITY—DEFINITION.** Specific learning disability is a disorder in one or more of the basic psychological processes involved in understanding or using spoken or written language. Such disorder may include problems in visual and auditory perception and integration and may manifest itself in an impaired ability to think, speak or communicate clearly, read with comprehension, write legibly and with meaning, and to accurately perform mathematical calculations, including those involving reading. Spelling shall not stand alone as a qualifying academic achievement area. The presence of a specific learning disability is indicated by intellectual functioning above that specified in this chapter for eligibility as mentally retarded and by a severe discrepancy between the student's intellectual ability and academic achievement in one or more of the following areas:

(1) Oral expression;

- (2) Listening comprehension;
- (3) Written expression;
- (4) Basic reading skill;
- (5) Reading comprehension;
- (6) Mathematics calculations; and
- (7) Mathematics reasoning;

PROVIDED, That such a performance deficit cannot be explained by visual or hearing problems, motor handicaps, mental retardation, behavioral disability, or environmental, cultural, or economic factors.

A specific learning disability includes conditions described as perceptual handicap, minimal brain dysfunction, dyslexia, and developmental aphasia: PROVIDED, That the student meets the eligibility criteria set forth in WAC 392-171-411, including documentation of severe discrepancy as required by WAC 392-171-413 and 392-171-418.

**READOPTED SECTION** (Readopting Order 84-19, filed 6/28/84)

WAC 392-171-411 **SPECIFIC LEARNING DISABILITY—ASSESSMENT PROCEDURES AND ELIGIBILITY CRITERIA.** Assessment procedures and eligibility standards: All students considered for initial placement in special education as specific learning disabled shall be assessed and determined eligible for special education and related services according to the following:

- (1) A current assessment of sufficient scope to rule out eligibility for any other handicapping condition and to rule out environmental, cultural, or economic factors as an explanation for the specific academic problem;
- (2) A current vision and hearing screening report shall be obtained and shall be of sufficient scope to rule out vision or hearing acuity as an explanation for the specific academic problem;
- (3) A written record of observation of the student's learning behaviors in the regular education program and the relationships of these behaviors to the specific academic problem shall be completed by a member of the assessment team other than the student's regular education teacher; and
- (4) Written documentation that the student has an academic achievement problem in the regular education program shall be available. Such documentation shall include, if applicable, previous intervention attempts and the results obtained. Examples of data used for documentation may include:
  - (a) Student performance on daily classroom work and/or criterion-referenced tests;
  - (b) Summary of past student performance;
  - (c) Group test results;
  - (d) Teacher observation and judgments; and
  - (e) Performance on student learning objectives.
- (5) Documentation of the existence of a severe discrepancy between the student's intellectual ability and academic achievement in one or more of the seven areas specified in WAC 392-171-406 shall be recorded. Such documentation shall conform to the requirements of WAC 392-171-413 or 392-171-418, whichever is applicable.

(6) Tests used to assess the student's intellectual ability and academic achievement shall be:

- (a) Current;
- (b) Reliable as demonstrated by a reliability coefficient of .85 or above;
- (c) Normed on representative national samples;
- (d) Selected and administered in accordance with the general requirements of WAC 392-171-351; and
- (e) Individually administered and interpreted by a qualified person (defined in WAC 392-171-351) in accordance with the standardized procedures described in the test manuals.

**READOPTED SECTION** (Readopting Order 84-19, filed 6/28/84)

WAC 392-171-412 **DISCREPANCY TABLES FOR DETERMINING SEVERE DISCREPANCY UNDER WAC 392-171-413.** The superintendent of public instruction shall develop and publish discrepancy tables for the purpose of determining a severe discrepancy between intellectual ability and academic achievement pursuant to WAC 392-171-413. Such tables shall be developed on the basis of a regressed standard score discrepancy method which shall consider the following variables:

- (1) The reliability coefficient of the intellectual ability test;
- (2) The reliability coefficient of the academic achievement test; and
- (3) An appropriate correlation between the intellectual ability and the academic achievement tests.

The regressed standard score discrepancy method shall be applied at a criterion level of 1.55.

**READOPTED SECTION** (Readopting Order 84-19, filed 6/28/84)

WAC 392-171-413 **METHOD FOR DOCUMENTING SEVERE DISCREPANCY—GRADES ONE AND ABOVE.** (1) For students in grades one and above, a severe discrepancy shall be determined and documented from tables developed pursuant to WAC 392-171-412.

- (2) For the purposes of applying the severe discrepancy tables, the following scores shall be used:
  - (a) A total or full scale intellectual ability score; and
  - (b) An academic achievement test score which can be converted into a standard score with a mean of one hundred and a standard deviation of fifteen.
  - (c) A severe discrepancy between the student's intellectual ability and academic achievement in one or more of the seven areas provided for in WAC 392-171-406 shall be determined by applying the regressed standard score discrepancy method to the obtained intellectual ability and achievement test scores using the tables referenced above: PROVIDED, That where the assessment results do not appear to accurately represent the student's intellectual ability and where the discrepancy between the student's intellectual ability and academic achievement does not initially appear to be severe upon application of the discrepancy tables, WAC 392-171-412, the multidisciplinary team shall apply professional

judgment in order to determine the presence of a severe discrepancy. In this event, the multidisciplinary team shall document in writing a narrative explanation as to why the student has a severe discrepancy. The multidisciplinary team must provide supportive evidence, including the procedures used to determine that a severe discrepancy exists between the student's intellectual ability and academic achievement: **PROVIDED FURTHER**, That if the prohibition against the use of specific tests or test results as provided in WAC 392-171-351(4) shall preclude the use of any of the tests referenced above, the multidisciplinary team shall document in a written narrative the basis upon which the members decided that there exists a severe discrepancy between intellectual ability and achievement.

**READOPTED SECTION** (Readopting Order 84-19, filed 6/28/84)

**WAC 392-171-418 ADDITIONAL METHOD FOR DOCUMENTING SEVERE DISCREPANCY—GRADES SEVEN AND ABOVE.** For a student in grades seven and above not found eligible under WAC 392-171-413 as a specific learning disabled student, the existence of a severe discrepancy between that student's intellectual ability and academic achievement shall be determined and documented as follows:

- (1) An intellectual ability test shall be administered.
- (2) An academic achievement test in one or more of the seven areas described in WAC 392-171-406 shall be administered.
- (3) The student's chronological age/grade (CAG) performance in one or more of the academic achievement areas provided for in the definition shall be adjusted for expectations due to variance in intellectual functioning. The expected performance adjusted for intellectual functioning shall then be compared to the results of the actual achievement measures, the results of which must yield:
  - (a) A functioning level of two-thirds or below of expected performance; and
  - (b) A functioning level below chronological age/grade.
- (4) If the results of the above comparison for a particular student indicate a functioning level of two-thirds or below of expected performance and a functioning level below chronological age/grade level in one or more of the seven areas described in WAC 392-171-406, a severe discrepancy has been documented.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-421 DEFINITION AND ELIGIBILITY CRITERIA FOR MENTAL RETARDATION.** Mentally retarded students are those who demonstrate significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affects their educational performance.

(1) **Assessment procedures.** All students considered for initial placement in special education as mentally retarded shall be assessed and determined eligible for special education and related services according to the following:

(a) A current assessment of intellectual functioning obtained from a standardized individual test designed to measure intellectual functioning, individually administered by a qualified psychologist and interpreted and attested to as to validity by a qualified psychologist; and

(b) A current evaluation which considers and describes adaptive behavior as measured by standardized instrument(s), or professionally recognized scales where there are no known standardized measures, which discusses any implications for educational planning; and

(c) Current assessment of level of academic achievement as measured by standardized tests appropriate to age level and administered individually; and

(d) A developmental history compiled directly from the parent(s), or records, when parents are not available; and

(e) A current vision and hearing screening report.

(2) **Eligibility standards.** The measured level of functioning is to be classified as follows:

(a) **Mild mental retardation.** Intellectual functioning (IQ) range from approximately 51 through 75 and the following conditions:

(i) Academic functioning equal to three-fourths or less of chronological age/grade; and

(ii) Adaptive behavior equal to three-fourths or less chronological age/grade.

(b) **Moderate mental retardation.** Intellectual functioning (IQ) range from 30 to 50 and the following conditions:

(i) Academic functioning equal to one-half or less of chronological age/grade; and

(ii) Adaptive behavior equal to one-half or less of chronological age/grade.

(c) **Severe/profound mental retardation.** Intellectual functioning (IQ) range under 30 and the following:

(i) Academic functioning equal to one-third or less of chronological age/grade; and

(ii) Adaptive behavior equal to one-third or less of chronological age/grade.

**READOPTED SECTION** (Readopting Order 84-19, filed 6/28/84)

**WAC 392-171-431 DEFINITION AND ELIGIBILITY CRITERIA FOR MULTIHANDICAPPED.** A student shall be considered multihandicapped when there are present and documented two or more handicapping conditions, each of which is so severe as to warrant a special program were that handicapping condition to appear in isolation, and the combination of which causes such severe educational problems that the student requires intensive programming cannot be accommodated in special education programs solely for one of the impairments. Students who are deaf-blind are not included as multihandicapped. (See WAC 392-171-451.) Students who are classified as specific learning disability in combination with another handicapping condition

shall not be eligible to be counted for state funding purposes as multihandicapped.

Assessment procedures and eligibility standards: All students considered for initial placement in special education as multihandicapped shall be assessed and determined eligible for special education and related services according to the following:

- (1) Assessment procedures for each handicapping condition have been followed, the results of which document eligibility for inclusion in special education were each handicap to appear in isolation; and
- (2) Summary statements in the assessment analysis report document that the effect of the multiplicity of handicaps is so severe that the student cannot be accommodated in special education programs solely for one of the impairments.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-436 DEFINITION AND ELIGIBILITY CRITERIA FOR DEAF.** Deaf student are those students who have a documented hearing impairment which is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification, which adversely affects educational performance.

All students considered for initial placement in special education as deaf shall be assessed and determined eligible for special education and related services according to the following:

- (1) A current evaluation by a qualified audiologist which describes and confirms that the hearing impairment is so severe that student is impaired in processing linguistic information through hearing, with or without amplification and which prevents the auditory channel from being the primary mode of learning speech and language and adversely affects educational performance;
- (2) Current assessment of level of academic achievement as measured by standardized tests appropriate to age level and administered individually;
- (3) A current evaluation which considers and describes the student's social and emotional behaviors and which provides any implications for educational planning;
- (4) A current assessment of language development as measured by standardized tests or professionally recognized scales appropriate to age level and administered individually; and
- (5) A current vision screening report.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-441 DEFINITION AND ELIGIBILITY CRITERIA FOR HARD OF HEARING.** Hard of hearing students are those students who have a hearing impairment, whether permanent or fluctuating, which adversely affects the student's educational performance.

All students considered for initial placement in special education as hard of hearing shall be assessed and determined eligible for special education and related services according to the following:

- (1) A current evaluation by a qualified audiologist which describes and confirms that the student:
  - (a) Has an organic hearing loss in excess of 20 dB better ear average in the speech range (500, 1,000, 2,000 Hz), unaided; or
  - (b) Has a history of fluctuating hearing loss which has interrupted the normal acquisition of speech and language and continues to be a part of educational planning.
- (2) A current assessment of level of academic achievement as measured by standardized tests appropriate to age level and administered individually.
- (3) A current evaluation which describes and confirms the student's social and emotional behaviors and which provides any implications for educational planning.
- (4) A current assessment of language development as measured by standardized tests or professionally recognized scales appropriate to age level and administered individually.
- (5) A current vision screening report.

Each school district shall ensure that the hearing aids worn by deaf and hearing impaired students in school are functioning properly.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-446 DEFINITION AND ELIGIBILITY CRITERIA FOR VISUALLY HANDICAPPED.** Visually handicapped students are those students who have a visual impairment which, even with correction, adversely affects the student's educational performance. The term includes both partially sighted and blind students.

All students considered for initial placement in special education as visually handicapped shall be assessed and determined eligible for special education and related services according to the following:

- (1) A current evaluation by a qualified vision specialist or physician which describes and confirms that the student:
  - (a) Has visual acuity of 20/70 or less in the better eye with correction; or
  - (b) Has a field of vision which at its widest diameter subtends an angle of no greater than twenty degrees in the better eye with correction.
- (2) Current assessment of level of academic achievement as measured by standardized tests appropriate to age level and administered individually.
- (3) A current evaluation which considers and describes the student's social and emotional behaviors and which provides any implications for educational planning.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-451 DEFINITION AND ELIGIBILITY CRITERIA FOR DEAF-BLIND.** Deaf-blind

students are those whose hearing and vision impairments, in combination, cause such severe communication and other developmental and educational problems that they cannot be accommodated in special education programs solely for deaf or blind students.

All students considered for initial placement in special education as deaf-blind shall be assessed and determined eligible for special education and related services according to the following:

(1) A current evaluation by a qualified audiologist and vision specialist or physician which describes and confirms that the vision and hearing impairments, in combination, cause such severe communication and other developmental and educational problems that the students cannot be accommodated in special education programs solely for deaf or blind students.

(2) Current assessment of level of academic achievement as measured by standardized tests appropriate to age level and administered individually.

(3) A current evaluation which considers and describes the student's social and emotional behaviors and which provides any implications for educational planning; and

(4) A current assessment of language development as measured by standardized tests or professionally recognized scales appropriate to age level and administered individually.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-456 MEETINGS. (1) A meeting shall be held within thirty calendar days after the date upon which a student's assessment is completed for the purpose of developing the student's individualized education program. The school district shall initiate and conduct the meeting and shall include the following participants:

(a) A representative of the school district other than the student's teacher who is qualified to provide or supervise the provision of special education and related services;

(b) The student's regular classroom teacher or special education teacher or therapist: PROVIDED, That either the representative of the school district or the teacher or therapist is qualified in the area of the student's suspected disability;

(c) One or both of the parents (in the case of a non-adult student), subject to subsections (2) through (5) of this section;

(d) The student if he or she is an adult student (and in the case of nonadult students, the student, if appropriate);

(e) A member of the student's assessment team; and

(f) Other individuals at the discretion of the district or the parent or the adult student.

(2) Each school district shall take steps to assure (in the case of nonadult students) that one or both parents of the handicapped student are present at each meeting or are afforded the opportunity to participate, including:

(a) Notifying the parent(s) of the meeting early enough to assure his or her participation; and

(b) Scheduling the meeting at a mutually agreed upon place and time.

(3) The notice to the parent(s) shall include the purpose, time, location of the meeting and who will be in attendance.

(4) If a parent cannot attend, the district shall use other methods to assure participation, including individual or conference telephone calls.

(5) A meeting may be conducted (in the case of a nonadult student) without a parent in attendance if the school district is unable to convince the parents they should attend. In such a case the school district shall make a record of its attempts to arrange a mutually agreed upon time and place. The record shall contain such information as:

(a) Detailed records of telephone calls made or attempted and the results of those calls;

(b) Copies of correspondence sent to the parents and any responses received; and

(c) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(6) The school district shall take whatever action is necessary to assure that the parent (or adult student) understands the proceedings at a meeting, including arranging for an interpreter for parents (or adult students) who are deaf or whose native language is other than English.

(7) The district shall document the parent(s)' and other IEP participants' presence at the IEP meeting.

(8) Meetings consistent with this section shall be conducted by the school district at least once a year for the purpose of reviewing and revising as necessary each student's individualized education program. Meetings may be held more frequently.

(9) In the case of students admitted to state residential schools, an assessment and individualized education program must be completed as provided in this chapter within fifty school days of enrollment.

**READOPTED SECTION** (Readopting Order 84-19, filed 6/28/84)

WAC 392-171-461 INDIVIDUALIZED EDUCATION PROGRAM. (1) Each handicapped student's individualized education program shall be developed on the basis of assessment analysis and parent input, where it is provided, and shall include:

(a) For each orthopedically impaired and health impaired student under the age of eligibility to first grade, current medical evaluation by a qualified medical practitioner which describes and confirms the student's health circumstance and which provides any medical implications for educational planning;

(b) A statement of the student's present levels of educational performance;

(c) A statement of specific annual goals including short-term instructional objectives which are stated in terms that provide for measurement of progress, expected levels of performance, and the schedules for their accomplishments;

(d) A statement of the specific special education and related services needed by the student, and the extent to

which the student will be able to participate in the regular educational program, including physical education. If the student is unable to participate in the regular physical education program, a description of the specially designed physical education to be provided to the student shall be included;

(e) The IEP developed for a handicapped student whose chronological age is fourteen or above shall also include career development and/or vocational education goals and short-term instructional objectives, where appropriate: **PROVIDED**, That if the career development and/or vocational education is specially designed instruction, goals and short-term instructional objectives shall be included;

(f) The projected dates for the initiation of services and the anticipated duration of the services, including the number of school days, the number of hours per day, and the length of the school year over which such services shall be provided: **PROVIDED**, That in the event the individualized educational program is the first in the district for such student and the multidisciplinary team has not made a determination as to the need for an extended school year for such child, the individualized educational program team shall make its recommendation on the length of the school year over which such services shall be provided prior to the conclusion of the regular one hundred eighty school days; and

(g) Appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short-term instructional objectives are being met.

(2) The school district shall provide the parent (or the adult student) a copy of the individualized education program.

(3) Nothing in this chapter may be construed as promising or guaranteeing that a handicapped student will in fact achieve the growth projected in his or her annual goals and short-term objectives.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-466 **INITIAL EDUCATIONAL PLACEMENT—NOTICE—CONSENT.** (1) Each school district shall provide written notice of a student's proposed, initial special education placement, or of the district's inability or refusal to make a special education placement, at the initial meeting or within ten calendar days after the initial meeting provided for in WAC 392-171-456. The notice shall comply with the notice requirements of WAC 392-171-526. Provided that pupils admitted to state residential schools shall be enrolled in an educational program within ten school days of admission.

(2) The written consent of the parent(s) (or adult student) shall be requested if special education placement is proposed.

(3) The student's proposed special education placement shall commence when either:

(a) Written consent has been given by the parent(s) (or the adult student); or

(b) The refusal of a student's parent(s) (or adult student) to grant consent has been overridden by the school

district pursuant to a hearing (or appeal) conducted in accordance with WAC 392-171-521 et seq.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-471 **LEAST RESTRICTIVE ENVIRONMENT.** The placement and provision of services to each handicapped student shall be in his or her least restrictive environment as follows:

(1) Educational setting—Each handicapped student shall be placed:

(a) In the regular educational environment with non-handicapped students to the maximum extent appropriate to his or her needs, unless it can be demonstrated by the school district that the nature or severity of the student's disability is such that his or her education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily; and

(b) In the school which he or she would attend if not handicapped, unless his or her individualized education program requires some other arrangement. If some other arrangement is required, the student shall be placed in the appropriate educational program that is as close to the student's home as is reasonably possible.

(2) Nonacademic settings—Each handicapped student shall be provided nonacademic and extracurricular services and activities conducted by the school district (e.g., meals, recess, recreation, athletics, counseling, transportation, student club activities, etc.) with nonhandicapped students to the maximum extent appropriate to the needs of the student.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-476 **CONTINUUM OF ALTERNATIVE PLACEMENTS.** A continuum of alternative placement options shall be made available as is necessary to meet the needs of the district's handicapped students for special education and related services.

The option shall include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions, and shall provide for supplementary services such as resource room or itinerant instruction in conjunction with regular class placement.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-481 **PLACEMENT OPTIONS—SELECTION—REQUIRED CONSIDERATIONS.**

(1) The placement of each handicapped student shall be determined annually at a meeting conducted pursuant to WAC 392-171-456.

(2) The selection of the appropriate placement option or options for each handicapped student shall be based upon:

(a) The student's individualized education program;

(b) The least restrictive environment requirements of WAC 392-171-471;

(c) The option or combination of options that provides a reasonably high probability of assisting the student to attain his or her annual goals, and

(d) A consideration of any potential harmful effect on the student or on the quality of services which he or she needs.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-486 HOME/HOSPITAL INSTRUCTION.** Home or hospital instruction shall be provided to both handicapped students and other students who are unable to attend school for an estimated period of four weeks or more because of physical disability or illness. As conditions to such services, the parent(s) of a student (or the adult student) shall request the services and provide a written statement to the school district from a qualified medical practitioner that states the student will not be able to attend school for an estimated period of at least four weeks. A student who is not otherwise handicapped pursuant to WAC 392-171-310 who qualifies pursuant to this subsection shall be deemed "handicapped" only for the purpose of home/hospital instructional services and funding and may not otherwise qualify as a handicapped student for the purposes of generating state or federal special education funds. A school district shall not pay the cost of the statement from a qualified medical practitioner for the purposes of qualifying a student for home/hospital instructional services pursuant to this section.

Home-hospital instructional services funded in accordance with the provisions of this section shall not be used for initial or on-going placement of otherwise handicapped students. It shall be limited to placement as is deemed necessary to provide temporary intervention as a result of a physical disability or illness.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-491 CONTRACTUAL SERVICES.** (1) School districts, severally or jointly, shall be authorized to:

(a) Enter into interdistrict agreements with another school district(s) pursuant to RCW 28A.58.075, 28A.58.245, 28A.58.250, and chapter 392-135 WAC; and

(b) Contract with nonpublic and public school agencies for special education and related services for handicapped students: **PROVIDED**, That the school district establishes that it cannot provide an appropriate education for the handicapped student within the district or another school district: **PROVIDED FURTHER**, That in the case of a cooperative placement by a school district of a handicapped student at a center for the furtherance of research and training in handicapping conditions as established pursuant to RCW 28B.20.410 through 28B.20.414, as now or hereafter amended, or other such centers as may be established at other public institutions of higher education, as defined in RCW 28B.10.016, the school districts shall establish that the parent (or adult student) has given written approval for

placement of the handicapped student at such center despite the existence of an appropriate education for the handicapped student within the district or another school district and has agreed that such placement would equal or substantially equal the placement available in the school district.

(2) If a handicapped student has special education and related services available in his or her public school district of residence and the child is placed in another public school district or in a public or private school or facility other than pursuant to a contractual arrangement between the student's district of (initial) residence and the entity of placement, the district of (initial) residence shall not be required to pay for the student's education or otherwise be responsible for the education of the student, except to the extent the student may qualify for services as a private school student pursuant to WAC 392-171-646 et seq.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-496 APPROVAL OF NONPUBLIC AND PUBLIC SCHOOL AGENCIES.** A school district shall not either place a student in a nonpublic or public school agency or award a contract to a nonpublic or public school agency until the nonpublic or public school agency has been approved by the state board of education. Approval of such agencies shall be made in accordance with the following procedures:

(1) The school district shall establish that all requirements imposed by this chapter for contracting with a nonpublic or public school agency can be met and shall forward the nonpublic or public school agency's application to the superintendent of public instruction or his or her designee;

(2) The superintendent of public instruction or his or her designee shall recommend approval or disapproval of the agency to the state board of education; and

(3) The superintendent of public instruction or his or her designee shall notify the requesting school district and nonpublic or public school agency of approval or disapproval.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-501 SCHOOL DISTRICT RESPONSIBILITY WHEN CONTRACTING FOR PLACEMENT IN A NONPUBLIC OR PUBLIC SCHOOL AGENCY.** Any school district contracting with an approved nonpublic or public school agency for special education and/or related services in behalf of a handicapped student shall:

(1) Initiate and conduct a meeting with appropriate personnel and the student's parent(s) for the purpose of developing the student's individualized education program. The district shall assure that a representative of the nonpublic or public school agency attends the meeting or in some other way assure participation by the nonpublic school agency. Meetings to review or revise the student's individualized education program after the student has been placed shall be initiated and conducted



by the nonpublic or public school agency at the discretion of the school district. The district shall assure that both the parent(s) (or the adult student) and the nonpublic school agency are represented in any decision concerning the student's individualized education program and agree to proposed changes in the program before those changes are implemented. The responsibility for compliance with this section lies with the school district.

(2) Develop a written contract which shall include, but not necessarily be limited to, the following elements:

- (a) Names of the parties involved;
- (b) The name of the handicapped student(s) for whom the contract is drawn;
- (c) Location and setting;
- (d) Description of program administration and supervision;
- (e) Designation of coordinator of the services to be provided by the school district and the contractor;
- (f) Assurance of compliance with staff licensing/certification requirements;
- (g) Periodic student report requirements;
- (h) Annual program monitoring procedures and requirements;
- (i) Starting date and duration of contract;
- (j) Program day and description of student's program;
- (k) Charges and reimbursement—Billing and payment procedures;
- (l) Total contract cost;
- (m) Contract review;
- (n) Disposition of materials and equipment upon termination;
- (o) School district's responsibility for compliance with due process, individualized education program, and yearly review and determination of placement requirements;
- (p) Contractor's policies and procedures covering:
  - (i) Care of student(s) in emergencies;
  - (ii) Fire drills;
  - (iii) Personnel policies;
  - (iv) Staff duties; and
  - (v) Board of directors' duties and functions;
- (q) Other contractual elements that may be necessary to assure compliance with state and federal rules and clearly define each party's role and functions; and
- (r) Signatures of authorized school and contractor officials.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-506 OUT-OF-STATE AGENCIES.** In the event the school district within which a handicapped student resides is unable to contract with another district, or a nonpublic or public school agency, or an appropriate state agency, the parent (or adult student) and district may jointly petition the superintendent of public instruction or his or her designee for state and federal special education funds to provide an educational program with an agency in another state or Canada.

Contractual arrangements for an out-of-state educational program shall be approved by the superintendent of public instruction or his or her designee prior to the

student's placement in that program. The school district shall be responsible for:

- (1) Determining that no appropriate in-state placement option is available and for making the decision that the student should be placed in an out-of-state program;
- (2) Determining that the out-of-state educational program is appropriately licensed or approved by that state's authorities and that placement will result in an appropriate education for the student; and
- (3) Contracting with the out-of-state agency pursuant to the requirements of WAC 392-171-491 through 392-171-501.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-511 ANNUAL REVIEW OF PLACEMENT AND STUDENT PROGRESS—PROGRAM IMPROVEMENT.** (1) Annual placement review—The educational placement of each handicapped student shall be evaluated and redetermined annually at a meeting conducted pursuant to WAC 392-171-456.

(2) Program evaluation—Each school district shall establish a simple and reliable system of evaluating the program established for each handicapped student. Program evaluations shall be based upon a handicapped student's progress toward the accomplishment of the goals and objectives set forth in the student's individualized education program and/or upon the teacher/manager efforts to facilitate change. Specific methods of evaluating and displaying program results shall be determined in accordance with the district's policies and procedures and the student's individualized education program.

(3) The program evaluation system shall assure that the performance measurement is recorded and reported at both in-process and final-result stages, and the results of the evaluation shall be reported to the parent(s) (or the adult student) consistent with policies and procedures of the school district.

(4) Program evaluations shall serve two purposes:

- (a) To compare a student's measured performance with established goals and objectives; and
- (b) To attempt to identify causal factors that account for significant differences between actual and predicted performance.

(5) Each school district shall develop, in its own format, alternatives designed to improve methods and results that are based upon the performance evaluation of the student. Evaluation of progress shall be continuing and completed at least annually in order to allow assessment personnel to adjust aims, programs, etc., if the goals and objectives are not met.

**READOPTED SECTION** (Readopting Order 86-1, filed 2/21/86)

**WAC 392-171-512 REASSESSMENT—REQUIREMENT.** Each identified student having a handicapping condition shall be reassessed in accordance with the assessment procedures specified in WAC 392-171-351 through 392-171-366 by the multidisciplinary team provided for in WAC 392-171-351 as follows:



(1) At a minimum, once every three years or more frequently if required by this chapter.

(2) Upon request of the student's parent (or adult student), teacher, or individualized education program committee.

**READOPTED SECTION** (Readopting Order 86-1, filed 2/21/86)

**WAC 392-171-513 REASSESSMENT—NOTICE REQUIREMENT.** Ten calendar days prior to conducting the reassessment, the district shall provide written notice to parents (or adult student). Such notice for reassessment, shall include:

(1) The procedural safeguard requirements provided in WAC 392-171-526 (1)(a) and also shall be issued in compliance with the provisions of WAC 392-171-526 (2) and (3);

(2) The reasons for reassessment i.e., required three-year reassessment or reassessment upon request. If the reassessment is upon request, the notice shall include the source of and reasons for such request;

(3) A statement that the student's records will be reviewed as a part of the reassessment and that the parents (or adult student) have the right to submit to the multidisciplinary team any information they deem important to the reassessment;

(4) A statement that the multidisciplinary team will determine the need, if any, for replication of previous assessment procedures and the need, if any, for additional assessment procedures;

(5) A list of the disciplines to be represented on the multidisciplinary team as required by WAC 392-171-351.

**READOPTED SECTION** (Readopting Order 86-1, filed 2/21/86)

**WAC 392-171-514 REASSESSMENT—PURPOSES.** The purposes of reassessment of identified students having a handicapping condition are to determine one or more of the following:

(1) Whether the student is appropriately identified as handicapped—i.e., having or not having a handicapping condition—or appropriately classified—i.e., having one or more particular handicapping conditions specified in WAC 392-171-381 through 392-171-451;

(2) Whether the program designed for the student is appropriate to meet the student's unique needs, abilities, and limitations; and

(3) Whether the student meets the continuing eligibility requirement of WAC 392-171-325(3) or 392-171-331.

**READOPTED SECTION** (Readopting Order 86-1, filed 2/21/86)

**WAC 392-171-516 REASSESSMENT—NOTICE OF RESULTS.** Following the completion of the reassessment and based on the reassessment results, the district superintendent or his or her designee shall record in writing one or more of the following decisions:

(1) Whether the student is appropriately identified as handicapped.

(2) Whether the student is appropriately classified as having a particular handicapping condition and is in need of special education services.

(3) Whether the program designed for the student is appropriate to the student's unique needs, abilities, and limitations.

(4) Whether the student meets the continuing eligibility requirement of WAC 392-171-325(3) or 392-171-331.

In accordance with WAC 392-171-521, the parent (or adult student) shall be notified pursuant to the content of notice prescribed in WAC 392-171-526 of the school district's decision within ten calendar days following the completion of the reassessment. When a determination is made that the program is inappropriate, an individualized education program committee meeting shall be convened in accordance with WAC 392-171-456 through 392-171-466. When special education services are to be discontinued, notice shall be given the parent(s) pursuant to WAC 392-171-521.

**READOPTED SECTION** (Readopting Order 86-1, filed 2/21/86)

**WAC 392-171-517 REASSESSMENT—THREE-YEAR REQUIREMENT.** If the reassessment is the result of the three-year reassessment requirement, the multidisciplinary team based on the professional judgment of the members thereof—i.e., a reasonable degree of professional certainty—shall determine and document the following:

(1) Whether the student is appropriately identified or appropriately classified. If not, the multidisciplinary team shall follow the procedures specified in WAC 392-171-518.

(2) Whether the current program is appropriate to the student's unique needs, abilities, and limitations. If not, the multidisciplinary team shall follow the procedures specified in WAC 392-171-519.

(3) Whether the student meets the continuing eligibility requirement of WAC 392-171-325(3) or 392-171-331. In making such determination, the multidisciplinary team shall document in a written narrative the basis for such determination, including any relevant data or assessment process used for the determination of continuing eligibility.

(4) Whether assessment procedures should be replicated or conducted by members of the multidisciplinary team or other professionals not represented on the multidisciplinary team to provide reasonable professional certainty that the reassessment results are accurate. In making such determination, members of the multidisciplinary team shall be governed by the generally recognized professional practice standards of their respective disciplines. Members of the multidisciplinary team shall defer to the professional judgment of a team member who requests the replication or conduction of a particular assessment procedure.

READOPTED SECTION (Readopting Order 86-1, filed 2/21/86)

WAC 392-171-518 REASSESSMENT—APPROPRIATE IDENTIFICATION OR CLASSIFICATION. If the reassessment is upon request of the student's parent (or adult student), teacher, or individualized education program committee and concern is stated that the student is or may be inappropriately identified as handicapped or inappropriately classified as having a particular handicapping condition, the reassessment process shall address each component of the eligibility criteria for the identified or suspected handicapping condition pursuant to WAC 392-171-381 through 392-171-451. The assessment procedures stated therein shall be conducted unless the multidisciplinary team based on a reasonable degree of professional certainty determines that the replication of a particular assessment procedure is not necessary for one or more of the following reasons:

- (1) That previous assessment procedures were conducted accurately;
- (2) That a particular assessment procedure is unnecessary to determine the accuracy of the identification or classification;
- (3) That an alternative assessment procedure is more or equally appropriate to determine the accuracy of the identification or classification.

READOPTED SECTION (Readopting Order 86-1, filed 2/21/86)

WAC 392-171-519 REASSESSMENT—APPROPRIATENESS OF PROGRAM. If the reassessment is upon the request of the student's parent (or adult student), teacher, or individualized education program committee and concern is stated that the current program is or may be inappropriate to the student's unique needs, abilities, and limitations, then the assessment procedures utilized to determine the appropriateness of the student's special education and related services program, including recommendations for changes therein, shall be determined by the multidisciplinary team. In making such determination the multidisciplinary team shall document in a written narrative the basis for such determination, including any relevant data or assessment procedures utilized.

READOPTED SECTION (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-521 WHEN NOTICE MUST BE GIVEN. Written notice in accordance with WAC 392-171-526 shall be given by a school district to the parent(s) of a student (or to the adult student) a reasonable time before the school district:

- (1) Proposes to initiate or change the identification, assessment, or educational placement of the student or the provision of special education and related services to the student pursuant to this chapter; or
- (2) Refuses to initiate or change the identification, assessment, or educational placement of the student or the provision of special education and related services to the student pursuant to this chapter.

READOPTED SECTION (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-526 CONTENTS OF NOTICE. (1) The notice required by WAC 392-171-521 shall include:

- (a) A full explanation of all of the procedural safeguards available to the parent (or the adult student) that are set forth in this chapter;
  - (b) A description of the action proposed or refused by the school district, an explanation of why the district proposes or refuses to take the action, and a description of any options the district considered and the reasons why those options were rejected;
  - (c) A description of each assessment procedure, test, record, or report the district used as a basis for the proposal or refusal; and
  - (d) A description of any other factors which are relevant to the district's proposal or refusal.
- (2) The notice shall be:
- (a) Written in language understandable to the general public; and
  - (b) Provided in the native language of the parent (or adult student) or other mode of communication used by the parent (or adult student), unless it is clearly not feasible to do so.

(3) If the native language or other mode of communication of the parent (or adult student) is not a written language, the district shall take steps to assure that:

- (a) The notice is translated orally or by other means to the parent (or adult student) in his or her native language or other mode of communication;
- (b) The parent (or adult student) understands the content of the notice; and
- (c) There is written evidence that the requirements in subparagraphs (a) and (b) of this subsection have been met.

READOPTED SECTION (Readopting Order 86-1, filed 2/21/86)

WAC 392-171-531 RIGHT TO INITIATE—PURPOSES. (1) Hearings conducted in accordance with WAC 392-171-521 through 392-171-556 may be initiated in the following cases for the purposes stated:

- (a) The parent(s) of a student (or an adult student) or a school district may initiate a hearing to challenge or to show (as the case may be) the appropriateness of a proposal by the school district to initiate or change:
  - (i) The identification of the student;
  - (ii) The assessment of the student;
  - (iii) The educational placement of the student; or
  - (iv) The provision of special education and related services to the student pursuant to this chapter;
- (b) The parent(s) of a student (or an adult student) or a school district may initiate a hearing to challenge or to show (as the case may be) the appropriateness of the school district's refusal of the parent(s) (or adult student's) request to initiate or change:
  - (i) The identification of the student;
  - (ii) The assessment of the student;
  - (iii) The educational placement of the student; or

(iv) The provision of special education and related services to the student pursuant to this chapter,

(c) A school district may initiate a hearing to show that its assessment of a student is appropriate if the student's parent(s) (or adult student) disagrees with the assessment results.

(2) A request by a student's parent(s) (or adult student) for a hearing pursuant to this section shall:

(a) Be in writing;

(b) Be mailed or provided directly to the superintendent of the school district; and

(c) Explain the complaint of the parent(s) (or adult student) in general or specific terms.

(3) A request by a school district for a hearing pursuant to this section shall:

(a) Be in writing;

(b) Be mailed or provided directly to Office of Superintendent of Public Instruction, Office of Legal Services, Old Capitol Building, Olympia, Washington 98504. A copy of such request, including required attachments shall be transmitted to the student's parent(s) (or adult student);

(c) Have attached to such request a copy of the notice to parent(s) (or adult student) as required by WAC 392-171-521. If the hearing request by the district is in response to a request for an independent educational assessment pursuant to WAC 392-171-371, the district's written request for a hearing also shall have attached a copy of the written notice to the district required by WAC 392-171-371(2).

(4) A notice of a hearing requested by a student's parent(s) (or adult student) or initiated by a school district pursuant to this section shall be provided by the hearing officer and shall include, but not necessarily be limited to:

(a) The date, time, and place of the hearing;

(b) The issues to be addressed at the hearing to the extent the issues have been identified at the time of the notice;

(c) The rights, procedures, and other matters set forth in WAC 392-171-536 through 392-171-576; and

(d) The right of the parent(s) (or adult student) to seek an independent assessment at public expense pursuant to WAC 392-171-371.

**READOPTED SECTION** (Readopting Order 84-33, filed 9/6/84)

**WAC 392-171-533 TRANSMITTAL OF COMPLAINT BY SCHOOL DISTRICT TO SUPERINTENDENT OF PUBLIC INSTRUCTION.** Unless the complaint filed with the school district superintendent pursuant to WAC 392-171-531(2) is withdrawn by the complainant in writing within five calendar days from the date of receipt, the school district superintendent shall transmit the complaint to the office of Superintendent of Public Instruction, Office of Legal Services, Old Capitol Building, Olympia, Washington 98504 prior to midnight of such fifth calendar day by depositing such complaint in the United States mail.

**READOPTED SECTION** (Readopting Order 84-33, filed 9/6/84)

**WAC 392-171-536 HEARING OFFICERS—SELECTION AND EXPENSES OF—PARENT ASSISTANCE.** (1) If a hearing is initiated pursuant to WAC 392-171-531:

(a) The hearing shall be conducted by and at the expense of the superintendent of public instruction.

(b) The superintendent of public instruction shall provide for a court reporter's stenographic record of all testimony and other oral hearing proceedings at the expense of the superintendent of public instruction: **PROVIDED**, That a court reporter's stenographic record need not be transcribed for any purpose except as provided or required in WAC 392-171-551(e).

(c) The superintendent of public instruction shall inform the parent(s) (or adult student) of any free or low-cost legal and other relevant services available in the area if:

(i) The parent (or adult student) requests the information; or

(ii) The school district or the parent (or adult student) initiates a hearing;

(d) The hearing shall be conducted by a qualified person selected and appointed by the chief administrative law judge in the office of administrative hearings pursuant to chapter 10-08 WAC and shall be a person who:

(i) Is not an employee of a school district which is involved in the education or care of the student; and

(ii) Does not have a personal or professional interest which would conflict with his or her objectivity in the hearing;

(2) The hearing shall be conducted in accordance with the provisions of WAC 392-101-005 unless modified by this chapter.

**READOPTED SECTION** (Readopting Order 84-33, filed 9/6/84)

**WAC 392-171-551 HEARING RIGHTS.** (1) Any party to a hearing initiated pursuant to WAC 392-171-531 has the right to:

(a) Be accompanied and advised by persons with special knowledge or training with respect to the problems of handicapped students;

(b) Be advised and/or represented by an attorney;

(c) Present evidence, including the opinion(s) of qualified experts, confront, cross-examine, and compel the attendance of witnesses;

(d) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five days before the hearing;

(e) Obtain a written verbatim record of the hearing at a cost no greater than the fee charged by the court reporter for transcribing his or her record of the hearing: **PROVIDED**, That in the event of an appeal to a court of law by the school district, such district shall bear the cost of transcribing the record for appeal purposes and shall make a copy available to the other party at a cost, if any, which is no greater than the school district's cost of copying the original; and

(f) Obtain written findings of fact, conclusions of law and judgments.

(2) Parents who are a party to a hearing have the right to have the child who is the subject of the hearing present.

(3) Parents (or adult students) who are a party to a hearing have the right to open the hearing to the public.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-556 TIMELINE FOR HEARING OFFICER'S DECISION—TIME AND PLACE OF HEARING.** (1) Not later than forty-five days after the date of receipt of a request for a hearing pursuant to WAC 392-171-531:

(a) A final decision shall be reached based upon a preponderance of the evidence; and

(b) A copy of the decision consisting of the hearing officer's findings of fact, conclusions of law, and judgment shall be mailed or provided directly to each of the parties and to the superintendent of public instruction by the hearing officer, together with a certification of the date of mailing and the parties to whom it was mailed.

(2) The date of mailing or providing a decision to the parties shall be certified to on the first page of the decision by the person(s) who mails or provides the decision to the parties. The decision of the hearing officer shall be drafted in a manner which:

(a) Sets forth the findings of fact, conclusions of law and judgment separately, and numbers each findings of fact and conclusion; and

(b) Avoids the revelation of personally identifiable information that is unnecessary to reaching and understanding the decision reached. The surnames of students and their parents shall be indicated by use of their last initial and shall not be spelled out.

(3) A hearing officer may grant specific extensions of time beyond the period set forth in this section at the request of either party.

(4) Each hearing involving oral arguments shall be conducted at a time and place which is reasonably convenient to the parent(s) and student involved.

**READOPTED SECTION** (Readopting Order 84-33, filed 9/6/84)

**WAC 392-171-559 PROSPECTIVE APPLICATION TO AMENDMENTS IN WASHINGTON ADMINISTRATIVE CODE AFFECTING HEARINGS.** Amendments to the Washington Administrative Code affecting special education hearings and appeals pursuant to chapter 392-171 WAC shall apply prospectively. Complaints filed pursuant to WAC 392-171-531 shall be governed by the chapter 392-171 WAC regulations in effect at the time the complaint is filed.

**READOPTED SECTION** (Readopting Order 84-33, filed 9/6/84)

**WAC 392-171-561 FINAL DECISION—APPEAL TO COURT OF LAW.** A decision made in a

hearing initiated pursuant to WAC 392-171-531 is final, unless modified or overturned by a court of law.

**READOPTED SECTION** (Readopting Order 84-33, filed 9/6/84)

**WAC 392-171-576 STUDENT'S STATUS DURING HEARING AND JUDICIAL REVIEW PROCESSES.** (1) During the pendency of any administrative or judicial proceeding regarding a complaint initiated pursuant to WAC 392-171-531, unless the school district and the parent(s) of the student (or the adult student) agree otherwise, the student involved in the complaint shall remain in the educational placement he or she was in at the time the complaint was made.

(2) The student, with the consent of the parent(s) (or the adult student), shall be placed in the regular school program until the completion of all such proceedings if the complaint involves an application for initial admission to the school.

**READOPTED SECTION** (Readopting Order 81-25, filed 9/4/81)

**WAC 392-171-581 SURROGATE PARENTS.** (1) General. Each school district providing a special education program to a nonadult handicapped student shall assure that the rights of the nonadult student are protected when:

(a) No parent (as defined in WAC 392-171-310(4)) can be identified;

(b) The school district, after reasonable efforts, cannot discover the whereabouts of a parent; or

(c) The student is a ward of the state.

(2) Duty of school district. The duty of a school district under this section includes the assignment of a person to act as a surrogate for the parents. This duty includes the establishment of a method:

(a) For determining whether a nonadult student needs a surrogate parent; and

(b) For assigning a surrogate parent to the student.

(3) Criteria for selection of surrogates. Each school district shall assure that a person selected as a surrogate:

(a) Has no interest that conflicts with the interests of the student he or she represents; and

(b) Has knowledge and skills that assure adequate representation of the student.

(4) Nonemployee requirement—Compensation:

(a) A person assigned as a surrogate may not be an employee of a school district and/or other agency which is involved in the education or care of the student; and

(b) A person who otherwise qualifies as a surrogate parent pursuant to this section is not an "employee" of the school district and/or other agency solely because he or she is paid by the school district and/or agency to serve as a surrogate parent.

(5) Responsibilities. A surrogate parent may represent the student in all matters relating to:

(a) The identification, assessment, and educational placement of the student; and

(b) The provision of free special education and related services to the student.

READOPTED SECTION (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-586 DEFINITION OF "EDUCATION RECORDS" AS USED IN RECORDS RULES. (1) For the purpose of WAC 392-171-596 through 392-171-641 governing handicapped student records, the term "education records" shall mean those records that:

- (a) Are directly related to a student; and
- (b) Are maintained by a school district or by a party acting for the school district.
- (2) The term "education records" does not include:
  - (a) Records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which:
    - (i) Are in the sole possession of the maker thereof; and
    - (ii) Are not accessible or revealed to any other individual except a substitute. For the purpose of this definition, a "substitute" means an individual who performs on a temporary basis the duties of the individual who made the record and does not refer to an individual who permanently succeeds the maker of the record in his or her position;
    - (b) Records of a law enforcement unit of a school district which are:
      - (i) Maintained apart from the records described in subsection (1) of this section;
      - (ii) Maintained solely for law enforcement purposes; and
      - (iii) Not disclosed to individuals other than law enforcement officials of the same jurisdiction: PROVIDED, That education records maintained by the school district are not disclosed to the personnel of the law enforcement unit;
    - (c) Records relating to an individual who is employed by a school district which:
      - (i) Are made and maintained in the normal course of business;
      - (ii) Relate exclusively to the individual in that individual's capacity as an employee; and
      - (iii) Are not available for use for any other purpose: PROVIDED, That this exception from the definition of "education records" does not apply to records relating to an individual in attendance at the school district who is employed as a result of his or her status as a student;
    - (d) Records relating to an adult student which are:
      - (i) Created or maintained by a physician, psychiatrist, psychologist, or other recognized professional acting in his or her professional or paraprofessional capacity;
      - (ii) Created, maintained, or used only in connection with the provision of treatment to the student; and
      - (iii) Not disclosed to anyone other than individuals providing the treatment: PROVIDED, That the records can be personally reviewed by a physician or other appropriate professional of the student's choice. For the purpose of this definition, "treatment" does not include remedial educational activities or activities which are part of the program of instruction at the school district;
    - (e) Records of a school district which contain only information relating to a person after that person was no

longer a student at the school district. An example would be information collected by a school district pertaining to the accomplishments of its alumni.

READOPTED SECTION (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-591 DEFINITIONS USED IN RECORDS RULES—"DESTRUCTION"—"NATIVE LANGUAGE"—AND "PARTICIPATING AGENCY." For the purpose of WAC 392-171-596 through 392-171-641 governing handicapped student records:

- (1) "Destruction" shall mean physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.
- (2) "Native language" has the meaning given that term by section 703 (a)(2) of the Bilingual Education Act, which provides essentially as follows:
  - The term "native language," when used with reference to a person of limited English-speaking ability, means the language normally used by that person, or in the case of a nonadult student, the language normally used by the parents of the student.
- (3) "Participating agency" means any agency or institution which collects, maintains, or uses personally identifiable information or from which information is obtained pursuant to this chapter.

READOPTED SECTION (Readopting Order 84-48, filed 10/2/84)

WAC 392-171-596 ACCESS RIGHTS. (1) Each school district shall permit parents of handicapped students (or adult students) to inspect and review during school business hours any education records relating to their children or ward (or the adult student) which are collected, maintained, or used by the district under this chapter. The district shall comply with a request promptly and before any meeting regarding an individualized education program or hearing relating to the identification, evaluation, or placement of the student.

- (2) The right to inspect and review education records under this section includes:
  - (a) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;
  - (b) The right to request that the school district provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and
  - (c) The right to have a representative of the parent (or adult student) inspect and review records.
- (3) A school district may presume that a parent has authority to inspect and review records relating to his or her child or ward unless the district has been advised that the parent does not have the authority under applicable state law governing such matters as guardianship, separation, and divorce.

READOPTED SECTION (Readopting Order 84-48, filed 10/2/84)

WAC 392-171-601 RECORD OF ACCESS. Each participating agency shall keep a record of parties obtaining access to education records collected, maintained, or used under this chapter (except access by parents, adult students, and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

READOPTED SECTION (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-606 RECORDS ON MORE THAN ONE STUDENT. If any education record includes information on more than one student, the parent(s) of those students (and/or adult students) shall have the right to inspect and review only the information relating to their child or ward (or themselves) or to be informed of that specific information.

READOPTED SECTION (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-611 LIST OF TYPES AND LOCATIONS OF INFORMATION. Each participating agency shall provide parents (and adult students) on request a list of the types and locations of education records collected, maintained, or used by the agency.

READOPTED SECTION (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-616 FEES. (1) A participating education agency may charge a fee for copies of records which are made for parents (or adult students) under this chapter if the fee does not effectively prevent the parents (or adult students) from exercising their right to inspect and review those records.

(2) A participating agency may not charge a fee to search for or to retrieve information under this chapter.

READOPTED SECTION (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-621 AMENDMENT OF RECORDS AT THE REQUEST OF A PARENT OR ADULT STUDENT. (1) A parent of a handicapped student (or an adult student) who believes that information in education records collected, maintained, or used under this chapter is inaccurate or misleading or violates the privacy or other rights of the student may request the participating agency which maintains the information to amend the information.

(2) The agency shall decide whether to amend the information in accordance with the request within a reasonable period of time after receipt of the request.

(3) If the agency decides to refuse to amend the information in accordance with the request it shall inform the parent (or adult student) of the refusal and advise the parent (or adult student) of the right to a hearing pursuant to WAC 392-171-626.

(4) The participating agency, on request, shall provide the parent (or adult student) an opportunity for a hearing to challenge information in education records to insure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student.

(5) If, as a result of the hearing, the participating agency decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall amend the information accordingly and so inform the parent (or adult student) in writing.

(6) If, as a result of the hearing, the participating agency decides that the information is not inaccurate, misleading or otherwise in violation of the privacy or other rights of the student, it shall inform the parent(s) (or adult student) of the right to place in the records it maintains on the student a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

(7) Any explanation placed in the records of the student pursuant to this section shall:

(a) Be maintained by the participating agency as part of the records of the student as long as the record or contested portion is maintained by the participating agency; and

(b) Also be disclosed to any party to whom the records of the student (or the contested portion thereof) are disclosed.

READOPTED SECTION (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-626 HEARING PROCEDURES REGARDING RECORDS. A hearing initiated pursuant to WAC 392-171-621 to challenge information in education records shall be conducted according to procedures which include at least the following elements:

(1) The hearing shall be held within a reasonable period of time after the participating agency has received the request;

(2) The parent (or adult student) shall be given notice of the date, place, and time reasonably in advance of the hearing;

(3) The hearing may be conducted by any party, including an official of the participating agency, who does not have a direct interest in the outcome of the hearing;

(4) The parent (or adult student) shall be afforded a full and fair opportunity to present evidence relevant to the issues raised pursuant to WAC 392-171-621 and may be assisted or represented by individuals of his or her choice at his or her own expense, including an attorney;

(5) The participating agency shall provide a written decision to the parent (or adult student) within a reasonable period of time after the conclusion of the hearing; and

(6) The decision of the participating agency shall:

(a) Be based solely upon the evidence presented at the hearing; and

(b) Include a summary of the evidence and the reasons for the decision.

READOPTED SECTION (Readopting Order 83-1, filed 3/30/83)

WAC 392-171-631 CONSENT. (1) Consent of a parent (or adult student) shall be obtained before personally identifiable information is:

(a) Disclosed to anyone other than officials of participating agencies collecting or using the information under this chapter subject to subsection (2) of this section; or

(b) Used for any purpose other than meeting a requirement imposed by this chapter.

(2) No school district shall release information from education records to participating agencies without the consent of a parent (or adult student) except in those cases in which a release of information without consent is permitted by the rules that implement the federal Privacy Rights of Parents and Students Part 99 of 34 Code of Federal Regulations (CFR) 34 sections 99.1 et seq. See 34 CFR 99.31 (when prior consent not required), 34 CFR 99.35 (disclosure to state and federal officials) and 34 CFR 99.37 (directory information).

READOPTED SECTION (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-636 SAFEGUARDS. (1) Each participating agency shall protect the confidentiality of personally identifiable information at the collection, storage, disclosure, and destruction stages.

(2) One official at each participating agency shall be designated as the individual responsible for assuring the confidentiality of any personally identifiable information.

(3) All persons collecting or using personally identifiable information shall receive training or instruction regarding:

(a) The policies and procedures on protection of the confidentiality of personally identifiable information set forth in the state's annual program plan; and

(b) 45 CFR 99.1 et seq. (the "Buckley Amendment" rules).

(4) Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

READOPTED SECTION (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-641 DESTRUCTION OF INFORMATION. Each school district shall inform parents (and adult students) when personally identifiable information collected, maintained, or used pursuant to this chapter is no longer needed to provide educational services to the student. The information shall thereafter be destroyed at the request of the parent(s) (or adult student). However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed and year completed may be maintained without time limitation.

READOPTED SECTION (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-646 DEFINITION—"PRIVATE SCHOOL HANDICAPPED STUDENT(S)." For the purpose of WAC 392-171-651 through 392-171-686 "private school handicapped student(s)" means handicapped students enrolled in private schools or agencies but not as the result of a contractual arrangement between a public school district and the private school or agency.

READOPTED SECTION (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-651 SCHOOL DISTRICT RESPONSIBILITY FOR PRIVATE SCHOOL HANDICAPPED STUDENTS. Subject to the provisions of WAC 392-171-656 through 392-171-686:

(1) Each school district shall provide special education and related services designed to meet the needs of private school handicapped students who reside in the school district.

(2) Each school district shall provide private school handicapped students with genuine opportunities to participate in special education and related services consistent with the number of those students and their needs.

READOPTED SECTION (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-656 DETERMINATION OF NEEDS, NUMBERS OF STUDENTS AND TYPES OF SERVICES. The needs of private school handicapped students, the number who will participate, and the types of special education and related services which the school district will provide them shall be determined after consultation with persons knowledgeable of the needs of these students on a basis comparable to that used in providing for the participation under this chapter of handicapped students enrolled in public schools.

READOPTED SECTION (Readopting Order 83-1, filed 3/30/83)

WAC 392-171-661 SERVICE ARRANGEMENTS. (1) Special education and related services to private school handicapped students may be provided through such arrangements as dual enrollment pursuant to chapter 392-134 WAC, educational radio and television, and the provision of mobile educational services and equipment.

(2) No services, material, or equipment of any nature shall be provided to or on the site of any private school or agency subject to sectarian (i.e., religious) control or influence.

(3) Handicapped students enrolled in any private school or agency subject to sectarian control or influence shall be provided services in a manner that:

(a) Maintains a physical and administrative separation between the private and the public school programs; and

(b) Does not benefit the private school at public expense, e.g., pursuant to dual enrollment or shared time



arrangements in accordance with chapter 392-134 WAC.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-666 **PERSONNEL IN PRIVATE SCHOOLS AND AGENCIES.** (1) School district personnel may be made available to nonsectarian private schools and agencies only to the extent necessary to provide services required by the handicapped student for whose needs those services were designed and only when those services are not normally provided by the nonsectarian private school or agency.

(2) Each school district providing services to students enrolled in nonsectarian private schools or agencies shall maintain continuing administrative control and direction over those services.

(3) Services to private school handicapped students shall not include the payment of salaries of teachers or other employees of private schools or agencies, except for services performed outside regular hours of the school day and under public supervision and control.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-671 **EQUIPMENT—CONSTRUCTION.** (1) Equipment used in the care of students with handicapping conditions in a private school or agency may be placed on nonsectarian private school or agency premises for a limited time, but title to and administrative control over all equipment must be retained and exercised by the school district.

(2) Records shall be kept of equipment and an accounting made of the equipment which shall assure that the equipment is used solely for the purposes of the program.

(3) The equipment shall be removed from the private school or agency if necessary to avoid its being used for other purposes or if it is no longer needed for the purposes of the program or project.

(4) Funds shall not be used to construct facilities for private schools or agencies.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-676 **PROHIBITION OF SEGREGATION.** Programs or projects carried out in public facilities, and involving joint participation by handicapped students otherwise enrolled in private schools or agencies and handicapped students enrolled in public schools, shall not include classes that are separated on the basis of school enrollment or the religious affiliations of the students.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-681 **FUNDS AND PROPERTY NOT TO BENEFIT PRIVATE SCHOOLS.** Public funds provided and property derived from those funds

shall not inure to the benefit of any private school or agency.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-686 **EXISTING LEVEL OF INSTRUCTION.** Provisions for serving private school handicapped students shall not include the financing of the existing level of instruction in a private school or agency.

**READOPTED SECTION** (Readopting Order 83-1, filed 3/30/83)

WAC 392-171-691 **ANNUAL APPLICATIONS—CONTENTS.** As a condition to the receipt and expenditure of federal special education funds, a school district shall annually submit an application to the superintendent of public instruction or his or her designee on or before such date is announced and conduct its special education and related services program in compliance therewith. The applications shall be made pursuant to forms developed and distributed by the superintendent or his or her designee. Application forms shall include, but not necessarily be limited to, the following assurance(s) and types of information:

(1) An assurance that:

(a) The school district is in compliance with the provisions of this chapter and the rules implementing PL 94-142 (34 CFR 300.1 et seq.) that may supplement this chapter,

(b) That the district shall remain in compliance with this chapter and any such supplemental rules for the entire school year, and

(c) That the funds applied for shall be expended in compliance with the application, this chapter, and any such supplemental federal rules;

(2) The information and assurances required by 34 CFR 300.220 through 34 CFR 300.240 and any other pertinent federal rules;

(3) Identification of the local district designee responsible for child identification activities and confidentiality of information;

(4) A description of the procedures and/or activities to be implemented or continued to provide for:

(a) Identification, location and evaluation of handicapped children not currently receiving special education and related services;

(b) Assurance of confidentiality of personally identifiable information;

(c) Implementation of a system for personnel development;

(d) Involvement of parents of handicapped children;

(e) Participation of handicapped students with non-handicapped students;

(f) Placement of handicapped students in the least restrictive environment;

(g) Development of individualized education programs for each eligible handicapped student;

(h) Availability of career development and vocational education programs for handicapped students;

(i) A description of the numbers and types of handicapped students receiving special education and related services by placement option within the district's continuum of alternative placements;

(j) A description of the kind of and number of facilities, personnel, and services necessary to meet the district's full educational opportunity goal, including a detailed timetable for reaching that goal; and

(k) A description of the use of funds received under PL 94-142 (34 CFR 300.1 et seq.).

(5) Any other pertinent information requested by the superintendent of public instruction which is necessary for the management of the special education program.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-696 DENIAL OF APPLICATIONS—OPPORTUNITY FOR HEARING.** (1) In the event the superintendent of public instruction or his or her designee proposes to deny, in whole or part, the annual application of a district for federal special education funds, the district shall be provided notice pursuant to RCW 34.04.090 of:

(a) Intent to deny the application of the district; and

(b) The district's opportunity for a hearing before the superintendent of public instruction or his or her designee prior to a denial of the application.

(2) The district's application may be denied, in whole or part, in the event the district fails to request a hearing or the hearing decision upholds the proposed basis for denial.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

**WAC 392-171-701 STAFF QUALIFICATIONS.** All employees of a school district funded in whole or part with state or federal excess cost funds shall be qualified, as follows:

(1) All employees shall hold such credentials, certificates or permits as are now or hereafter required by the state board of education for the particular position of employment and shall meet such supplemental standards as may be established by the school district of employment. Supplemental standards established by a district may exceed, but not be less than, those established by this section.

(2) In addition to the requirement of subsection (1) of this section, all teachers shall possess "substantial professional training" and/or "successful prior experience" and support personnel shall meet standards established under the educational staff associate rules of the state board of education, as now or hereafter amended.

(a) "Successful prior professional experience" as used in this section shall mean at least three full school years of employment as a professional staff member in an approved special education program within the five year period immediately preceding the school year of employment in a position supported in whole or part by excess cost apportionment funds.

(b) "Substantial professional training" as used in this section shall mean and be evidenced by either an appropriate special education endorsement or recommended placement upon the teaching certificate of an employee issued by the superintendent of public instruction or completion of teacher education program designed to prepare teachers of students with handicapping conditions offered by an institution approved by the state board of education for teacher certification purposes.

(3) Classified staff shall present evidence of either formal and/or adequate in-service training or successful experience in working with handicapped students.

(4) The assignment of personnel shall be consistent with training and experience appropriate to the age level (preschool, elementary, secondary) and type of program in which teaching will be performed. District reorganization, reductions in force, and reassignments shall be made in a manner consistent with the requirements of this section.

(5) The superintendent of public instruction or his or her designee may grant an exception to compliance with any of the staff qualifications imposed by this section which are above and beyond certification requirements imposed by the state board of education, only upon the request of a school district and the provision of satisfactory assurances by the district that noncompliance:

(a) Is unavoidable;

(b) Will be temporary and not extend beyond the school year for which the exception is requested; and

(c) Will not likely result in a significant reduction in the quality of the district's special education program.

(6) Notwithstanding any staff qualification requirement of this section to the contrary, employees of a school district which possess credentials as required by the state board of education and who were employed during and serving as of termination of the 1974-75 school year in the special education program of the district shall be deemed qualified for purposes of state program approval so long as they continue in such employment with that particular district.

**READOPTED SECTION** (Readopting Order 86-1, filed 2/21/86)

**WAC 392-171-706 TRANSPORTATION.** (1) Methods. Transportation options for handicapped students shall include the following categories and shall be exercised in the following sequence:

(a) A scheduled school bus;

(b) Contracted transportation, including public transportation; and

(c) Other transportation arrangements, including that provided by parents: PROVIDED, That board and room cost in lieu of transportation may be provided whenever the above stated transportation options are not feasible because of the need(s) of a handicapped student or because of the unavailability of adequate means of transportation, in accordance with rules of the superintendent of public instruction.

(2) Welfare of the student. The transportation of a handicapped student shall be in accordance with rules of the superintendent of public instruction governing transportation by public school districts.

(3) *Bus aides and drivers.* Training and supervision of bus aides and drivers shall be the responsibility of the school district superintendent or his or her designee.

(4) *Special equipment.* Special equipment may include lifts, wheel chair holders, restrainers, and two-way radios. All such special equipment shall comply with specifications contained in the specifications for school buses as now or hereafter established by the superintendent of public instruction.

(5) *Transportation time on bus.* Wherever reasonably possible, no student should be required to ride more than sixty minutes one way.

(6) *Discipline of handicapped students during transportation.* The discipline of a handicapped student during his or her transportation shall be the responsibility of the transporting district.

(7) *Transportation for state residential school students to and from the residential school and the sites of the educational program shall be the responsibility of the department of social and health services and each state residential school pursuant to law.*

(8) *Transportation for a state residential school student, including students attending the state school for the deaf and the state school for the blind, to and from such school and the residency of such student shall be the responsibility of the district of residency only if the student's placement was made by such district—i.e., an appropriate placement in the least restrictive environment.*

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-711 **FACILITIES.** Construction of special facilities or the remodeling of present facilities in order to meet the special education and related services needs of any handicapped student shall be provided in accordance with rules of the superintendent of public instruction and the state board of education which govern the construction and/or financing of school district facilities: **PROVIDED,** That all educational facilities required for handicapped students in residential school programs shall be the responsibility of department of social and health services as provided by RCW 28A.58.774.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-716 **COMPARABLE FACILITIES.** If a school district, in compliance with this chapter, operates a facility that is identifiable as being for handicapped students, the district shall assure that the facility and the services and activities provided therein are comparable in quality to the district's facilities, services, and activities for nonhandicapped students.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-721 **PROGRAM LENGTH.** The length of the education program for handicapped students shall be at least as long as the education program

for nonhandicapped students in terms of both the number of school days in the regular school year and the average number of hours per school day. If a handicapped student cannot attend school a full school day, the reason shall be documented in his or her education or medical records.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-726 **ADMINISTRATION OF MEDICATION.** (1) Medication may be administered to a handicapped student by school district personnel subject to the state professional licensing laws and the following conditions:

(a) The medication shall be administered pursuant to a written order and written instruction from the student's physician; and

(b) The medication shall be supplied by the student's parent(s) (or the adult student).

(2) The orders and instructions shall be current, obtained at least yearly, and reviewed and updated whenever there is a significant change in the student's school activity program, in accordance with policies adopted by the school district.

**READOPTED SECTION** (Readopting Order 84-19, filed 6/28/84)

WAC 392-171-731 **MONITORING.** (1) The superintendent of public instruction or his or her designee shall annually monitor selected local school district special education programs. The purposes of monitoring shall be:

(a) To determine the school district's compliance with this chapter and the federal regulations implementing 20 USC Section 1401 et seq. (PL 94-142) and federal and state handicapped laws including validation of information included in school district applications for federal funds;

(b) To provide the school district with technical assistance for improving the quality of its special education program.

(2) The superintendent of public instruction or his or her designee shall develop procedures (including specific timelines) for monitoring school districts. These procedures shall include:

(a) Collection of data and reports;

(b) Conduct of on-site visits;

(c) A review of state and federal special education fund utilization; and

(d) Comparison of a sampling of individualized education programs with the programs actually provided.

(3) Following a monitoring visit, a written monitoring report shall be submitted to the school district. The monitoring report shall include, but not be limited to:

(a) Findings of noncompliance, if any; and

(b) Required corrective actions for remediation of any such instance(s) of noncompliance.

(4) The school district shall have thirty calendar days after the date of its receipt of the monitoring report to provide the office of superintendent of public instruction with:

(a) Supplemental arguments and/or facts which may serve as a basis for alteration of the monitoring report;

(b) A written action plan which sets forth the measures the district shall take and time period(s) within which the district shall act in order to remediate the instance(s) of noncompliance;

(c) In the event that the district submits supplemental arguments and/or facts which may serve as a basis for alteration of the monitoring report, the office of superintendent of public instruction shall within thirty calendar days provide the district with a determination as to the alteration of the monitoring report. The school district shall, within thirty calendar days of receipt of the determination, provide the office of superintendent of public instruction a written action plan, if any, pursuant to that determination.

(5) The superintendent of public instruction or his or her designee either shall approve the plan as submitted or shall request the school district to make such modifications as are considered necessary. Once an approvable plan has been submitted, the district shall be provided written notice of:

(a) Approval;

(b) The performance expected of the district; and

(c) The schedule for periodic review or verification of the district's progress toward remediation of the instance(s) of noncompliance.

(6) If the school district fails to submit an approvable corrective action plan pursuant to WAC 392-171-731(4) or fails to comply with a corrective action plan approved pursuant to WAC 392-171-731(5), the superintendent of public instruction or his or her designee shall institute procedures to insure corrective action or prompt response to a monitoring report. Such procedures may include one or more of the following:

(a) Verification visits by OSPI staff to:

(i) Determine whether the school district is taking the required corrective action;

(ii) Expedite the school district's response to a monitoring report;

(iii) Provide any necessary technical assistance to the school district in its efforts to comply.

(b) Withhold, in whole or part, a specified amount of state and/or federal special education funds, pursuant to WAC 392-171-696 and 392-171-746.

(c) Initiate request for OSPI audit pursuant to WAC 392-171-736 through 392-171-756 which may result in the recovery of unlawfully received or expended of state and/or federal special education funds.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-736 DEFINITION OF "UNLAWFULLY RECEIVED OR EXPENDED FUNDS." For the purpose of WAC 392-171-741 through 392-171-756, "unlawfully received or expended funds" shall mean any state or federal special education funds received and held or expended by a school district in a manner or for a purpose that is in violation of any provision of:

(1) State statute or rule, including this chapter, or

(2) Any federal rule or condition to funding that may now or hereafter supplement this chapter.

**READOPTED SECTION** (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-741 AUDITS. (1) The superintendent of public instruction or his or her designee shall conduct fiscal/program audits of school district special education programs. The purposes of such audits shall be:

(a) To determine compliance or noncompliance with:

(i) A school district's application(s) for state and federal excess cost funds;

(ii) The provisions of this chapter; and

(iii) Any supplemental federal conditions to funding as may now or hereafter exist.

(b) To establish a factual basis for:

(i) The recovery of unlawfully received or expended state or federal special education funds; or

(ii) The initiation of fund withholding proceedings;

(2) Preliminary audit report—Following an audit, a preliminary written audit report shall be submitted to the school district for review and comment. The preliminary audit report shall include, but not be limited to:

(a) Findings of noncompliance which could include comparisons to findings of noncompliance as a result of monitoring, if any; and

(b) Recommendations for remediation of any such instance(s) of noncompliance.

(3) The school district shall have fifteen days after the date of its receipt of the preliminary audit report to provide the superintendent of public instruction or his or her designee a written reply setting forth any supplemental arguments and/or facts that may serve as a basis for alteration of the preliminary finding(s) of noncompliance.

(4) Final audit report—A final written audit report shall be provided to the school district after review of the supplemental arguments and/or facts submitted by the district. The final audit report shall include, but not necessarily be limited to:

(a) Findings of noncompliance, if any; and

(b) Recommendations for remediation of any such instance(s) of noncompliance.

(5) The school district shall have fifteen days after the date of its receipt of the final audit report to provide the superintendent of public instruction or his or her designee a written plan which sets forth the measures the district shall take and time period(s) within which the district shall act in order to remedy the instance(s) of noncompliance.

(6) The superintendent of public instruction or his or her designee shall either approve the plan as submitted or request the school district to make such modifications as are considered necessary. Once an approvable plan has been submitted the district shall be provided written notice of:

(a) Approval;

(b) The performance expected of the district; and

(c) The schedule for periodic review or audit of the district's progress toward remediation of the instance(s) of noncompliance.

READOPTED SECTION (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-746 FUND WITHHOLDING. (1) In the event a school district fails to submit an approvable remediation plan pursuant to WAC 392-171-741 or fails to submit an approvable corrective action plan pursuant to WAC 392-171-731 or fails to comply with a remediation plan approved pursuant to WAC 392-171-741 or fails to comply with a corrective action plan pursuant to WAC 392-171-731, the superintendent or his or her designee shall provide the school district notice pursuant to RCW 34.04.090 of:

(a) Intent to withhold a specified amount of state and/or federal special education funds; and

(b) The district's opportunity for a hearing before the superintendent of public instruction or his or her designee prior to commencement of the withholding.

(2) Funds may be withheld in whole or part in the event the district fails to request a hearing or the hearing decision upholds the final audit or monitoring in whole or part.

READOPTED SECTION (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-751 RECOVERY OF FUNDS. (1) If a preliminary audit conducted pursuant to WAC 392-171-741 indicates that a district has unlawfully received and/or expended either state or federal special education funds, the superintendent of public instruction or his or her designee shall provide the school district with an opportunity for an informal conference prior to the final audit report.

(2) If the final audit report sets forth one or more instances of unlawful receipt or expenditure of either state or federal special education funds, the superintendent of public instruction or his or her designee shall take such action as he or she deems necessary to recover the funds including, but not limited to, a reduction in future allocations of any amount of any state funds and/or any amount of federal special education funds to the district.

(3) No right to a hearing in connection with the recovery of funds unlawfully received and/or expended is granted by this chapter.

READOPTED SECTION (Readopting Order 80-31, filed 8/19/80)

WAC 392-171-756 FUND WITHHOLDINGS TO ENFORCE PARENT APPEAL DECISIONS. The superintendent of public instruction or his or her designee may withhold any amount of state funds and/or any amount of federal special education funds as he or she deems necessary to enforce a decision made on appeal pursuant to WAC 392-171-566 and 392-171-571 without any necessity of a further hearing on the matter.

READOPTED SECTION (Readopting Order 88-18, filed 7/11/88)

WAC 392-171-761 RIGHT TO REGISTER AND PROCESS COMPLAINTS. (1) Any person, entity, or

organization may register and process complaints alleging one or more violations of this chapter as provided for in chapter 392-168 WAC.

READOPTED SECTION (Readopting Order 6-76, filed 5/17/76)

WAC 392-190-005 PURPOSE—ELIMINATION OF SEX DISCRIMINATION. The purpose of this chapter is to establish rules and regulations which implement chapter 28A.85 RCW. The referenced enactment prohibits discrimination on the basis of sex in grades K-12 of the Washington public schools. Broad federal regulations implementing Title IX of the Education Amendments of 1972 similarly prohibit sex discrimination in federally-assisted education programs or activities. As a result, several substantive areas have been similarly identified and addressed by both state and federal enactments.

It is the intent of this chapter to encompass those similar substantive areas addressed by the Title IX regulations and in some aspects extend beyond the Title IX regulations. Accordingly, compliance with this chapter should constitute compliance with those similar substantive areas treated in the Title IX regulations, but school districts should be aware that compliance with the Title IX regulations alone may not constitute compliance with this chapter.

Although chapter 28A.85 RCW and the balance of this chapter prohibit sex discrimination in grades K-12 only, the superintendent of public instruction hereby declares pursuant to the authority vested in the superintendent by Article 3, section 22 of the state Constitution that it shall be unlawful for any public school district to discriminate on the basis of sex with regard to any activity conducted by or in behalf of a school district including, but not limited to, preschool, adult education, community education and vocational-technical program activities.

READOPTED SECTION (Readopting Order 80-26, filed 7/9/80)

WAC 392-190-010 COUNSELING AND GUIDANCE SERVICES—CAREER OPPORTUNITIES—INTERNAL PROCEDURES. (1) No school district shall engage in discrimination against any person on the basis of sex in the counseling or guidance of students in grades K-12.

(2) Each school district shall devise and use materials, orientation programs, and counseling techniques that will encourage participation in all school programs and courses of study based on factors other than sex and that encourage students to explore subjects and activities not heretofore traditional for their sex.

(3) Each school district which uses testing and other materials for appraising or counseling students shall not use different materials for students on the basis of their sex or use materials which permit or require different treatment of students on such basis unless (a) such different materials cover the same occupations and interest areas and (b) the use of such different materials is demonstrated to be essential to eliminate sex bias.

(4) Each school district shall develop and use internal procedures for ensuring that all tests and appraisal instruments, career and vocational guidance materials, work/study programs and opportunities, and educational scheduling and/or placement do not discriminate on the basis of sex: **PROVIDED**, That where the use of such instruments or materials or such programs or activities results in a substantially disproportionate number of members of one sex in any particular course of study or classification, the school district shall take such immediate action as is necessary to assure itself that such disproportion is not the result of discrimination in the program or activity or in the instrument or material or its application: **PROVIDED FURTHER**, That where a school district finds that a particular class contains a substantially disproportionate number of individuals of one sex, the district shall take such immediate action as is necessary to assure itself that such disproportion is not the result of discrimination on the basis of sex in tests and appraisal instruments, career and vocational guidance materials, work/study programs and opportunities, and educational scheduling and/or placement or by counselors.

**READOPTED SECTION** (Readopting Order 6-76, filed 5/17/76)

**WAC 392-190-015 COUNSELING AND GUIDANCE—DUTY OF CERTIFICATED AND CLASSROOM PERSONNEL—COORDINATION OF EFFORT.** (1) All certificated and classroom personnel shall encourage students to explore and develop their individual interests in career and vocational technical programs and employment opportunities without regard to sex, including reasonable efforts encouraging students to consider and explore "nontraditional" occupations for men and women: **PROVIDED**, That all certificated and classroom personnel within each local school district shall have access to an educational staff associate (ESA) certificated school counselor(s) or such other appropriate person(s), designated by the school district superintendent to coordinate compliance with the requirements of this section.

(2) All certificated and classroom personnel shall comply fully and immediately with the requirements of this section. The superintendent of each school district shall make the designation(s) required by this section immediately.

**READOPTED SECTION** (Readopting Order 6-76, filed 5/17/76)

**WAC 392-190-020 INSERVICE TRAINING—SEX BIAS AWARENESS.** Each school district should include sex bias awareness and sex bias elimination training sessions in such inservice training programs as are conducted or provided for certificated and/or classroom personnel.

**READOPTED SECTION** (Readopting Order 6-76, filed 5/17/76)

**WAC 392-190-025 RECREATIONAL AND ATHLETIC ACTIVITIES—EQUAL OPPORTUNITY—SEPARATE TEAMS.** (1) No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, club or intramural athletics or recreational activity offered by a school district, and no school district shall provide any such athletics or recreational activity separately on such basis. Sports teams and programs offered by a school district shall, regardless of their nature, be equally open to participation by qualified members of both sexes: **PROVIDED**, That in the case of sports and recreational activities offered for students in grades 7 through 12, a school district may maintain separate teams for members of each sex if (a) it can clearly be shown, under the factual circumstances involved in the particular case, that the maintenance of separate teams for boys and girls truly constitutes the best method of providing both sexes, as a whole, with an equal opportunity to participate in the sports or games of their choice and (b) at the same time, a test of substantial equality between the two programs can be found to have been met.

(2) For the purpose of this section and WAC 392-190-050(2) "substantial equality" shall be determined by considering factors including but not limited to the following:

- (a) The relationship between the skill and compensation of coaching staffs;
- (b) The size of their budgets;
- (c) The quality of competition and game schedules;
- (d) Uniforms;
- (e) Equipment and facilities; and
- (f) Sufficient numbers of participants to warrant separate teams.

**READOPTED SECTION** (Readopting Order 6-76, filed 5/17/76)

**WAC 392-190-030 GENERAL—RECREATIONAL AND ATHLETIC ACTIVITIES—EQUAL OPPORTUNITY FACTORS CONSIDERED.** Each school district shall evaluate its recreational and athletic program at least once each year to ensure that equal opportunities are available to members of both sexes with respect to interscholastic, club or intramural athletics which are operated, sponsored, or otherwise provided by the school district.

In determining whether equal opportunities are available to members of both sexes with respect to interscholastic, club or intramural athletics, each school district conducting an evaluation required by this section, and the office of superintendent of public instruction upon receipt of a complaint pursuant to WAC 392-190-075, shall consider several factors, including but not limited to the following where provided by a school district:

- (1) Whether the selection of sports and levels of competition effectively accommodates the interests and abilities of members of both sexes;

- (2) The provision of equipment and supplies;
- (3) The scheduling of games and practice times including the use of playfields, courts, gyms, and pools;
- (4) Transportation and per diem allowances, if any;
- (5) The opportunity to receive coaching and academic tutoring;
- (6) The assignment and compensation of coaches, tutors, and game officials;
- (7) The provision of medical and training facilities and services including the availability of insurance;
- (8) The provision of housing, laundry, and dining facilities and services, if any; and
- (9) Publicity and awards.

Unequal aggregate expenditures within a school district for members of each sex or unequal expenditures for separate male and female teams will not alone constitute noncompliance with this chapter, but the failure to provide the necessary funds for recreational and athletic activities for members of one sex may be considered in assessing the equality of opportunity for members of each sex.

**READOPTED SECTION** (Readopting Order 80-26, filed 7/9/80)

**WAC 392-190-035 RECREATIONAL AND ATHLETIC ACTIVITIES—COMPLIANCE TIME-TABLE—ELEMENTARY AND SECONDARY LEVEL.** (1) Each school district which operates, sponsors, or otherwise provides interscholastic, club or intramural athletics at the elementary school level (K-6) shall provide equal opportunity and encouragement for physical and skill development to all students in the elementary grades consistent with this chapter.

(2) Each school district which operates, sponsors, or otherwise provides interscholastic, club or intramural athletics at the secondary school level (7-12) shall provide equal opportunity and encouragement for physical and skill development to all students in the secondary grades consistent with this chapter.

**READOPTED SECTION** (Readopting Order 80-26, filed 7/9/80)

**WAC 392-190-040 RECREATIONAL AND ATHLETIC ACTIVITIES—STUDENT INTEREST—REQUIRED SURVEY INSTRUMENT.** (1) The superintendent of public instruction shall develop a survey instrument to assist each school district in the determination of student interest for male/female participation in specific sports.

(2) A survey instrument shall be administered by each school district at all grade levels where interscholastic, intramural and other sports and recreational activities are conducted. The results of the survey shall be considered in the program planning and development in the area of recreational and athletic activities offered within the school district.

(3) A survey instrument developed pursuant to this section shall be administered at least once every three years within each school district: **PROVIDED**, That the

content of the survey instrument may be modified or amended as deemed appropriate to clarify and assist in the evaluation of student interest.

**READOPTED SECTION** (Readopting Order 80-26, filed 7/9/80)

**WAC 392-190-045 RECREATIONAL AND ATHLETIC ACTIVITIES—FACILITIES.** A school district which provides athletic facilities for members of one sex including showers, toilets, and training room facilities for athletic purposes shall provide comparable facilities for members of the opposite sex: **PROVIDED**, That such facilities may be provided as either separate facilities or shall be scheduled and used separately by members of each sex: **PROVIDED FURTHER**, That this section shall not be interpreted to require the construction of additional facilities.

**READOPTED SECTION** (Readopting Order 80-26, filed 7/9/80)

**WAC 392-190-050 COURSE OFFERINGS—GENERALLY—SEPARATE SESSIONS OR GROUPS PERMISSIBLE.** No school district shall provide any course or otherwise carry out any of its education programs or activities separately on the basis of sex, or require or refuse participation therein by any of its students on such basis, including but not limited to health, physical education, industrial arts, business, vocational-technical, and home economics courses: **PROVIDED**, That this section shall not be construed to prohibit:

(1) The grouping of students in physical education classes and activities by demonstrated ability as assessed by objective standards of individual performance developed and applied without regard to sex: **PROVIDED**, That where use of a single standard of measuring skill or progress in a physical education class has an adverse effect on members of one sex, the school district shall immediately implement appropriate standards which do not have such effect;

(2) The separation of students by sex within physical education classes or activities offered for students in grades 7 through 12 if (a) it can clearly be shown under the factual circumstances involved in the particular case, that the maintenance of a separate physical education class or activity for boys and girls truly constitutes the best method of providing both sexes, as a whole, with an equal opportunity to participate in such class or activity and (b) at the same time, a test of substantial equality between the two classes or activities can be found to have been met;

(3) The conduct of separate sessions for boys and girls with respect to those portions of classes which deal exclusively with human sexuality; and

(4) The conduct of classes and/or activities within which a school district may establish or maintain requirements based on vocal range or quality which may result in a chorus or choruses of one or predominantly one sex.



**READOPTED SECTION** (Readopting Order 80-26, filed 7/9/80)

**WAC 392-190-055 TEXTBOOKS AND INSTRUCTIONAL MATERIALS—SCOPE—ELIMINATION OF SEX BIAS—COMPLIANCE TIMETA-BLE.** (1) It is the intent of this section to eliminate sex bias in connection with any form of instruction provided by a school district.

(2) The instructional materials policy of each school district required by RCW 28A.58.103 shall incorporate therein, as part of the selection criteria, a specific statement requiring the elimination of sex bias in all textbooks and instructional materials including reference materials and audio-visual materials.

(3) The instructional materials committee of each school district shall establish and maintain appropriate screening criteria designed to identify and eliminate sex bias in all textbooks and instructional materials including reference materials and audio-visual materials: **PROVIDED**, That such selection criteria shall be consistent with the selection criteria endorsed by the state board of education dated December 6, 1974, WAC 180-48-010, as now or hereafter amended, and WAC 180-46-005 through 180-46-060, as now or hereafter amended. One of the aids to identification of sex bias in instructional materials consists of the Washington Models for the Evaluation of Bias Content in Instructional Materials published by the superintendent of public instruction.

(4) In recognition of the fact that current instructional materials which contain sex bias may not be replaced immediately, each school district should acquire supplemental instructional materials or aids to be used concurrent with existing materials for the purpose of countering the sex bias content thereof.

(5) Nothing in this section is intended to prohibit the use or assignment of supplemental instructional materials such as classic and contemporary literary works, periodicals and technical journals which, although they contain sex bias, are educationally necessary or advisable.

**READOPTED SECTION** (Readopting Order 6-76, filed 5/17/76)

**WAC 392-190-060 COMPLIANCE—LOCAL SCHOOL DISTRICT—DESIGNATION OF RESPONSIBLE EMPLOYEE—NOTIFICATION.** (1) The superintendent of each school district shall immediately designate at least one employee who shall be responsible directly to the superintendent for monitoring and coordinating the district's compliance with this chapter. The employee designated pursuant to this section shall also be charged with the responsibility to investigate any complaint(s) communicated to the school district pursuant to WAC 392-190-065.

(2) Each school district shall, once each year or more often as deemed necessary, publish notice in a manner which is reasonably calculated to inform all students, students' parents, and employees of the name, office address and telephone number of the employee or employees appointed pursuant to this section and the appeal

procedure set forth in WAC 392-190-065, WAC 392-190-070 and WAC 392-190-075 as now or hereafter amended.

**READOPTED SECTION** (Readopting Order 6-76, filed 5/17/76)

**WAC 392-190-065 COMPLIANCE—COMPLAINT PROCEDURE—DISTRICT SUPERINTENDENT.** (1) Upon receipt of a complaint by a school district in the manner herein described, the employee or employees designated pursuant to WAC 392-190-060 shall investigate the allegations set forth and shall institute such other reasonable procedures to effect a prompt resolution of the complaint: **PROVIDED**, That each complaint communicated to the school district shall be (a) written, (b) signed by the complaining party, and (c) set forth specific acts, conditions, or circumstances alleged to be violative of this chapter or the specific acts, conditions, or circumstances that would be prohibited by this chapter.

(2) Upon completion of the investigation required by this section in connection with a complaint communicated to the school district, the designated employee or employees shall provide the district superintendent with a full written report of the complaint and the results of the investigation. The district superintendent shall respond in writing to the complaining party as expeditiously as possible but in no event later than thirty calendar days following receipt of such complaint by the school district.

(3) The response of the school district superintendent required by this section shall clearly state either (a) that the school district denies the allegations contained in the complaint received pursuant to this section, or (b) the nature of such reasonable corrective measures deemed necessary to eliminate any such act, condition, or circumstance within the school district: **PROVIDED**, That any such corrective measures deemed necessary shall be instituted as expeditiously as possible but in no event later than thirty calendar days following the school district superintendent's mailing of a written response to the complaining party required by this section.

(4) The complaint procedure required by this section shall not prohibit the processing of grievances by an employee bargaining representative and/or a member of a bargaining unit pursuant to grievance procedures established at the school district level by local bargaining agreement.

**READOPTED SECTION** (Readopting Order 6-76, filed 5/17/76)

**WAC 392-190-070 COMPLIANCE—APPEAL PROCEDURE—LOCAL SCHOOL BOARD.** (1) In the event a complainant remains aggrieved as a result of the action or inaction of the superintendent in resolving a complaint as provided in WAC 392-190-065, said complainant may appeal to the school district board of directors by filing a written notice of appeal with the secretary of the school board on or before the tenth day

following (a) the date upon which the complainant received the superintendent's response or (b) the expiration of the thirty day response period provided by WAC 392-190-065, whichever occurs first.

(2) An appeal to the board of directors pursuant to this section shall require the board of directors to schedule a hearing to commence on or before the twentieth day following the filing of the written notice of appeal. Both parties shall be allowed to present such witnesses and testimony as the board deems relevant and material. The board of directors shall render a written decision on or before the tenth day following the termination of the hearing, and shall provide a copy to all parties involved.

**READOPTED SECTION** (Readopting Order 80-26, filed 7/9/80)

WAC 392-190-075 COMPLIANCE—CONTESTED CASE—DUTY OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION. (1) In the event a complainant remains aggrieved with the decision of a school district board of directors rendered pursuant to WAC 392-190-070, the complainant may appeal the board's decision to the superintendent of public instruction. Upon the receipt of a notice of appeal filed in compliance with this section, the superintendent of public instruction shall schedule a hearing to commence on or before the fortieth day thereafter.

(2) A notice of appeal must be received by the superintendent on or before the tenth day following the date upon which the complainant received written notice of the school board's decision. Furthermore, the notice must be in writing and must set forth (a) a concise statement of the portion or portions of the school board's decision which is appealed from, and (b) the relief requested by the complainant/appellant.

(3) Appeals to the superintendent shall be conducted de novo pursuant to the state Administrative Procedure Act (chapter 34.04 RCW). The complainant/appellant shall have the responsibility for prosecuting his or her case and the school district/respondent shall have the duty of defending the decision or portion thereof appealed.

**READOPTED SECTION** (Readopting Order 6-76, filed 5/17/76)

WAC 392-190-080 COMPLIANCE—VIOLATIONS—PERMISSIBLE SANCTIONS. In the event a school district is found to be in violation of the requirements of this chapter, the superintendent of public instruction may, by appropriate order pursuant to chapter 34.04 RCW, impose an appropriate sanction or institute appropriate corrective measures, including but not limited to (a) the termination of all or part of state apportionment or categorical moneys to the offending school district, (b) the termination of specified programs wherein such violation or violations are found to be flagrant in nature, (c) the institution of a mandatory affirmative action program within the offending school district, and (d) the placement of the offending school district on probation with appropriate sanctions until such time as compliance is achieved or is assured, whichever

is deemed appropriate in the particular case by the superintendent of public instruction.

**READOPTED SECTION** (Readopting Order 80-8, filed 4/15/80)

WAC 392-137-001 PURPOSES. The purposes of this chapter are: (1) To implement RCW 28A.58.240 by setting forth arrangements deemed approved by the superintendent of public instruction under which nonresident and resident students may attend the preschool through twelfth grade programs of any school district without tuition charge;

(2) To implement RCW 28A.58.240 by establishing a reasonable tuition charge for nonresident and resident students whose attendance arrangements in preschool through twelfth grade programs have not been deemed approved by the superintendent of public instruction; and

(3) To implement RCW 28A.58.242 by establishing procedures for filing and conducting appeals from the decision of a resident school district to deny the release of a student to a nonresident district.

**READOPTED SECTION** (Readopting Order 80-8, filed 4/15/80)

WAC 392-137-002 ARRANGEMENTS DEEMED APPROVED—RETENTION AND FILING OF. Any arrangement for the attendance of students which is documented in writing and consistent with this chapter shall be deemed approved by the superintendent of public instruction.

Attendance agreements and district policies required by this chapter shall be retained by each district as public records and submitted to the superintendent of public instruction upon request.

**READOPTED SECTION** (Readopting Order 80-8, filed 4/15/80)

WAC 392-137-003 NONRESIDENT ATTENDANCE EXEMPT FROM CHAPTER PROVISIONS. The following nonresident attendance arrangements are exempt from the provisions of this chapter:

(1) Interdistrict cooperation programs conducted in accordance with RCW 28A.58.075(7) and chapter 392-135 WAC;

(2) Programs temporarily conducted in behalf of another school district in accordance with RCW 28A.58.225; and

(3) Reciprocity programs with contiguous out-of-state school districts conducted pursuant to RCW 28A.58.250.

Nonresident attendance arrangements exempted from the provisions of this chapter by this section, as now or hereafter amended, are governed by the statutes and rules referenced above and by the rules or policies of a school district that supplement the referenced rules or statutes.

**READOPTED SECTION** (Readopting Order 83-11, filed 8/18/83)

**WAC 392-137-010 DEFINITIONS.** As used in this chapter, the term: (1) "Residence" shall mean the physical location of a student's principal abode—i.e., the home, house, apartment, etc., within which the student lives the majority of the time. The mailing address of the student—e.g., parent's address or post office box—may be different than the student's principal abode.

(2) "Resident student" shall mean a student:

(a) Whose residence is within the school district of attendance; or

(b) Whose residence is within the boundaries of any military, naval, lighthouse, other United States reservation, national park, national forest, or Indian reservation (provided the student resides upon rented or leased un-deeded lands within the Indian reservation) which is contiguous to the school district of attendance; or

(c) Whose residence is within a school district which does not carry the grades for which the student is eligible to enroll (e.g., a non-high school district).

(3) "Nonresident student" shall mean any student other than a resident student whose residence is within the state of Washington.

(4) "Resident district" shall mean the Washington state school district or districts of which a student is considered to be a resident.

(5) "Nonresident district" shall mean any school district other than a resident school district.

**READOPTED SECTION** (Readopting Order 7-75, filed 12/22/75)

**WAC 392-137-015 PERSONS ENTITLED TO ATTEND—TUITION—FREE.** A resident student as defined in WAC 392-137-010(2) who is between the ages of four and twenty-one is entitled as a matter of right to attend grades kindergarten through twelve conducted by or in cooperation with the district or districts considered to be his or her resident district tuition-free: **PROVIDED**, That the student is otherwise eligible to enroll.

**READOPTED SECTION** (Readopting Order 84-37, filed 10/2/84)

**WAC 392-137-020 NONRESIDENT STUDENTS UNDER THE AGE OF TWENTY-ONE—MUTUAL AGREEMENT BETWEEN RESIDENT AND NONRESIDENT DISTRICT REQUIRED.** (1) A nonresident student who is under the age of twenty-one may be admitted tuition free (but see permissive tuition in WAC 392-137-045(1)) by a nonresident district only pursuant to an agreement between the student's resident district and the nonresident district or pursuant to an order of the superintendent of public instruction pursuant to RCW 28A.58.242 and WAC 392-137-065 or pursuant to an order of a court of law. In the event the student is considered to be a resident of more than one district pursuant to the definition of "resident student" set forth in WAC 392-137-010(2), the agreement

shall be between the nonresident district and the district in which the student was last enrolled and is considered to be a resident.

(2) A student's attendance shall be credited in all cases to the school district of enrollment unless:

(a) The superintendent of public instruction is notified by order of the board of directors of a student's resident district provided for in subsection (1) that the student is a resident of its district and is attending a nonresident district without authorization pursuant to an agreement or order of the superintendent or a court of law releasing the student, and

(b) it is established that the student is a resident of the district and that neither such an agreement nor order of the superintendent or a court of law exists.

(3) In the event a district claims that a student attending another district is a resident of its district, the board of directors of such district, in its order, shall set forth the correct residence of the student and the facts upon which such determination was made. A copy of such order shall be provided to the student and the district of enrollment. If the student or the district of enrollment protests the correctness of the student's residence, the board of directors of the district of enrollment shall cause the matter to be investigated and determine within forty-five calendar days whether the student is a resident of the district of enrollment and the district thereby is entitled to claim the student for apportionment purposes. The superintendent of public instruction shall consider the decision of the board of directors of the district of enrollment final unless set aside by a court of law.

(4) In the event it is so established that a student is enrolled in a nonresident district without authorization, the basic education allocation and other state payments in connection with the student's enrollment shall be discontinued until:

(a) The student enrolls in a resident district,

(b) An agreement required by subsection (1) is entered into, or

(c) The superintendent or a court of law orders the release of the student.

(5) In the event an agreement is entered into or the superintendent of public instruction or a court of law orders the release of the student, the basic education entitlement shall be allocated to the nonresident district for the period of the agreement or the order which may be retroactive to the month in which such entitlement was discontinued.

**READOPTED SECTION** (Readopting Order 7-75, filed 12/22/75)

**WAC 392-137-025 NONRESIDENT STUDENTS TWENTY-ONE YEARS OF AGE OR OLDER—AGREEMENT BETWEEN STUDENT AND NONRESIDENT DISTRICT REQUIRED.** A nonresident student who is twenty-one years of age or older may be admitted by a nonresident district only pursuant to an agreement between the nonresident student and the nonresident district.

READOPTED SECTION (Readopting Order 7-75, filed 12/22/75)

WAC 392-137-030 RESIDENT STUDENTS TWENTY-ONE YEARS OF AGE OR OLDER—AGREEMENT BETWEEN STUDENT AND RESIDENT DISTRICT REQUIRED. A resident student who is twenty-one years of age or older may be admitted only pursuant to an agreement between the resident student and the resident district.

READOPTED SECTION (Readopting Order 7-75, filed 12/22/75)

WAC 392-137-035 CONTENTS OF AGREEMENTS. Agreements required by WAC 392-137-020, 392-137-025, and 392-137-030 shall set forth:

- (1) The name, age, and grade level of attendance of the student;
- (2) The duration of the agreement;
- (3) A finding that the student, if a nonresident, will be best accommodated in the nonresident district; and
- (4) Such other terms and conditions as the parties deem advisable and as are consistent with this chapter.

READOPTED SECTION (Readopting Order 83-11, filed 8/18/83)

WAC 392-137-040 DISTRICT POLICIES—PROCEDURES AND CRITERIA FOR RELEASE OF RESIDENT STUDENTS AND ADMISSION OF NONRESIDENT STUDENTS. Each school district board of directors shall adopt policies which specify the procedures and criteria pursuant to which resident students under the age of twenty-one may be released to nonresident districts and nonresident students and resident students twenty-one years of age or older may be admitted.

Districts shall grant requests for the release of resident students and requests for the admission of nonresident and resident students only on the basis of the order in which such requests are made and without preference: PROVIDED, That preference may be granted in those cases in which the attendance requested would likely alleviate to a significant extent an existing or probable special hardship or detrimental condition of a financial, educational, safety, or health nature affecting the student or the student's immediate family or custodian: PROVIDED FURTHER, That if a student, or in the case of a minor, the student's parent(s), guardian, or custodian requests a hearing before the board of directors of the resident district and the resident district fails to provide such a hearing within sixty calendar days of receipt of such request for a hearing, the resident district, for the purposes of this chapter, shall be deemed to have released such student to attend the nonresident district.

READOPTED SECTION (Readopting Order 83-11, filed 8/18/83)

WAC 392-137-045 TUITION—ENROLLMENT IN COMPLIANCE OR NONCOMPLIANCE WITH AN ARRANGEMENT. (1) The tuition for nonresident

students and for resident students twenty-one years of age or older who are enrolled pursuant to the provisions within this chapter or pursuant to an order of the superintendent of public instruction or a court of law releasing the student from his or her resident district, if any tuition is charged, shall be established by the school district of enrollment. In order to avoid infringements upon an individual's right to equal protection of the law, in the event tuition is charged any such student, tuition should be charged all nonresident students and resident students twenty-one years of age or older on the basis of a uniform rate or on the basis of a uniformly applied formula (e.g., tuition based upon the difference between the cost of educating a student in the district or at the grade level of attendance and state and federal funds accruing to the district as a result of the student's enrollment and/or attendance).

(2) In the event it is established by the school district of enrollment or by the superintendent of public instruction pursuant to WAC 392-137-020(2) that a student under twenty-one years of age has been enrolled in a nonresident district without an arrangement prescribed by this chapter, the district of enrollment shall have no discretion as to the tuition to be charged such student. In all such cases, the arrangements for the student's enrollment shall be considered disapproved by the superintendent of public instruction and tuition equal to the per pupil cost of the district of enrollment for the previous school year as computed on Form F-196, Part II, shall be charged the student or if the district has established a higher charge for any nonresident student or resident student twenty-one years of age or older, then an amount equal to such higher charge shall be charged the student for a full school year. Any such tuition charge, however, may be ratably reduced in the event the student is enrolled part-time and/or for less than a full school year.

READOPTED SECTION (Readopting Order 80-8, filed 4/15/80)

WAC 392-137-051 RIGHT OF APPEAL. Any student eighteen years of age or more but less than twenty-one years of age, or, in the case of a minor, the student's parent(s), guardian(s), or custodian(s) may appeal the decision of the school district within which the student resides, or the decision of the school district within which the student was last enrolled and is considered to be a resident for attendance purposes by operation of law, to deny the student's request for release to a nonresident school district made pursuant to this chapter to the superintendent of public instruction.

READOPTED SECTION (Readopting Order 83-11, filed 8/18/83)

WAC 392-137-055 APPEAL NOTICE. (1) Requests for appeal shall be written, signed, and directed to the superintendent of public instruction. Any such notice of appeal shall set forth or be accompanied by the following information:

- (a) The name, age, grade level, and residence address of the student and the name, mailing address, and the

legal relationship of the person, if any, filing the notice of appeal on behalf of the student;

(b) The school district of residence on the date of the school district's decision to deny a release;

(c) The date of the school district's decision to deny a release;

(d) Either a copy of the minutes of the board of directors of the resident school district which establishes that the board has denied a request to release the student or a written statement by the superintendent of the resident district that the board has taken action denying such a request;

(e) Either a copy of the minutes of the board of directors of the nonresident school district to which a release has been requested that establishes the nonresident district is willing to accept the student or a written statement of the superintendent of the nonresident district that the board has taken action accepting the student or that the board has established a policy accepting all students who are released by an order of the superintendent of public instruction or the court;

(f) An explanation of the special hardship or detrimental condition of a financial, educational, safety, or health nature affecting the student or the student's immediate family or custodian that exists or would exist as a result of the student's attendance in the resident district;

(g) An explanation of how attendance in the nonresident district would allegedly alleviate such special hardship or detrimental condition to a significant extent.

(2) Upon receipt of a notice of appeal which complies with subsection (1) the superintendent of public instruction or his or her designee shall schedule a hearing and provide a notice as required by RCW 34.04.090(1) to the appellant and the school district that denied the student's release.

**READOPTED SECTION** (Readopting Order 87-6, filed 4/28/87)

WAC 392-137-060 HEARING. The hearing provided for in WAC 392-137-055(2) shall be conducted in compliance with chapter 392-101 WAC.

**READOPTED SECTION** (Readopting Order 83-11, filed 8/18/83)

WAC 392-137-065 GROUNDS FOR ORDER OF RELEASE. (1) It shall be the policy of the superintendent of public instruction to order the release of a student to a nonresident district only in those cases in which the evidence establishes:

(a) That a special hardship or detrimental condition of the nature and effect identified in WAC 392-137-055(1)(f) exists; and

(b) That such special hardship or detrimental condition is likely to be alleviated to a significant extent in the event the student's release is ordered.

(2) It shall not be the policy of the superintendent of public instruction to order the release of a student to a nonresident district for the purpose of providing enrichment of educational opportunity unless the evidence also establishes:

(a) That a particular student has a unique need for the enrichment of educational opportunity;

(b) That the lack of enrichment of educational opportunity is a special hardship or detrimental condition of the nature and effect identified in WAC 392-137-055(1)(f) for a particular student; and

(c) That such special hardship or detrimental condition is likely to be alleviated to a significant extent for that particular student in the event the student's release is ordered.

**READOPTED SECTION** (Readopting Order 83-11, filed 8/18/83)

WAC 392-137-070 PER SE SPECIAL HARDSHIP OR DETRIMENTAL HARDSHIPS. The following conditions are judged by the superintendent of public instruction to constitute a special hardship or detrimental condition, the proof of which is a per se condition for the order of a release:

(1) A student who was enrolled the previous school year in a nonresident district who will complete in the same nonresident district during the current school year the highest grade offered in the resident district; and

(2) A student who has completed two or more school years in a nonresident district without a release but with the knowledge of such nonresident attendance by the superintendent or any member of the board of directors of the resident district.

**READOPTED SECTION** (Readopting Order 6-76, filed 5/17/76)

WAC 392-190-005 PURPOSE—ELIMINATION OF SEX DISCRIMINATION. The purpose of this chapter is to establish rules and regulations which implement chapter 28A.85 RCW. The referenced enactment prohibits discrimination on the basis of sex in grades K-12 of the Washington public schools. Broad federal regulations implementing Title IX of the Education Amendments of 1972 similarly prohibit sex discrimination in federally-assisted education programs or activities. As a result, several substantive areas have been similarly identified and addressed by both state and federal enactments.

It is the intent of this chapter to encompass those similar substantive areas addressed by the Title IX regulations and in some aspects extend beyond the Title IX regulations. Accordingly, compliance with this chapter should constitute compliance with those similar substantive areas treated in the Title IX regulations, but school districts should be aware that compliance with the Title IX regulations alone may not constitute compliance with this chapter.

Although chapter 28A.85 RCW and the balance of this chapter prohibit sex discrimination in grades K-12 only, the superintendent of public instruction hereby declares pursuant to the authority vested in the superintendent by Article 3, section 22 of the state Constitution that it shall be unlawful for any public school district to discriminate on the basis of sex with regard to any activity conducted by or in behalf of a school district including, but not limited to, preschool, adult education,

community education and vocational-technical program activities.

**READOPTED SECTION** (Readopting Order 80-26, filed 7/9/80)

**WAC 392-190-010 COUNSELING AND GUIDANCE SERVICES—CAREER OPPORTUNITIES—INTERNAL PROCEDURES.** (1) No school district shall engage in discrimination against any person on the basis of sex in the counseling or guidance of students in grades K-12.

(2) Each school district shall devise and use materials, orientation programs, and counseling techniques that will encourage participation in all school programs and courses of study based on factors other than sex and that encourage students to explore subjects and activities not heretofore traditional for their sex.

(3) Each school district which uses testing and other materials for appraising or counseling students shall not use different materials for students on the basis of their sex or use materials which permit or require different treatment of students on such basis unless (a) such different materials cover the same occupations and interest areas and (b) the use of such different materials is demonstrated to be essential to eliminate sex bias.

(4) Each school district shall develop and use internal procedures for ensuring that all tests and appraisal instruments, career and vocational guidance materials, work/study programs and opportunities, and educational scheduling and/or placement do not discriminate on the basis of sex: **PROVIDED**, That where the use of such instruments or materials or such programs or activities results in a substantially disproportionate number of members of one sex in any particular course of study or classification, the school district shall take such immediate action as is necessary to assure itself that such disproportion is not the result of discrimination in the program or activity or in the instrument or material or its application: **PROVIDED FURTHER**, That where a school district finds that a particular class contains a substantially disproportionate number of individuals of one sex, the district shall take such immediate action as is necessary to assure itself that such disproportion is not the result of discrimination on the basis of sex in tests and appraisal instruments, career and vocational guidance materials, work/study programs and opportunities, and educational scheduling and/or placement or by counselors.

**READOPTED SECTION** (Readopting Order 6-76, filed 5/17/76)

**WAC 392-190-015 COUNSELING AND GUIDANCE—DUTY OF CERTIFICATED AND CLASSROOM PERSONNEL—COORDINATION OF EFFORT.** (1) All certificated and classroom personnel shall encourage students to explore and develop their individual interests in career and vocational technical programs and employment opportunities without regard to sex, including reasonable efforts encouraging students to consider and explore "nontraditional" occupations for men

and women: **PROVIDED**, That all certificated and classroom personnel within each local school district shall have access to an educational staff associate (ESA) certificated school counselor(s) or such other appropriate person(s), designated by the school district superintendent to coordinate compliance with the requirements of this section.

(2) All certificated and classroom personnel shall comply fully and immediately with the requirements of this section. The superintendent of each school district shall make the designation(s) required by this section immediately.

**READOPTED SECTION** (Readopting Order 6-76, filed 5/17/76)

**WAC 392-190-020 INSERVICE TRAINING—SEX BIAS AWARENESS.** Each school district should include sex bias awareness and sex bias elimination training sessions in such inservice training programs as are conducted or provided for certificated and/or classroom personnel.

**READOPTED SECTION** (Readopting Order 6-76, filed 5/17/76)

**WAC 392-190-025 RECREATIONAL AND ATHLETIC ACTIVITIES—EQUAL OPPORTUNITY—SEPARATE TEAMS.** (1) No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, club or intramural athletics or recreational activity offered by a school district, and no school district shall provide any such athletics or recreational activity separately on such basis. Sports teams and programs offered by a school district shall, regardless of their nature, be equally open to participation by qualified members of both sexes: **PROVIDED**, That in the case of sports and recreational activities offered for students in grades 7 through 12, a school district may maintain separate teams for members of each sex if (a) it can clearly be shown, under the factual circumstances involved in the particular case, that the maintenance of separate teams for boys and girls truly constitutes the best method of providing both sexes, as a whole, with an equal opportunity to participate in the sports or games of their choice and (b) at the same time, a test of substantial equality between the two programs can be found to have been met.

(2) For the purpose of this section and WAC 392-190-050(2) "substantial equality" shall be determined by considering factors including but not limited to the following:

- (a) The relationship between the skill and compensation of coaching staffs;
- (b) The size of their budgets;
- (c) The quality of competition and game schedules;
- (d) Uniforms;
- (e) Equipment and facilities; and
- (f) Sufficient numbers of participants to warrant separate teams.



READOPTED SECTION (Readopting Order 6-76, filed 5/17/76)

**WAC 392-190-030 GENERAL—RECREATIONAL AND ATHLETIC ACTIVITIES—EQUAL OPPORTUNITY FACTORS CONSIDERED.** Each school district shall evaluate its recreational and athletic program at least once each year to ensure that equal opportunities are available to members of both sexes with respect to interscholastic, club or intramural athletics which are operated, sponsored, or otherwise provided by the school district.

In determining whether equal opportunities are available to members of both sexes with respect to interscholastic, club or intramural athletics, each school district conducting an evaluation required by this section, and the office of superintendent of public instruction upon receipt of a complaint pursuant to WAC 392-190-075, shall consider several factors, including but not limited to the following where provided by a school district:

- (1) Whether the selection of sports and levels of competition effectively accommodates the interests and abilities of members of both sexes;
- (2) The provision of equipment and supplies;
- (3) The scheduling of games and practice times including the use of playfields, courts, gyms, and pools;
- (4) Transportation and per diem allowances, if any;
- (5) The opportunity to receive coaching and academic tutoring;
- (6) The assignment and compensation of coaches, tutors, and game officials;
- (7) The provision of medical and training facilities and services including the availability of insurance;
- (8) The provision of housing, laundry, and dining facilities and services, if any; and
- (9) Publicity and awards.

Unequal aggregate expenditures within a school district for members of each sex or unequal expenditures for separate male and female teams will not alone constitute noncompliance with this chapter, but the failure to provide the necessary funds for recreational and athletic activities for members of one sex may be considered in assessing the equality of opportunity for members of each sex.

READOPTED SECTION (Readopting Order 80-26, filed 7/9/80)

**WAC 392-190-035 RECREATIONAL AND ATHLETIC ACTIVITIES—COMPLIANCE TIME-TABLE—ELEMENTARY AND SECONDARY LEVEL.** (1) Each school district which operates, sponsors, or otherwise provides interscholastic, club or intramural athletics at the elementary school level (K-6) shall provide equal opportunity and encouragement for physical and skill development to all students in the elementary grades consistent with this chapter.

(2) Each school district which operates, sponsors, or otherwise provides interscholastic, club or intramural athletics at the secondary school level (7-12) shall provide equal opportunity and encouragement for physical and skill development to all students in the secondary grades consistent with this chapter.

READOPTED SECTION (Readopting Order 80-26, filed 7/9/80)

**WAC 392-190-040 RECREATIONAL AND ATHLETIC ACTIVITIES—STUDENT INTEREST—REQUIRED SURVEY INSTRUMENT.** (1) The superintendent of public instruction shall develop a survey instrument to assist each school district in the determination of student interest for male/female participation in specific sports.

(2) A survey instrument shall be administered by each school district at all grade levels where interscholastic, intramural and other sports and recreational activities are conducted. The results of the survey shall be considered in the program planning and development in the area of recreational and athletic activities offered within the school district.

(3) A survey instrument developed pursuant to this section shall be administered at least once every three years within each school district: **PROVIDED**, That the content of the survey instrument may be modified or amended as deemed appropriate to clarify and assist in the evaluation of student interest.

READOPTED SECTION (Readopting Order 80-26, filed 7/9/80)

**WAC 392-190-045 RECREATIONAL AND ATHLETIC ACTIVITIES—FACILITIES.** A school district which provides athletic facilities for members of one sex including showers, toilets, and training room facilities for athletic purposes shall provide comparable facilities for members of the opposite sex: **PROVIDED**, That such facilities may be provided as either separate facilities or shall be scheduled and used separately by members of each sex: **PROVIDED FURTHER**, That this section shall not be interpreted to require the construction of additional facilities.

READOPTED SECTION (Readopting Order 80-26, filed 7/9/80)

**WAC 392-190-050 COURSE OFFERINGS—GENERALLY—SEPARATE SESSIONS OR GROUPS PERMISSIBLE.** No school district shall provide any course or otherwise carry out any of its education programs or activities separately on the basis of sex, or require or refuse participation therein by any of its students on such basis, including but not limited to health, physical education, industrial arts, business, vocational-technical, and home economics courses: **PROVIDED**, That this section shall not be construed to prohibit:

(1) The grouping of students in physical education classes and activities by demonstrated ability as assessed by objective standards of individual performance developed and applied without regard to sex: **PROVIDED**, That where use of a single standard of measuring skill or progress in a physical education class has an adverse effect on members of one sex, the school district shall immediately implement appropriate standards which do not have such effect;

(2) The separation of students by sex within physical education classes or activities offered for students in



grades 7 through 12 if (a) it can clearly be shown under the factual circumstances involved in the particular case, that the maintenance of a separate physical education class or activity for boys and girls truly constitutes the best method of providing both sexes, as a whole, with an equal opportunity to participate in such class or activity and (b) at the same time, a test of substantial equality between the two classes or activities can be found to have been met,

(3) The conduct of separate sessions for boys and girls with respect to those portions of classes which deal exclusively with human sexuality, and

(4) The conduct of classes and/or activities within which a school district may establish or maintain requirements based on vocal range or quality which may result in a chorus or choruses of one or predominantly one sex.

**READOPTED SECTION** (Readopting Order 80-26, filed 7/9/80)

WAC 392-190-055 TEXTBOOKS AND INSTRUCTIONAL MATERIALS—SCOPE—ELIMINATION OF SEX BIAS—COMPLIANCE TIMETABLE. (1) It is the intent of this section to eliminate sex bias in connection with any form of instruction provided by a school district.

(2) The instructional materials policy of each school district required by RCW 28A.58.103 shall incorporate therein, as part of the selection criteria, a specific statement requiring the elimination of sex bias in all textbooks and instructional materials including reference materials and audio-visual materials.

(3) The instructional materials committee of each school district shall establish and maintain appropriate screening criteria designed to identify and eliminate sex bias in all textbooks and instructional materials including reference materials and audio-visual materials: PROVIDED, That such selection criteria shall be consistent with the selection criteria endorsed by the state board of education dated December 6, 1974, WAC 180-48-010, as now or hereafter amended, and WAC 180-46-005 through 180-46-060, as now or hereafter amended. One of the aids to identification of sex bias in instructional materials consists of the Washington Models for the Evaluation of Bias Content in Instructional Materials published by the superintendent of public instruction.

(4) In recognition of the fact that current instructional materials which contain sex bias may not be replaced immediately, each school district should acquire supplemental instructional materials or aids to be used concurrent with existing materials for the purpose of countering the sex bias content thereof.

(5) Nothing in this section is intended to prohibit the use or assignment of supplemental instructional materials such as classic and contemporary literary works, periodicals and technical journals which, although they contain sex bias, are educationally necessary or advisable.

**READOPTED SECTION** (Readopting Order 6-76, filed 5/17/76)

WAC 392-190-060 COMPLIANCE—LOCAL SCHOOL DISTRICT—DESIGNATION OF RESPONSIBLE EMPLOYEE—NOTIFICATION. (1) The superintendent of each school district shall immediately designate at least one employee who shall be responsible directly to the superintendent for monitoring and coordinating the district's compliance with this chapter. The employee designated pursuant to this section shall also be charged with the responsibility to investigate any complaint(s) communicated to the school district pursuant to WAC 392-190-065.

(2) Each school district shall, once each year or more often as deemed necessary, publish notice in a manner which is reasonably calculated to inform all students, students' parents, and employees of the name, office address and telephone number of the employee or employees appointed pursuant to this section and the appeal procedure set forth in WAC 392-190-065, WAC 392-190-070 and WAC 392-190-075 as now or hereafter amended.

**READOPTED SECTION** (Readopting Order 6-76, filed 5/17/76)

WAC 392-190-065 COMPLIANCE—COMPLAINT PROCEDURE—DISTRICT SUPERINTENDENT. (1) Upon receipt of a complaint by a school district in the manner herein described, the employee or employees designated pursuant to WAC 392-190-060 shall investigate the allegations set forth and shall institute such other reasonable procedures to effect a prompt resolution of the complaint: PROVIDED, That each complaint communicated to the school district shall be (a) written, (b) signed by the complaining party, and (c) set forth specific acts, conditions, or circumstances alleged to be violative of this chapter or the specific acts, conditions, or circumstances that would be prohibited by this chapter.

(2) Upon completion of the investigation required by this section in connection with a complaint communicated to the school district, the designated employee or employees shall provide the district superintendent with a full written report of the complaint and the results of the investigation. The district superintendent shall respond in writing to the complaining party as expeditiously as possible but in no event later than thirty calendar days following receipt of such complaint by the school district.

(3) The response of the school district superintendent required by this section shall clearly state either (a) that the school district denies the allegations contained in the complaint received pursuant to this section, or (b) the nature of such reasonable corrective measures deemed necessary to eliminate any such act, condition, or circumstance within the school district: PROVIDED, That any such corrective measures deemed necessary shall be instituted as expeditiously as possible but in no event later than thirty calendar days following the school district superintendent's mailing of a written response to the complaining party required by this section.

(4) The complaint procedure required by this section shall not prohibit the processing of grievances by an employee bargaining representative and/or a member of a bargaining unit pursuant to grievance procedures established at the school district level by local bargaining agreement.

**READOPTED SECTION** (Readopting Order 6-76, filed 5/17/76)

**WAC 392-190-070 COMPLIANCE—APPEAL PROCEDURE—LOCAL SCHOOL BOARD.** (1) In the event a complainant remains aggrieved as a result of the action or inaction of the superintendent in resolving a complaint as provided in WAC 392-190-065, said complainant may appeal to the school district board of directors by filing a written notice of appeal with the secretary of the school board on or before the tenth day following (a) the date upon which the complainant received the superintendent's response or (b) the expiration of the thirty day response period provided by WAC 392-190-065, whichever occurs first.

(2) An appeal to the board of directors pursuant to this section shall require the board of directors to schedule a hearing to commence on or before the twentieth day following the filing of the written notice of appeal. Both parties shall be allowed to present such witnesses and testimony as the board deems relevant and material. The board of directors shall render a written decision on or before the tenth day following the termination of the hearing, and shall provide a copy to all parties involved.

**READOPTED SECTION** (Readopting Order 80-26, filed 7/9/80)

**WAC 392-190-075 COMPLIANCE—CONTESTED CASE—DUTY OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION.** (1) In the event a complainant remains aggrieved with the decision of a school district board of directors rendered pursuant to WAC 392-190-070, the complainant may appeal the board's decision to the superintendent of public instruction. Upon the receipt of a notice of appeal filed in compliance with this section, the superintendent of public instruction shall schedule a hearing to commence on or before the fortieth day thereafter.

(2) A notice of appeal must be received by the superintendent on or before the tenth day following the date upon which the complainant received written notice of the school board's decision. Furthermore, the notice must be in writing and must set forth (a) a concise statement of the portion or portions of the school board's decision which is appealed from, and (b) the relief requested by the complainant/appellant.

(3) Appeals to the superintendent shall be conducted de novo pursuant to the state Administrative Procedure Act (chapter 34.04 RCW). The complainant/appellant shall have the responsibility for prosecuting his or her case and the school district/respondent shall have the duty of defending the decision or portion thereof appealed.

**READOPTED SECTION** (Readopting Order 6-76, filed 5/17/76)

**WAC 392-190-080 COMPLIANCE—VIOLATIONS—PERMISSIBLE SANCTIONS.** In the event a school district is found to be in violation of the requirements of this chapter, the superintendent of public instruction may, by appropriate order pursuant to chapter 34.04 RCW, impose an appropriate sanction or institute appropriate corrective measures, including but not limited to (a) the termination of all or part of state apportionment or categorical moneys to the offending school district, (b) the termination of specified programs wherein such violation or violations are found to be flagrant in nature, (c) the institution of a mandatory affirmative action program within the offending school district, and (d) the placement of the offending school district on probation with appropriate sanctions until such time as compliance is achieved or is assured, whichever is deemed appropriate in the particular case by the superintendent of public instruction.

**WSR 89-16-017**

**EMERGENCY RULES**

**SUPERINTENDENT OF PUBLIC INSTRUCTION**

[Filed July 21, 1989, 4:09 p.m.]

Date of Adoption: July 14, 1989.

Purpose: To set forth policies and procedures for a teacher assistance program, chapter 392-196 WAC.

Citation of Existing Rules Affected by this Order: Amending WAC 392-196-011, 392-196-015, 392-196-020, 392-196-025, 392-196-030, 392-196-035, 392-196-040, 392-196-045, 392-196-050, 392-196-055, 392-196-060, 392-196-070, 392-196-075, 392-196-080, 392-196-085 and 392-196-090.

Statutory Authority for Adoption: RCW 28A.67.240.

Pursuant to RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: Changes in legislative funding requires immediate adoption of rules to provide uninterrupted delivery of program.

Effective Date of Rule: Immediately.

July 21, 1989  
Judith A. Billings  
Superintendent of  
Public Instruction

**AMENDATORY SECTION** (Amending Order 87-13, filed 11/5/87)

**WAC 392-196-011 DEFINITION—TEACHER** (~~(=DEFINITION)~~). As used in this chapter the term "teacher" means any school employee possessing any one of the certificates issued by the superintendent of public instruction under RCW 28A.70.005: PROVIDED, That such employees who hold administrator credentials and are employed as administrators shall not be included for purposes of this chapter.

AMENDATORY SECTION (Amending Order 85-12, filed 10/15/85)

WAC 392-196-015 DEFINITION—MENTOR TEACHER~~((=DEFINITION))~~. As used in this chapter, the term "mentor teacher" shall mean a classroom teacher who has been selected by a school district to provide continuing and sustained support to a beginning teacher, both in and outside the classroom.

AMENDATORY SECTION (Amending Order 88-20, filed 8/31/88)

WAC 392-196-020 DEFINITION—MENTOR TEACHER STIPEND~~((=DEFINITION))~~. As used in this chapter, the term "mentor teacher stipend" shall mean an amount paid by a school district to a mentor teacher for services as a mentor teacher including three days attendance at the ~~((superintendent of public instruction sponsored beginner-mentor teacher))~~ required workshops or training sessions. Such stipend, including the amount and conditions applicable, shall be set forth in a supplemental contract in accordance with and subject to the provisions of RCW 28A.67.074.

AMENDATORY SECTION (Amending Order 85-12, filed 10/15/85)

WAC 392-196-025 ~~((MENTOR TEACHER STIPEND—MINIMUM AMOUNT))~~ DEFINITION—BEGINNING TEACHER. ~~((The minimum amount per school year of the mentor teacher stipend shall be nine hundred fifty dollars.))~~ As used in this chapter, the term "beginning teacher" shall mean a teacher with fewer than ninety consecutive school days of certificated teaching experience in either a public or private school in any grade, preschool through twelve, and who is employed by the district for ninety consecutive school days or more.

AMENDATORY SECTION (Amending Order 87-13, filed 11/5/87)

WAC 392-196-030 ~~((MENTOR TEACHER—QUALIFICATIONS FOR NOMINATION))~~ DEFINITION—BEGINNING TEACHER/EXPERIENCED TEACHER STIPEND. ~~((In order to be nominated to serve as a mentor teacher pursuant to WAC 392-196-035, the teacher shall meet the following minimum qualifications:~~

- ~~(1) Be employed full time primarily as a teacher.~~
- ~~(2) Have been employed primarily as a teacher for one school year within the district and two additional school years within any public or private school in any grade, preschool through twelve.~~
- ~~(3) Hold a valid continuing certificate issued pursuant to chapter 180-79 WAC or be eligible for conversion to such certificate pursuant to WAC 180-79-045.))~~ As used in this chapter, the term "beginning teacher stipend" shall mean an amount paid by a school district to a beginning teacher/experienced teacher for three days of attendance at the required workshops or training sessions. Such stipend, including the amount and conditions

applicable, shall be set forth in a supplemental contract in accordance with and subject to the provisions of RCW 28A.67.074.

AMENDATORY SECTION (Amending Order 85-12, filed 10/15/85)

WAC 392-196-035 ~~((MENTOR TEACHER—SELECTION PROCESS))~~ DEFINITION—EXPERIENCED TEACHER. ~~((Mentor teachers shall be selected by the district. If a bargaining unit, certified pursuant to RCW 41.59.090 exists within the district, classroom teachers representing the bargaining unit shall participate in the mentor teacher selection process.))~~ As used in this chapter, the term "experienced teacher" means a teacher not included in the "beginning teacher" population, as defined in WAC 392-196-040.

AMENDATORY SECTION (Amending Order 87-13, filed 11/5/87)

WAC 392-196-040 ~~((BEGINNING TEACHER—))~~ DEFINITION—EDUCATIONAL SERVICE DISTRICT SPONSORED WORKSHOP. As used in this chapter, the term ("beginning teacher" shall mean a teacher with fewer than ninety consecutive school days of certificated teaching experience in either a public or private school in any grade, preschool through twelve, and who is employed by the district for ninety consecutive school days or more)) "educational service district sponsored workshop" shall mean an in-service training program sponsored by the educational service district for the purpose of providing professional training for beginning/experienced teachers and mentors with particular emphasis upon improving communications skills and developing support teams. Such workshops shall be no more than one day in length and shall not be held during school hours.

AMENDATORY SECTION (Amending Order 88-20, filed 8/31/88)

WAC 392-196-045 ~~((BEGINNING TEACHER STIPEND—))~~ DEFINITION—SCHOOL DISTRICT WORKSHOPS. As used in this chapter, the term ("beginning teacher stipend" shall mean an amount paid by a school district to a beginning teacher for two days of attendance at the superintendent of public instruction sponsored beginner-mentor teacher workshops. Such stipend, including the amount and conditions applicable, shall be set forth in a supplemental contract in accordance with and subject to the provisions of RCW 28A.67.074)) "school district workshops" shall mean an in-service training program sponsored or approved by the school district for the purpose of providing professional training for the mentors and the beginning or participating experienced teachers in one or more of the following:

- (1) Communication skills;
- (2) Teacher effectiveness; and/or
- (3) School district policies and procedures.

Such workshops shall be no longer than two days in length, but need not be consecutive days, and shall not

be held during school hours. School districts will be provided fifty dollars per team, per workshop to support the costs associated with providing two days of training.

AMENDATORY SECTION (Amending Order 88-20, filed 8/31/88)

WAC 392-196-050 ((BEGINNING)) MENTOR TEACHER STIPEND—MINIMUM AMOUNT. The minimum amount per school year of the ((beginning)) mentor teacher stipend shall be ((one)) nine hundred ((sixty)) fifty dollars.

AMENDATORY SECTION (Amending Order 88-20, filed 8/31/88)

WAC 392-196-055 ((SPI-SPONSORED BEGINNING AND MENTOR TEACHER WORKSHOP—DEFINITION)) MENTOR TEACHER—QUALIFICATIONS FOR NOMINATION. ((As used in this chapter, the term "superintendent of public instruction sponsored beginning and mentor teacher workshop" shall mean an in-service training program sponsored by the superintendent of public instruction for the purpose of providing professional training for mentor and beginning teachers in the methods and procedures for performing such roles with particular emphasis upon providing continuing and sustained support by the mentor teacher to a beginning teacher. Such workshops shall be no more than three days in length for the mentor and two days in length for the beginner, but need not be consecutive days, and shall not be held during school hours.)) In order to be nominated to serve as a mentor teacher pursuant to WAC 392-196-035, the teacher shall meet the following minimum qualifications:

(1) Be employed full time primarily as a teacher.

(2) Have been employed primarily as a teacher for one school year within the district and two additional school years within any public or private school in any grade, preschool through twelve.

(3) Hold a valid continuing certificate issued pursuant to chapter 180-79 WAC or be eligible for conversion to such certificate pursuant to WAC 180-79-045.

AMENDATORY SECTION (Amending Order 88-20, filed 8/31/88)

WAC 392-196-060 ((SCHOOL DISTRICT APPLICATION TO SPI FOR PARTICIPATION IN THE TEACHER ASSISTANCE PROGRAM)) MENTOR TEACHER—SELECTION PROCESS. ((Any district may apply to the superintendent of public instruction for participation in the teacher assistance program. The application shall require the superintendent of the district to provide the following assurances:

(1) The board of directors of the district has reviewed the requirements of this chapter and has agreed to the conditions therein.

(2) The mentor teacher shall be paid a mentor teacher stipend.

(3) The beginning teacher shall be paid a beginning teacher stipend.

(4) The mentor and beginning teacher shall be required to attend and shall be reimbursed by the district

for travel expenses for attendance at the superintendent of public instruction sponsored beginner-mentor teacher workshops.

(5) The mentor teacher, the beginning teacher, and the experienced teacher shall be released from teaching responsibilities in order to jointly or separately observe each other or observe colleagues in teaching situations.

(6) The total released time from classroom teaching as required by subsection (5) of this section shall be at least twenty-four scheduled instructional hours per school year but no more than twenty-four scheduled instructional hours shall be paid for with funds made available under this chapter.

(7) Mentor teachers shall not be involved in evaluations of their beginning or experienced teachers conducted pursuant to RCW 28A.67.065.

(8) The mentor teacher, beginning teacher, and experienced teacher shall be required to complete and forward to the superintendent of public instruction such evaluation reports of the teacher assistance program as requested by the superintendent of public instruction.

(9) Mentor teachers shall periodically inform their principals respecting the contents of training sessions and other program activities.

(10) The superintendent of the district shall supply the superintendent of public instruction, at times specified by the superintendent of public instruction, such information as requested regarding the teacher assistance program.)) Mentor teachers shall be selected by the district. If a bargaining unit, certified pursuant to RCW 41.59.090 exists within the district, classroom teachers representing the bargaining unit shall participate in the mentor teacher selection process.

#### NEW SECTION

WAC 392-196-066 BEGINNING TEACHER/EXPERIENCED TEACHER STIPEND—MINIMUM AMOUNT. The minimum amount of the beginning teacher/experienced teacher stipend shall be two hundred forty dollars.

AMENDATORY SECTION (Amending Order 88-20, filed 8/31/88)

WAC 392-196-070 ((SCHOOL DISTRICT SELECTION PROCESS AND STATE PRIORITIES)) EXPERIENCED TEACHER PARTICIPATION. ((The selection process and priorities shall be as follows for the 1988-89 school year:

(1) Beginning teacher and mentor teams will be selected on the following basis:

(a) Beginning teacher and mentor assigned to the same building and teaching in the same endorsement area:

(b) Beginning teacher and mentor assigned to the same building and teaching in a related endorsement area (e.g., social studies-English or mathematics-science):

(c) Beginning teacher and mentor assigned to different buildings, but teaching in the same endorsement area:

~~(2) The process used to select beginner and mentor teacher teams shall be as follows:~~

~~(a) Applications received between July 15 and August 15 that meet the priority criteria set forth in subsection (1)(a) and (b) of this section will be accepted in accordance with the priority and the date the application is received in the office of the superintendent of public instruction subject to availability of funds.~~

~~(b) If funds are still available after the initial application period, a second application period will be established from August 15 to September 25. Selection priorities will remain the same as set forth herein.) "Experienced teachers" shall not be required to participate in this program. Districts shall be reimbursed for up to twenty-four hours substitute teacher expenses (per team) associated with participation of experienced teachers if such funds are available after all nominated beginning teachers have been included.~~

AMENDATORY SECTION (Amending Order 88-20, filed 8/31/88)

WAC 392-196-075 ((ANNUAL AMOUNT FOR DISTRIBUTION TO PARTICIPATING SCHOOL DISTRICTS)) EXPERIENCED TEACHER-SELECTION CRITERIA. ((The superintendent of public instruction annually shall establish a dollar amount per beginning teacher-mentor teacher team for distribution to districts for support of the teacher assistance program. Such distribution shall be used by the district exclusively for the following:

~~(1) Mentor teacher stipends.~~

~~(2) Travel expenses of the mentor and beginning teachers for attendance at the superintendent of public instruction beginner-mentor teacher workshops.~~

~~(3) Substitute teacher salaries for released time for mentor, beginner, and experienced teachers.~~

~~(4) Beginning teacher stipends.~~

~~(5) Appropriate fringe benefits associated with mentor and beginning teacher stipends.) "Experienced" teachers who meet one of the following criteria may be nominated for participation in the teacher assistance program:~~

~~(1) Teachers assigned to a different subject area or grade level from previous assignment(s).~~

~~(2) Teachers reentering the teaching profession.~~

~~(3) Teachers who have substitute taught ninety consecutive days or more, but have not had a regular contract.~~

~~(4) Teachers newly hired by the school district.~~

AMENDATORY SECTION (Amending Order 88-20, filed 8/31/88)

WAC 392-196-080 ((DISTRIBUTION OF STATE MONEYS FOR)) SCHOOL DISTRICT APPLICATION TO SPI FOR PARTICIPATION IN THE TEACHER ASSISTANCE PROGRAM. ((The superintendent of public instruction shall issue grant awards for the 1988-89 school year for a maximum of one thousand six hundred dollars per mentor-beginning teacher team.) Any district may apply to the superintendent of public instruction for participation in the

teacher assistance program. The application shall require the superintendent of the district to provide the following assurances:

(1) The board of directors of the district has reviewed the requirements of this chapter and has agreed to the conditions therein.

(2) The mentor teacher shall be paid a mentor teacher stipend.

(3) The beginning/experienced teacher shall be paid a beginning/experienced teacher stipend.

(4) The beginning/experienced teacher and mentor shall be required to attend and shall be reimbursed by the district for travel expenses for attendance at the educational service district sponsored workshops or training sessions.

(5) The mentor teacher, the beginning teacher, and the experienced teacher shall be released from teaching responsibilities in order to jointly or separately observe each other or observe colleagues in teaching situations.

(6) The district shall provide for or approve two days of workshops as training sessions as defined in WAC 392-196-045. The mentor and beginning or participating experienced teacher shall be required to attend together and shall be reimbursed by the district for expenses for attendance at the two school district sponsored or approved workshops or training sessions.

(7) The total released time from classroom teaching as required by subsection (5) of this section shall be at least twenty-four scheduled instructional hours per school year but no more than twenty-four scheduled instructional hours shall be paid for with funds made available under this chapter.

(8) Mentor teachers shall not be involved in evaluations of their beginning or experienced teachers conducted pursuant to RCW 28A.67.065.

(9) The mentor teacher, beginning teacher, and experienced teacher shall be required to complete and forward to the superintendent of public instruction such evaluation reports of the teacher assistance program as requested by the superintendent of public instruction.

(10) Mentor teachers shall periodically inform their principals respecting the contents of training sessions and other program activities.

(11) The superintendent of the district shall supply the superintendent of public instruction, at times specified by the superintendent of public instruction, such information as requested regarding the teacher assistance program, including agendas and evaluation material from each district sponsored or approved workshop or training session.

AMENDATORY SECTION (Amending Order 87-13, filed 11/5/87)

WAC 392-196-085 ((CARRYOVER PROHIBITION)) SELECTION PROCESS. ((State moneys distributed to districts for the teacher assistance program shall be subject to the carryover prohibition of WAC 392-122-900.) Nominations for the teacher assistance program must be received by the office of the superintendent of public instruction by 5:00 p.m. September 15, 1989.

A maximum of nine hundred beginning teacher and mentor teams and a maximum of one hundred experienced teacher and mentor teams will be selected. Applications will be accepted based upon date of receipt at the office of the superintendent of public instruction until funding is depleted.

AMENDATORY SECTION (Amending Order 87-13, filed 11/5/87)

WAC 392-196-090 ((~~MAXIMUM CONTROL FACTOR-PRORATION~~)) SUPERINTENDENT OF PUBLIC INSTRUCTION CONSULTATION. ((State moneys distributed to districts for the teacher assistance program shall be subject to the proration provision of WAC 392-122-905 if the current appropriation to the superintendent of public instruction for the beginning teacher assistance program is adversely affected by action of the legislature after the commencement of the ensuing school year.)) The superintendent of public instruction hereby establishes a teacher assistance task force of no more than twelve members representing teachers, educational staff associates, administrators, educational service districts, colleges and universities, and school directors. The superintendent shall:

(1) Appoint task force members from nominations submitted by the professional groups eligible to be represented on the task force;

(2) Consult with the task force for the purpose of obtaining their advice about teacher assistance program policies, operations, and evaluations;

(3) Convene the task force at least once annually.

#### NEW SECTION

WAC 392-196-095 ANNUAL AMOUNT FOR DISTRIBUTION TO PARTICIPATING SCHOOL DISTRICTS. The superintendent of public instruction annually shall establish a dollar amount per beginning teacher-mentor teacher team for distribution to districts for support of the teacher assistance program. Such distribution shall be used by the district exclusively for the following:

(1) Mentor teacher stipends.

(2) Travel expenses of the beginning/experienced teachers and mentors for attendance at the educational service district workshops or training sessions.

(3) Two days of school district sponsored or approved training workshops for the mentor and beginning and experienced teachers and expenses for the workshops.

(4) Substitute teacher salaries for released time for mentor, beginner, and experienced teachers.

(5) Beginning teacher stipends.

(6) Appropriate fringe benefits associated with mentor and beginning teacher stipends.

#### NEW SECTION

WAC 392-196-100 DISTRIBUTION OF STATE MONEYS FOR THE TEACHER ASSISTANCE PROGRAM. The superintendent of public instruction shall issue grant awards for the 1989-90 school year for a maximum of one thousand seven hundred thirty dollars per mentor-beginning teacher team.

#### NEW SECTION

WAC 392-196-105 CARRYOVER PROHIBITION. State moneys distributed to districts for the teacher assistance program shall be subject to the carry-over prohibition of WAC 392-122-900.

#### NEW SECTION

WAC 392-196-110 MAXIMUM CONTROL FACTOR-PRORATION. State moneys distributed to districts for the teacher assistance program shall be subject to the proration provision of WAC 392-122-905 if the current appropriation to the superintendent of public instruction for the beginning teacher assistance program is adversely affected by action of the legislature after the commencement of the ensuing school year.

### **WSR 89-16-018**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF FISHERIES**

[Order 89-66—Filed July 21, 1989, 4:45 p.m.]

Date of Adoption: July 21, 1989.

Purpose: Modify personal use rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-57-14000J (89-31); and amending WAC 220-57-140.

Statutory Authority for Adoption: RCW 75.08.080.

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

Reasons for this Finding: A harvestable number of coho and chinook salmon are expected below the Fuller Bridge. In order to harvest these fish, immediate implementation of this rule is necessary. Offering time for public comment would mean the run would move through the harvest area into the breeding area, from which no fish may be taken to ensure reproduction.

Effective Date of Rule: Immediately.

July 21, 1989

Judith Merchant  
Deputy Director  
for Joseph R. Blum  
Director

#### NEW SECTION

WAC 220-57-14000K CHEHALIS RIVER. Notwithstanding the provisions of WAC 220-57-140, it is unlawful to fish for or possess salmon taken for personal use from the waters of the Chehalis River except as provided for in this section:

(1) Effective immediately until further notice – Bag Limit A – Waters downstream from the Fuller Bridge.

(2) Effective September 1 through September 30 – Bag Limit A – Waters downstream from the Porter Bridge to the Fuller Bridge, except that all coho salmon

greater than 20 inches in length must be released immediately.

to fish for or possess salmon taken for personal use from the waters of Lake Wenatchee.

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 220-57-14000J CHEHALIS RIVER. (89-31)

**WSR 89-16-019**

**EMERGENCY RULES**

**DEPARTMENT OF FISHERIES**

[Order 89-67—Filed July 21, 1989, 4:48 p.m.]

Date of Adoption: July 21, 1989.

Purpose: Modify personal use rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-57-160 and 220-57A-183.

Statutory Authority for Adoption: RCW 75.08.080.

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

Reasons for this Finding: A harvestable number of chinook salmon will be moving into the area of the Columbia River immediately below the Megler-Astoria Bridge, and delay in implementing this rule would mean a loss of harvest opportunity. There are insufficient returns of sockeye salmon to Lake Wenatchee to allow for the expected harvest, and the fishery must be closed to allow for reproduction.

Effective Date of Rule: Immediately.

July 21, 1989  
Judith Merchant  
Deputy Director  
for Joseph R. Blum  
Director

**NEW SECTION**

WAC 220-57-16000Z COLUMBIA RIVER. Notwithstanding the provisions of WAC 220-57-160, effective August 1, 1989 through August 13, 1989, Bag Limit F in those waters of the Columbia River downstream from the Megler-Astoria Bridge to a line from the landward end of the Chinook Jetty, following the Chinook Jetty to Chinook Jetty Light No. 7, thence southerly in a straight line to Desdemona Sands Light, thence southeasterly in a straight line through Buoy 26 to land fall on the Oregon shore. During the season provided for in this section, fishing is permitted from the North Jetty of the Columbia River.

**NEW SECTION**

WAC 220-57A-18300B LAKE WENATCHEE. Notwithstanding the provisions of WAC 220-57A-183, effective immediately until further notice it is unlawful

**WSR 89-16-020**  
**EMERGENCY RULES**  
**DEPARTMENT OF WILDLIFE**

[Filed July 21, 1989, 7:50 p.m.]

Date of Adoption: July 21, 1989.

Purpose: The goal of 500 summer-run steelhead for broodstock purposes from the Skykomish River has been reached. Therefore, it is no longer necessary to continue the fishing closure on the section of the river between the Highway 2 Bridge two miles east of the town of Goldbar and the confluence of the North Fork and the South Fork. The Washington Department of Wildlife and the Washington Department of Fisheries have agreed that a 6:00 a.m. opening on Saturday, July 22, 1989, will provide for an orderly fishery for both salmon and steelhead.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61727 Amendment to 1988-90 game fish regulations—Skykomish River.

Statutory Authority for Adoption: RCW 77.12.040.

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

Reasons for this Finding: See purpose above.

Effective Date of Rule: Immediately.

July 21, 1989  
John McGlenn  
Chairman  
Wildlife Commission

**REPEALER**

The following section of the Washington Administrative Code is hereby repealed effective 6:00 a.m. Saturday, July 22, 1989:

WAC 232-28-61727 AMENDMENT TO 1988-90 GAME FISH REGULATIONS — SKYKOMISH RIVER

**WSR 89-16-021**  
**EMERGENCY RULES**  
**BASIC HEALTH PLAN**  
[Filed July 24, 1989, 10:26 a.m.]

Date of Adoption: July 24, 1989.

Purpose: To change the requirement for submittal of documentation to verify income at recertification from six months' worth to one months' worth to make recertification consistent with the plan's application process.

Citation of Existing Rules Affected by this Order: Amending chapter 55-01 WAC.



Statutory Authority for Adoption: RCW 70.47.050.

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

Reasons for this Finding: As a result of the proposed action, the administrative burden of membership recertification will be substantially eased both for enrolled individuals and for the state. The proposed action is also necessary to ensure that the recertification process is consistent with the existing application process. Recertification of Washington Basic Health Plan enrollees is scheduled to begin this week; therefore, emergency adoption of the proposed change is necessary to ensure ongoing fairness and consistency.

Effective Date of Rule: Immediately.

July 24, 1989  
Thomas L. Kobler  
Administrator

**AMENDATORY SECTION** (Amending Order 89-002 [89-001], filed 5/17/89 [2/16/89])

**WAC 55-01-050 ENROLLMENT IN THE PLAN.** (1) Any individual applying for enrollment in the plan must complete and submit the plan's application for enrollment. Applications for enrollment of children under the age of eighteen must be signed by the child's parent or legal guardian, who shall also be held responsible by the plan for payment of premiums due on behalf of the child.

(2) Each applicant shall complete and sign the application for enrollment, listing family members to be enrolled and supplying such other information as required by the plan. (a) Documentation will be required, showing the amount and sources of applicants' income for the most recent complete calendar month as of the date of application. Applicants will also be required to submit a copy of their most recent federal income tax form. Income documentation shall be required for all income-earning family members, including those not applying for enrollment, except for family members who reside in another household and whose income is not available to the family seeking enrollment, and dependent children. (b) Documentation of residence shall also be required, displaying the applicant's name and address. (c) The plan may request additional information from applicants for purposes of establishing or verifying eligibility, premium responsibility or managed health care system selection. (d) Submission of incomplete or inaccurate information may delay or prevent an applicant's enrollment in the plan. Intentional submission of false information may result in disenrollment of the applicant and all enrolled family members, retroactive to the date upon which coverage began.

(3) Each family applying for enrollment must designate a participating managed health care system from which all enrolled family members will receive covered services. All applicants from the same family must receive covered services from the same managed health

care system. No applicant will be enrolled for whom designation of a participating managed health care system has not been made as part of the application for enrollment. The administrator will establish procedures for the selection of managed health care systems, which will include conditions under which an enrollee may change from one managed health care system to another. Such procedures will allow enrollees to change from one managed health care system to another during open enrollment, or otherwise upon showing of good cause for the transfer.

(4) Except as provided in WAC 55-01-040(2), applications for enrollment will be reviewed by the plan within thirty days of receipt and those applicants satisfying the eligibility criteria and who have provided all required information, documentation and premium payments will be notified of their effective date of enrollment.

(5) Eligible applicants will be enrolled in the plan in the order in which their completed applications, including all required documentation, have been received by the plan, provided that the applicant also remits full payment of the first premium bill to the plan by the due date specified by the plan.

(6) Not all family members are required to apply for enrollment in the plan; however, any family member for whom application for enrollment is not made at the same time that other family members apply may not subsequently enroll as a family dependent until the next open enrollment period available to that family member. Eligible newborn and newly adopted children may be enrolled effective from the date of birth or physical placement with the adoptive parents for adoption, provided that application for enrollment is submitted to the plan within sixty days of the date of birth or such placement for adoption. A newly acquired spouse of an enrollee may apply for enrollment within thirty days of the date of marriage and, if found eligible by the plan, will be enrolled on the first of a month following completion of the enrollment process by the plan, provided that the addition of the spouse does not otherwise render the family ineligible for coverage by the plan.

(7) Any enrollee who disenrolls from the plan for reasons other than (a) ineligibility due to an increase in gross family income or (b) coverage by another health care benefits program may not re-enroll in the plan for a period of twelve months from the effective date of disenrollment. An enrollee who disenrolls because of ineligibility due to an increase in gross family income may re-enroll in the event that gross family income subsequently falls to a level which qualifies the enrollee for eligibility. An enrollee who disenrolls because of coverage by another health care benefits program may re-enroll in the event that the enrollee becomes ineligible for such other coverage, provided that the enrollee has been continuously covered since the date of disenrollment from the plan, and provides documentation of such continuous coverage to the plan. Before any person shall be re-enrolled in the plan, that person must complete a new application for enrollment and must be determined by the plan to be otherwise eligible for enrollment as of the date of application.

(8) Once every six months, the plan will request verification of information from enrollees ("recertification"), which may include a request to complete a new application form and submit required documentation. At recertification, enrollees will be required to report their ((monthly)) gross family income for the ((preceding six)) most recent complete calendar month((s)) as of the recertification date specified by the plan, and to provide the same documentation of such income as required of applicants. The plan may request information more frequently from an enrollee for the purpose of verifying eligibility if the plan has good cause to believe that the enrollee's income, residence, family size or other eligibility criteria may have changed since the date on which information was last received by the plan. Enrollees shall be given at least twenty days from the date of any such information request to respond to the request. Failure to respond within the time designated in any information request shall result in a second request from the plan. Failure to respond within the time designated in any second request for information may result in disenrollment of the enrollee. Each enrollee is responsible for notifying the plan within thirty days of any changes which could affect the enrollee's eligibility or premium responsibility.

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

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

### WSR 89-16-022

#### EMERGENCY RULES

#### DEPARTMENT OF LABOR AND INDUSTRIES

[Order 89-15—Filed July 24, 1989, 11:30 a.m.]

Date of Adoption: July 24, 1989.

Purpose: Implement pay statement provisions of chapter 380, Laws of 1989.

Statutory Authority for Adoption: RCW 43.22.270.

Other Authority: Chapter 380, Laws of 1989.

Pursuant to RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: The pay statement provisions of chapter 380, Laws of 1989 take effect July 23, 1989.

Effective Date of Rule: Immediately.

July 24, 1989

Joseph A. Dear

Director

#### NEW SECTION

WAC 296-131-001 **APPLICABILITY.** These standards, adopted pursuant to sections 83 through 86, chapter 380, Laws of 1989, shall apply to persons employed in agricultural labor as defined in RCW 50.04.150.

#### NEW SECTION

WAC 296-131-010 **PAYMENT INTERVAL.** All wages due shall be paid at no longer than monthly intervals to each employee on established regular pay days.

#### NEW SECTION

WAC 296-131-015 **PAY STATEMENTS.** A pay statement shall be provided to each employee at the time wages are paid showing the pay basis in hours or days worked, the rate or rates of pay, the number of piece work units earned if paid on a piece work basis, the gross pay, all deductions and the purpose of each deduction for the respective pay period.

#### NEW SECTION

WAC 296-131-017 **EMPLOYMENT RECORDS.**  
(1) Every employer shall keep for at least three years a record of the name, address, and occupation of each employee, dates of employment, rate or rates of pay, amount paid each pay period to each such employee and the hours or days worked.

(2) Every employer shall make the record described in subsection (1) of this section available to the director or the director's authorized representative at any time for inspection and copying and to the employee, upon request for that employee's work record, at any reasonable time.

### WSR 89-16-023

#### EMERGENCY RULES

#### DEPARTMENT OF LABOR AND INDUSTRIES

[Order 89-17—Filed July 24, 1989, 11:31 a.m.]

Date of Adoption: July 24, 1989.

Purpose: Implement chapter 216, Laws of 1989, regulating house-to-house sales.

Citation of Existing Rules Affected by this Order: Repealing WAC 296-125-030 (2)(e); and amending WAC 296-125-015.

Statutory Authority for Adoption: RCW 43.22.270.

Other Authority: Chapter 216, Laws of 1989.

Pursuant to RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: Chapter 216, Laws of 1989, regulating house-to-house sales, takes effect July 23, 1989.

Effective Date of Rule: Immediately.

July 21, 1989

Joseph A. Dear

Director

#### AMENDATORY SECTION (Amending Order 76-15, filed 5/17/76)

WAC 296-125-015 **DEFINITIONS.** For the purposes of this ((order)) chapter:

(1) A "minor" is a person of either sex who is under the age of 18 years.

(2) "Employ" means to engage, suffer or permit to work.

(3) "Employee" means any minor employed by an employer.

(4) "Employer" means any person, association, partnership, private or public corporation who employs or exercises control over the wages, hours or working conditions of a minor.

(5) "Division" means ~~((industrial relations))~~ employment standards, apprenticeship and crime victims division, Washington state ~~((of))~~ department of labor and industries.

AMENDATORY SECTION (Amending Order 77-32, filed 12/30/77)

WAC 296-125-030 PROHIBITED AND HAZARDOUS EMPLOYMENT. (1) The following employments are prohibited for all minors, unless specifically permitted in the text of the hazardous occupations orders in nonagricultural occupations of the child labor provisions of the Federal Fair Labor Standards Act, as now or hereafter amended.

(a) Occupations in or about plants or establishments manufacturing or storing explosives or articles containing explosive components.

(b) Occupations involving regular driving of motor vehicles. Occasional driving is permissible if: The minor has a valid state driver's license for the type of driving involved; driving is restricted to daylight hours, vehicle gross weight is under 6,000 pounds; the minor has completed a state-approved driver education course; and seat belts are provided in the vehicle and the minors have been instructed to use them.

(c) All mining operations.

(d) Logging occupations and occupations in the operation of any sawmill, lath mill, shingle mill, or cooperage-stock mill.

(e) Occupations involving operation of power-driven wood-working machines, power-driven metal-forming punching and shearing machines, power-driven bakery machines, power-driven paper products machines, circular saws, band-saws and guillotine shears, elevators and other power-driven hoisting apparatus.

(f) Occupations involving potential exposure to radioactive substances and to ionizing radiations.

(g) Occupations involving slaughtering, meat-packing or processing and rendering.

(h) Occupations involving wrecking, demolition and shipbreaking operations.

(i) All roofing operations.

(j) Occupations involving excavations.

(k) Occupations involving manufacturing of brick, tile and kindred products.

(2) The following types of work are prohibited for all minors:

(a) Work involving operation of or working in proximity to earth-moving machines, cranes, garbage compactors or other heavy equipment of similar nature.

(b) Work in establishments or work places being picketed during the course of a labor dispute.

(c) Work as a nurses' aide, unless the minor is a student in a bona fide nursing training program or has successfully completed such a program.

(d) Work as a maid or bell-hop in motels or hotels, unless the minor is accompanied by a responsible adult whenever the work requires the minor to enter assigned guest rooms.

~~(e) ((Work as a canvasser or peddler from house to house.~~

~~(f))~~ Work in shooting galleries, penny arcades, sauna-massage parlors or body painting studios.

NEW SECTION

WAC 296-125-110 APPLICABILITY. Unless exempted by Washington state or federal law every employer who, after the effective date of these regulations, employs one or more minor workers in house to house sales or advertises to employ persons in house to house sales specifying in the advertisement a minimum age under twenty-one years, shall have a valid registration certificate to employ minors from the employment standards, apprenticeship and crime victims division, department of labor and industries.

NEW SECTION

WAC 296-125-115 DEFINITIONS. For the purposes of WAC 296-125-110 through 296-125-175:

(1) "Employ" means to engage, suffer, or permit to work, but does not include voluntary or donated services performed for no compensation, or without expectation or contemplation of compensation as the adequate consideration for the services performed, for an educational, charitable, religious, state or local government body or agency, or nonprofit organization, or services performed by a newspaper vendor or carrier or a person in the employ of his or her parent or stepparent.

(2) "House to house sales" means a sale or other transaction in consumer goods, the demonstration of products or equipment, the obtaining of orders for consumer goods, or the obtaining of contracts for services, in which the employee personally solicits the sale or transaction at a place other than the place of business of the employer.

NEW SECTION

WAC 296-125-120 FILING OF REGISTRATION CERTIFICATE. Prior to the employment of one or more minors, each employer seeking to employ minors in house to house sales shall file with the division an application for a registration certificate. When validated by the signature of the division's supervisor of employment standards, such a registration certificate will authorize the employer to employ any number of minor workers in house to house sales in accordance with the conditions established.

NEW SECTION

WAC 296-125-125 APPLICATION FOR INITIAL AND RENEWED REGISTRATION. (1) To obtain a registration certificate, an employer must:

(a) Complete an application for a registration certificate on a form provided by the department.

(b) Supply the information required by WAC 296-125-145 if the employer seeks to transport minors out of the state.

(c) Applications for issuance or renewal of a registration certificate must be sent to:

Department of Labor  
& Industries  
ESAC Division  
Mailstop: HC-710  
Olympia, WA 98504

(2) The department shall send a renewal notice to the employer's last recorded address at least forty-five days before the employer's registration certificate expires. Except as provided in WAC 296-125-165, a registration certificate shall be renewed if the employer returns the renewal notice and provides all required information.

NEW SECTION

WAC 296-125-130 **POSTING.** At least one copy of the registration certificate must be posted in plain view of all employees within the confines of the work place specified in the registration certificate.

NEW SECTION

WAC 296-125-135 **IDENTIFICATION CARDS.**  
(1) Every employer shall provide an identification card to each minor employee employed in house to house sales in a form prescribed by the director.

(2) Every minor employee employed in house to house sales shall show the identification card to each customer or potential customer.

(3) An identification card shall be in the possession of each minor employee during all work hours.

NEW SECTION

WAC 296-125-140 **HOUSE TO HOUSE EMPLOYMENT STANDARDS.** In addition to the requirements of WAC 296-125-027,

(1) Minors may not be employed in house to house sales during school hours, nor before 7:00 a.m. nor after 9:00 p.m.

(2) During all work hours, minors employed in house to house sales must be supervised by a responsible adult who is at least twenty-one years of age, with each supervisor responsible for no more than five minor employees.

NEW SECTION

WAC 296-125-145 **TRANSPORTING MINORS OUT-OF-STATE.** Prior to transporting minor employees employed in house to house sales out of the state, every employer shall obtain written authorization from the minor's parents or legal guardian.

NEW SECTION

WAC 296-125-155 **RECORDKEEPING.** The employer shall be responsible for obtaining and keeping on

file all information as required in WAC 296-125-050 and 296-125-145. The records shall be made available for inspection and copying at the request of the department.

NEW SECTION

WAC 296-125-160 **REVOCAATION OF REGISTRATION CERTIFICATE.** The supervisor of employment standards may revoke any employer's registration certificate upon a showing that the conditions of its issuance are not being met, or that other conditions exist which are detrimental to the health, safety, or welfare of the minor.

NEW SECTION

WAC 296-125-165 **DENIAL OF REGISTRATION CERTIFICATE.** The department may refuse to issue or renew a registration certificate. If the department refuses to issue or renew a registration certificate for any reason, it shall serve on the employer a notice of denial. The notice of denial shall explain the grounds for denial of the certificate. The department may refuse to renew a registration certificate if the conditions of its initial issuance are not being met.

NEW SECTION

WAC 296-125-170 **EMPLOYMENT OF MINORS UNDER THE AGE OF SIXTEEN.** Minors under the age of sixteen are prohibited from employment in house to house sales unless a variance is granted, consistent with all other requirements of this chapter, in accordance with procedures outlined in WAC 296-126-130.

NEW SECTION

WAC 296-125-175 **LENGTH OF REGISTRATION PERIOD.** Registration certificates shall be issued for a one-year period.

**WSR 89-16-024**

**PERMANENT RULES**

**ATTORNEY GENERAL'S OFFICE**

[Order 89-4—Filed July 24, 1989, 11:52 a.m.]

I, Kenneth O. Eikenberry, Attorney General of Washington, do promulgate and adopt at Olympia, Washington, the annexed rules relating to:

- Amd WAC 44-10-040 Attorney General screening of arbitration requests.
- Amd WAC 44-10-050 Assignment to arbitration service.
- Rep WAC 44-10-055 Composition of arbitration panel.
- Amd WAC 44-10-060 Powers and duties of arbitration special master.
- Amd WAC 44-10-100 Subpoenas.
- Amd WAC 44-10-110 Scheduling of arbitration hearings.
- Amd WAC 44-10-130 Defaults.
- Amd WAC 44-10-140 Representation by counsel.
- Amd WAC 44-10-150 Predecision settlement of dispute.
- Amd WAC 44-10-160 Use of technical expert.
- Amd WAC 44-10-170 Powers and duties of the arbitrator.
- Amd WAC 44-10-180 The arbitration hearing.

Amd	WAC 44-10-200	The arbitration decision.
Amd	WAC 44-10-220	Resale of motor vehicle determined or adjudicated as having a serious safety defect.
Amd	WAC 44-10-230	Resale of motor vehicle determined or adjudicated as having a nonconformity.
Amd	WAC 44-10-240	Warranty period for certificate of correction.

This action is taken pursuant to Notice No. WSR 89-12-030 filed with the code reviser on June 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 pursuant to RCW 19.118.061, 19.118.080 and 19.118.090 which directs that the Washington State Attorney General's Office has authority to implement the provisions of chapter 19.118 RCW.

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 July 24, 1989.

By Kenneth O. Eikenberry  
Attorney General

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

WAC 44-10-040 ATTORNEY GENERAL SCREENING OF ARBITRATION REQUESTS. (1) A submitted request for arbitration form shall be date stamped upon receipt by the attorney general.

(2) The attorney general will screen the request for arbitration form and supporting documentation to determine if the request is timely, complete and complies with the jurisdictional requirements of chapter 19.118 RCW. The date of screening shall be recorded in the request for arbitration file.

(a) A request will be considered timely if it is received within thirty months from the date of original delivery of the new motor vehicle to the original consumer at retail.

(b) If a request is not timely or does not comply with the jurisdictional requirements of chapter 19.118 RCW the attorney general will reject the request and then notify the consumer of the reason for the rejection.

(c) A request will be considered complete if the information required by the request form is provided in full or if the consumer can provide a reasonable explanation to the attorney general why any supporting documentation may be absent.

(d) If a request is not complete, the attorney general will notify the consumer of any procedures or information required to complete the request.

(3) If the attorney general finds that a request is not complete, the statute of limitations, for purposes of chapter 19.118 RCW, will resume running two business days after the date the attorney general mails notice of incompleteness to the consumer.

(4) A consumer request that is based on a problem which does not manifest itself, is intermittent or unconfirmed shall not preclude an attorney general finding of jurisdiction for purposes of initial screening. However,

this section shall not preclude a party from raising jurisdictional issues at the arbitration hearing or subsequent court proceedings.

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

WAC 44-10-050 ASSIGNMENT TO ARBITRATION SERVICE. (1) After initial screening by the attorney general, all timely and complete requests for arbitration (~~((forms))~~) which have met the jurisdictional requirements of chapter 19.118 RCW shall be (~~((date stamped upon approval))~~) assigned by the attorney general ((and forwarded)) to the arbitration service which will ((date stamp the request upon)) record the date of receipt in the request for arbitration file.

(2) The arbitration service must determine if it will accept the request for arbitration or reject the request for arbitration, for the reasons set forth in RCW 19.118.090, within three business days after the attorney general has forwarded the request for arbitration to the arbitration service.

(3) The arbitration service shall (~~((date stamp))~~) record the date of acceptance or rejection of the request for arbitration ((immediately upon acceptance of the request)). The acceptance of the request shall commence the running of the (~~((thirty))~~) forty-five calendar day period in which a hearing must be conducted.

(4) Upon acceptance of a request, the arbitration service shall immediately send a notice of arbitration to the consumer and manufacturer of its acceptance by certified mail/return receipt requested and shall inform the parties that a hearing shall be held within (~~((thirty))~~) forty-five calendar days. The parties shall be sent formal notice of the actual hearing date by certified mail/return receipt requested, at least ten calendar days before the hearing. The manufacturer shall be sent a copy of the consumer's request and a manufacturer's statement form with the notice of arbitration.

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

WAC 44-10-060 POWERS AND DUTIES OF ARBITRATION SPECIAL MASTER. (1) One or more arbitration special masters shall be appointed by the arbitration service to hear and decide preliminary and post-hearing issues that must be resolved, including but not limited to(~~(:)~~): Motions to quash subpoenas, motions for telephone conference hearings, requests for continuances, requests to view the vehicle. The arbitration special master may conduct telephonic conferences with a party or parties, as appropriate, and may request additional written information in order to rule on issues.

(2) Arbitration special masters shall sign a written oath prior to their appointment as arbitration special master attesting to their impartiality. There shall be no ex parte communication initiated by a party between such party and the arbitration special master.

AMENDATORY SECTION (Amending Order 87-4, filed 12/22/87)

WAC 44-10-100 SUBPOENAS. (1) A subpoena issued by the attorney general, pursuant to chapter 19.118 RCW, shall identify the party causing the issuance of the subpoena, designate that the subpoena is issued by the attorney general pursuant to RCW 19.118.080, state the purpose of the proceeding and shall command the person to whom it is directed to produce at the time and place set in the subpoena the designated ((books;)) documents(;) or ((things)) records under his or her control ((at the time and place set in the subpoena)).

(2) A subpoena may be served by any suitable person over 18 years of age, by exhibiting and reading it to the person, or by giving a copy of the subpoena, or by leaving such copy at the place of his or her abode. When service is made by any other person than an office authorized to serve process, proof of service shall be made by affidavit.

(3) A person to whom a subpoena is directed may move to quash the subpoena. The motion to quash must be accompanied by a short memorandum or statement setting forth the foundation for the motion. Upon motion made promptly, and in any event at or before the time specified in the subpoena for compliance, by the person to whom the subpoena is directed ((f))and upon notice to the party ((by whom)) who requested the subpoena ((was issued)), the arbitration special master may quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter at issue.

(4) Any objection to the production of evidence shall be treated as a motion to quash to be decided by the arbitration special master.

(5) If a ((person fails to obey a subpoena, upheld by the arbitration special master;)) nonparty fails to comply with a subpoena and upon an arbitrator finding that without such compliance there is insufficient evidence to render a decision in the dispute, the attorney general shall enforce such subpoena in superior court and the arbitrator shall continue the arbitration hearing until such time as the nonparty complies with the subpoena or the subpoena is quashed. The attorney general ((may)) shall petition the superior court of the county where the hearing is being conducted for enforcement of the subpoena. The petition shall be accompanied by a copy of the subpoena and proof of service, and shall set forth in what specific manner the subpoena has not been complied with, and shall ask for an order of the court to compel the production of ((relevant)) relevant evidence for the arbitration hearing. The court upon such petition shall enter an order directing the person to appear before the court at a time and place to be fixed in such order and then and there to show cause why the person has not responded to the subpoena or has refused to comply. A copy of the order shall be served upon the person. If it appears to the court that the subpoena was properly issued ((and upheld by the arbitration special master)), the court shall enter an order that the person appear at the time and place fixed in the order and produce the required evidence, and on failing to obey said order the person shall be dealt with as for contempt of court.

(6) If a party fails to comply with the subpoena, the arbitrator may, at the outset of the arbitration hearing, impose any of the following sanctions:

(a) Find that the matters which were the subject of the subpoena, or any other designated facts, shall be taken to be established for purposes of the hearing in accordance with the claim of the party which requested the subpoena;

(b) Refuse to allow the disobedient party to support or oppose the designated claims or defenses, or prohibit that party from introducing designated matters into evidence;

(c) Strike claims or defenses, or parts thereof; or

(d) Render a decision by default against the disobedient party.

(7) The arbitration service shall have three business days from the receipt of the manufacturer's statement to determine whether to submit a request from itself or the parties, to the attorney general to issue a subpoena for the production of evidence. ((The person)) A party or nonparty subject to the subpoena must comply or submit a motion to quash before the arbitration special master within five business days of receipt of the subpoena. The arbitration special master shall have five business days to hear and rule on a motion to quash. If the arbitration special master upholds a subpoena the ((person)) party or nonparty shall have five business days to comply with the subpoena. ((If the person does not comply the attorney general may bring a show cause motion in superior court.))

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

WAC 44-10-110 SCHEDULING OF ARBITRATION HEARINGS. The arbitration service has the authority to schedule ((, at its discretion;)) the arbitration hearing at its discretion and shall notify ((both)) the parties of the date, time and place by certified letter mailed at least ten calendar days prior to the hearing. Hearings may be scheduled during business hours, Monday through Thursday evenings, or Saturdays.

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

WAC 44-10-130 DEFAULTS. (1) A party who fails to appear at the arbitration hearing will be considered in default.

(2) If a manufacturer defaults the arbitrator shall hold the hearing. The arbitrator shall make a decision based on the evidence presented by the consumer, and any files or documentation contained in the record.

(3) If the consumer defaults it shall be considered a withdrawal with prejudice of the claim for arbitration. The hearing shall be canceled if the consumer defaults.

(4) The default shall be final unless within twenty-four hours of the hearing time, the manufacturer or consumer contacts the arbitration service to request that the default be set aside. The request shall include evidence of an unforeseeable circumstance that resulted in the failure of the party to appear. Such request shall be considered by the arbitration special master who will

hear arguments from both parties on the request to set aside the default (~~(-Arguments)~~) which may be conducted via telephone conference call. If the arbitration special master sets aside the default a new hearing shall be scheduled within ten calendar days of the original hearing date, and the parties shall be informed of the new date and time at least five business days prior to the hearing date.

(5) If both parties default, the disposition of the case shall be handled as if only the consumer defaulted pursuant to WAC 44-10-130(3).

AMENDATORY SECTION (Amending Order 87-4, filed 12/22/87)

WAC 44-10-140 REPRESENTATION BY COUNSEL. (1) Any party to the arbitration hearing may be represented by counsel. If either party opts to be so represented, said party shall immediately notify the arbitration service and the other party of the name and address of the attorney.

(2) The consumer may be represented by himself or herself or by legal counsel, but may not be represented by a nonattorney. However, a person, acting as an interpreter, may assist a party in the presentation of the case if such assistance is necessary because of a mental or physical handicap or language barrier which would preclude the party from adequately representing himself or herself (~~(pro se)~~).

(3) A manufacturer may be represented by legal counsel or (~~(an appointed)~~) designated representative or agent (~~(of the manufacturer)~~).

AMENDATORY SECTION (Amending Order 87-4, filed 12/22/87)

WAC 44-10-150 PREDECISION SETTLEMENT OF DISPUTE. (1) (~~(One or both of the)~~) Both parties shall notify the arbitration service and attorney general if the dispute is settled (~~(at any time after the request for arbitration is received and before the decision is rendered)~~) after the request for arbitration has been accepted by the arbitration board. The attorney general shall verify the terms of the settlement to which the parties have agreed. The disclosure of terms is for statutorily required record keeping only. The settlement is not subject to approval by the arbitration service or the attorney general.

(2) Notice of settlement shall be treated procedurally as if the consumer had withdrawn from the arbitration process, as set forth in WAC 44-10-120.

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

WAC 44-10-160 USE OF TECHNICAL EXPERT. (1) An adequate pool of automotive technical experts shall be maintained by the arbitration service for assignment as advisors and consultants to each arbitrator if such services are deemed necessary. Technical experts shall not be directly involved in the manufacture, distribution, sale, or warranty service of any motor vehicle.

(2) Either party may request that a technical expert be assigned to a dispute. Such assignment, however, shall be at the discretion of the arbitrator or the arbitration service. The arbitrator or the arbitration service may upon their own volition assign a technical expert to a dispute. Any request for a technical expert must be made within a time frame that will allow for reasonable inspection by the expert.

(3) If a technical expert is assigned to a dispute, and intends to perform an inspection of the vehicle prior to the hearing, a notice of the time, date and location of the technical expert's inspection of the vehicle will be provided to both parties. This section does not confer a right, for either party, to be present during the inspection of the vehicle, however, either party may be present. (~~(Any request for a technical expert must be made within a time frame that will allow for reasonable inspection by the expert.~~

(~~(3))~~) (4) Said expert may be present as advisor and consultant at the arbitration hearing, if he or she has been requested to be present by the arbitrator or arbitration service.

(~~((4))~~) (5) The expert shall sign a written oath attesting to his or her impartiality prior to the commencement of each arbitration hearing to which he or she has been assigned.

AMENDATORY SECTION (Amending Order 87-4, filed 12/22/87)

WAC 44-10-170 POWERS AND DUTIES OF ARBITRATORS. (1) Arbitrators shall have the duty to conduct fair and impartial hearings, to take all necessary actions to avoid delay in the disposition of proceedings, to maintain order, and to meet the sixty day time frame required by RCW 19.118.090 for the rendering of a decision. They shall have all powers necessary to meet these ends including, but not limited to, the power:

(a) To consider any and all evidence offered by the parties which the arbitrator deems necessary to an understanding and determination of the dispute;

(b) (~~(To request the attorney general to issue subpoenas to compel the production of documents, records, and things relevant to the dispute;~~

(~~(c))~~) To regulate the course of the hearings and the conduct of the parties, their representatives and witnesses;

(~~((d))~~) (c) To schedule vehicle inspection by the technical experts, if deemed necessary, at such time and place as the arbitrator determines;

(~~((c))~~) (d) To continue the arbitration hearing to a subsequent date if, at the initial hearing, the arbitrator determines that additional information is necessary in order for said arbitrator to render a fair and accurate decision. Such continuance shall be held within ten calendar days of the initial hearing;

(e) To impose sanctions or to continue a hearing for failure of a party or nonparty to comply with a subpoena pursuant to WAC 44-10-100.

(2) Arbitrators shall maintain their impartiality throughout the course of the arbitration proceedings.

(a) An arbitrator shall sign a written oath prior to the commencement of each arbitration hearing to which he



or she has been assigned, attesting to his or her impartiality in that case.

(b) There shall be no direct communication between the parties and the arbitrators other than at the arbitration hearing. Any other oral or written communications between the parties and the arbitrators shall be channeled through the arbitration service (~~for transmittal to the appropriate arbitrator~~). Any (~~such~~) prohibited contact shall be reported by the arbitrators to the arbitration service and noted in the case record.

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

WAC 44-10-180 THE ARBITRATION HEARING. (1) The conduct of the hearing shall encourage a full and complete disclosure of the facts.

(2) Arbitrators may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent people in the conduct of their affairs. They shall give effect to the rules of privilege recognized by law. They may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence. (~~Either~~) A party, at the hearing or any time prior, may request that the arbitrator examine or ride in the vehicle. The arbitrator shall comply with such requests unless the arbitrator determines that such examination or ride is not reasonably practical, not reasonably safe, or not relevant to the issues to be considered at the hearing. (~~Such determination shall be set forth in the arbitration decision.~~)

(3) The consumer shall present his or her evidence and witnesses, then the manufacturer shall present its evidence and witnesses.

(4) Each party may question the other after each presentation, and may question each witness after testimony. The arbitrator may question any party or witness at any time.

(5) The arbitrator shall ensure that a tape recording record of the hearing is maintained,

(6) The arbitrator shall administer an oath or affirmation to each individual who testifies.

(7) The hearing procedure contemplates that both parties will be present. However, either party may offer written testimony only, as long as the arbitration service and the other party are informed of such and are in receipt of that evidence prior to the day of the hearing.

(8) A party may request presentation of its case by telephone. Such request must demonstrate that it is unreasonable to require the requesting (~~person~~) party to attend the hearing in person. The request shall be directed to the arbitration service and will be decided by the arbitration special master. If such request is granted the arbitration service shall immediately notify the other party. In such cases, the party requesting the telephonic hearing shall pay all costs associated therewith, including but not limited to, costs for long distance calls, conference calls, and rental of telephone amplification equipment.

(9) The arbitration service shall assign arbitrators to the pending cases. The choice of arbitrators is not subject to the approval of either party.

(10) Arbitrators must not have a personal interest in the outcome of any hearing, nor be acquainted with any of the participants except as such acquaintance may occur in the hearing process, nor hold any prejudice toward any party. Arbitrators shall (~~have no current connection to the sale or manufacturer of~~) not be directly involved in the manufacture, distribution, sale, or warranty service of any motor vehicle(s).

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

WAC 44-10-200 THE ARBITRATION DECISION. (1) The (~~arbitrator shall send, by certified mail, a decision in each case within sixty calendar days of the notice of~~) arbitration board shall send the decision to the parties in each case within sixty calendar days of acceptance of the request for arbitration:

(a) All decisions shall be (~~in writing~~) written, in a form to be provided by the attorney general, dated and signed by the arbitrator, and sent to both parties and the attorney general;

(b) The date of mailing of the arbitration decision shall determine compliance with the sixty day requirement.

(c) The written decision shall contain findings of fact and (~~a~~) conclusions of law as to whether the motor vehicle meets the statutory standards for refund or replacement;

(i) If the consumer prevails and has elected repurchase of the vehicle, the decision shall include the calculations used to determine the monetary award as set forth in RCW 19.118.090, 19.118.041 and 19.118.021;

(ii) If the consumer prevails and has elected replacement of the vehicle, the decision shall include the information used to identify a reasonably equivalent replacement vehicle and the costs associated with such vehicle and a description of the vehicle as set forth in RCW 19.118.090, 19.118.041 and 19.118.021;

(iii) If the consumer prevails, the decision shall include provisions for the return of the vehicle upon compliance by the manufacturer at a reasonable time and place.

(2) Included with the copy of the arbitration decision sent to the consumer shall be a form to be completed by said consumer, indicating acceptance or rejection of the decision. The consumer must return said form to the arbitration service within (~~thirty~~) sixty calendar days from the date of the consumer's receipt of (~~said notice~~) the decision. If the consumer has not responded within thirty days, the attorney general's office shall send a (~~second~~) notice requesting a response and informing the consumer that failure to respond (~~within thirty days of receipt of the second notice~~) shall be deemed a rejection of the arbitration decision.

(3) If the consumer rejects the decision, the arbitration service shall forward general information to the consumer explaining the consumer's right to appeal the decision to superior court. (~~A form shall be included with the information, and if the consumer files an appeal, the consumer will be requested to return the form to the attorney general indicating the cause number and~~

~~county of the filing.))~~ The consumer shall have one hundred twenty calendar days from the date of the rejection of the decision to file a petition of appeal in superior court. At the time of filing an appeal, the consumer shall deliver by certified mail or by personal service a conformed copy of the petition to the attorney general.

(4) If the consumer accepts the decision, the arbitration service shall send a notice of acceptance by certified mail to the manufacturer(~~(:))~~ and shall include a manufacturer's intent form ((~~shall also be sent~~)). The intent form shall be returned to the attorney general by the manufacturer within thirty calendar days, of the manufacturer's receipt of notice of consumer's acceptance(~~(; to the attorney general))~~) and shall indicate whether the manufacturer intends to comply with the decision or appeal the decision to superior court.

(5) A verification of compliance form shall be sent to the consumer by the attorney general's office. The verification of compliance form shall be completed and returned to the attorney general by the consumer upon the manufacturer's compliance with the decision.

(6) After forty calendar days from the date of the notice of acceptance to the manufacturer, the attorney general shall determine whether the manufacturer has complied with the arbitration decision or appealed to superior court. If the manufacturer has not complied or appealed, the attorney general may impose fines authorized by RCW 19.118.090. ~~((Information regarding the manufacturer's right to contest the fines shall be provided by the attorney general.))~~

AMENDATORY SECTION (Amending Order 88-7, filed 6/9/88)

WAC 44-10-220 RESALE OF MOTOR VEHICLE DETERMINED OR ADJUDICATED AS HAVING A SERIOUS SAFETY DEFECT. (1) Resale of a motor vehicle in the state of Washington, pursuant to RCW 19.118.061(1), must conform to the following procedures:

(a) A manufacturer(~~(:))~~ or its agent ((~~or motor vehicle dealer~~)) to whom a motor vehicle with a serious safety defect is returned, shall affix a "Lemon Law resale notice" to the lower center of the front windshield of the vehicle in a manner so as to be readily visible from the exterior of such vehicle. The "Lemon Law resale notice" will set forth that the vehicle was determined to have a serious safety defect and the specific serious safety defect(s) shall be enumerated. The "Lemon Law resale notice" shall be supplied by the attorney general's office. The "Lemon Law resale notice" may only be removed by the manufacturer, its agent or motor vehicle dealer upon receipt of a signed copy of the consumer disclosure form.

(b) The consumer disclosure form sets forth the specific serious safety defect found in the motor vehicle. The motor vehicle dealer shall ensure that the purchaser of a motor vehicle signs the consumer disclosure form and that a signed copy is delivered to the attorney general's office. The purchaser shall receive a copy of the signed disclosure form.

(c) The manufacturer must ensure that a copy of the signed certificate of correction and warranty is received

by the motor vehicle dealer that is to sell the vehicle, the vehicle service division of the Washington state department of licensing and the state attorney general's office. Upon sale of the vehicle, the motor vehicle dealer shall provide a copy of the certificate of correction and warranty to the consumer.

(2)(a) If a manufacturer delivers a motor vehicle that has been found to have a serious safety defect under the Lemon Law, to a motor vehicle dealer outside of Washington state, the manufacturer shall fill out an out of state disposition postcard indicating the vehicle identification number and the destination state, and send the postcard to the attorney general's office.

(b) If a motor vehicle dealer in Washington state has received, for purposes of resale, a motor vehicle that has been found to have a serious safety defect, and such dealer sells, delivers or disposes of such vehicle outside of Washington state, the motor vehicle dealer shall fill out an out of state disposition postcard indicating the vehicle identification number and destination state, and send the postcard to the attorney general's office.

AMENDATORY SECTION (Amending Order 88-7, filed 6/9/88)

WAC 44-10-230 RESALE OF MOTOR VEHICLE DETERMINED OR ADJUDICATED AS HAVING A NONCONFORMITY. (1) Resale of a motor vehicle in the state of Washington, pursuant to RCW 19.118.061(3) and 19.118.061(4), must conform to the following procedures:

(a) A manufacturer(~~(:))~~ or its agent ((~~or motor vehicle dealer~~)) to whom a motor vehicle with a nonconformity is returned shall affix a "Lemon Law resale notice" to the lower center of the front windshield of the vehicle in a manner so as to be readily visible from the exterior of such vehicle. The "Lemon Law resale notice" will set forth that the vehicle was determined to have a nonconformity and the specific nonconformity(ies) shall be enumerated. The "Lemon Law resale notice" shall be supplied by the attorney general's office. The "Lemon Law resale notice" may only be removed by the manufacturer, its agent or motor vehicle dealer upon receipt of a signed copy of the consumer disclosure form.

(b) The consumer disclosure form sets forth the specific nonconformity found in the motor vehicle. The motor vehicle dealer shall ensure that the purchaser of a motor vehicle signs the consumer disclosure form and that a signed copy is delivered to the attorney general's office. The purchaser shall receive a copy of the signed disclosure form.

(c) The manufacturer, if it chooses to have the nonconformity corrected, must ensure that a copy of the signed certificate of correction and warranty is received by the motor vehicle dealer that is to sell the vehicle, the vehicle services division of the Washington state department of licensing and attorney general's office. Upon sale of the vehicle, the motor vehicle dealer shall provide a copy of the certificate of correction and warranty to the consumer.

(2)(a) If a manufacturer delivers a motor vehicle that has been found to have a nonconformity under the Lemon Law, to a motor vehicle dealer outside of Washington

state, the manufacturer shall fill out an out of state disposition postcard indicating the vehicle identification number and the destination state, and send the postcard to the attorney general's office.

(b) If a motor vehicle dealer in Washington state has received, for purposes of resale, a motor vehicle that has been found to have a nonconformity, and such dealer sells, delivers or disposes of such vehicle outside of Washington state, the motor vehicle dealer shall fill out an out of state disposition postcard indicating the vehicle identification number and destination state, and send the postcard to the attorney general's office.

AMENDATORY SECTION (Amending Order 88-5, filed 4/20/88)

WAC 44-10-240 WARRANTY PERIOD FOR CERTIFICATE OF CORRECTION AND WARRANTY. Any warranty of a correction of a defect issued pursuant to the provisions of RCW 19.118.061 shall be for ~~((the duration of))~~ not less than one year from the date of resale or an additional twelve thousand miles from the date of resale, whichever occurs first.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 44-10-055 COMPOSITION OF ARBITRATION PANEL.

**WSR 89-16-025**  
EMERGENCY RULES

**DEPARTMENT OF LABOR AND INDUSTRIES**

[Order 89-12—Filed July 24, 1989, 3:07 p.m.]

Date of Adoption: July 24, 1989.

Purpose: Implement recent legislation that has discontinued the group size qualifications in the retrospective rating program. These changes took effect July 23, 1989.

Citation of Existing Rules Affected by this Order: Repealing RCW 51.16.035(4).

Statutory Authority for Adoption: RCW 51.16.035 and 51.04.020(1).

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

Effective Date of Rule: Immediately.

July 24, 1989  
Dorette M. Markham  
for Joseph A. Dear  
Director

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 89-16-026**  
EMERGENCY RULES  
**BOARD OF HEALTH**

[Order 330—Filed July 24, 1989, 3:50 p.m.]

Date of Adoption: July 12, 1989.

Purpose: Establish State Board of Health requirements for persons ordering or requiring HIV tests and standards for testing. The present board rules are inconsistent with chapter 387, Laws of 1989. Amendments make board rules consistent with law.

Citation of Existing Rules Affected by this Order: Amending WAC 248-100-207.

Statutory Authority for Adoption: RCW 70.24.130.

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

Reasons for this Finding: A conflict between board rules and 1989 amendments to law exists which may present a danger to public health and the safety of people in Washington state. The law referred to is chapter 374, Laws of 1989.

Effective Date of Rule: Immediately.

July 12, 1989

John A. Beare, M.D., M.P.H.  
Secretary  
for Graham Tollefson  
Chairman

**AMENDATORY SECTION** (Amending Order 329, filed 6/22/89)

**WAC 248-100-207 HUMAN IMMUNODEFICIENCY VIRUS (HIV) TESTING—ORDERING—LABORATORY SCREENING—INTERPRETATION—REPORTING.** (1) Any person ordering or prescribing an HIV test for another, except for seroprevalent studies under chapter 70.24 RCW or provided under subsections (2) and (3) of this section, shall:

(a) Provide or refer for pretest counseling described under WAC 248-100-209; and

(b) Obtain or ensure informed specific consent of the individual to be tested separate from other consents prior to ordering or prescribing an HIV test, unless accepted under provisions in chapter 70.24 RCW; and

(c) Provide or refer for post-test counseling described under WAC 248-100-209 if HIV test is positive for or suggestive of HIV infection.

(2) Blood banks, tissue banks, and others collecting or processing blood, sperm, tissues, or organs for transfusion/transplanting shall:

(a) Obtain or ensure informed specific consent of the individual prior to ordering or prescribing an HIV test, unless excepted under provisions in chapter 70.24 RCW;

(b) Explain the reason for HIV testing is to prevent contamination of the blood supply or tissue or organ bank donations; and

(c) At the time of notification regarding a positive HIV test, provide or ensure at least one individual counseling session.

(3) Persons subject to regulation under Title 48 RCW and requesting an insured, a subscriber, or a potential insured or subscriber, to furnish the results of an HIV test for underwriting purposes, as a condition for obtaining or renewing coverage under an insurance contract, health care service contract, or health maintenance organization agreement shall:

(a) Before drawing blood to perform an HIV test, provide written information to the individual tested explaining:

(i) What an HIV test is;

(ii) Behaviors placing a person at risk for HIV infection;

(iii) The purpose of HIV testing in this setting is to determine eligibility for coverage;

(iv) The potential risks of HIV testing; and

(v) Where to obtain HIV pretest counseling.

(b) Obtain informed specific written consent for an HIV test. The written informed consent shall include:

(i) An explanation of confidential treatment of test result reports limited to persons involved in handling or determining applications for coverage or claims for the applicant or claimant; and

(ii) Requirements under subsection (3)(c) of this section.

(c) Establish procedures to inform (~~and ensure~~) an applicant of the following:

(i) Post-test counseling, specified under WAC 248-100-209(4), is required if an HIV test is positive or indeterminate;

(ii) Post-test counseling is done at the time any positive or indeterminate HIV test result is given to the tested individual;

(iii) The applicant is required to designate a health care provider or health care agency to whom positive or indeterminate HIV test results are to be provided for interpretation and post-test counseling; and

(iv) When an individual applicant does not identify a designated health care provider or health care agency and the applicant's HIV test results are positive or indeterminate, the (~~insurance contractor~~) insurer, health care service contractor, or health maintenance organization shall (~~ensure that~~) provide the test results to the local health department for interpretation and post-test counseling (~~is offered to the individual~~).

(4) Laboratories and other places where HIV testing is performed shall demonstrate complete and satisfactory participation in an HIV proficiency testing program approved by the Department Laboratory Quality Assurance Section, Mailstop B17-9, Seattle, Washington 98104.

(5) The department laboratory quality assurance section shall accept substitutions for EIA screening only as approved by the United States Food and Drug Administration (FDA) and a published list or other written FDA communication.

(6) Medical laboratories testing for the presence of HIV shall:

(a) Send an HIV test prevalence results report by telephone or in writing to the department office on AIDS (MS B17-9, Seattle, Washington 98104), quarterly or more often; and

(b) Include in the report:

(i) Number of samples tested;

(ii) Number of samples repeatedly reactive by enzyme immuno assay (EIA);

(iii) Number of samples tested by western blot assay (WBA) or other confirmatory test as approved by department office on AIDS;

(iv) Number of positive test results by WBA or other confirmatory test as approved by department office on AIDS;

(v) Number of specimens tested by viral culture; and

(vi) Number of positive test results from viral cultures.

(7) Persons informing a tested individual of positive laboratory test results indicating HIV infection shall do so only when:

(a) HIV is isolated by viral culture technique; or  
 (b) HIV antibodies are identified by a sequence of tests which are reactive and include:

(i) A repeatedly reactive screening test such as the enzyme immunoassay (EIA); and

(ii) An additional, more specific, assay such as a positive western blot assay (WBA) or other tests as defined and described in the AIDS office manual, April, 1988, DSHS, Mailstop LP-20, Olympia, Washington 98504.

(c) Such information consists of relevant, pertinent facts communicated in such a way that it will be readily understood by the recipient.

### WSR 89-16-027

#### EMERGENCY RULES

#### DEPARTMENT OF FISHERIES

[Filed July 24, 1989, 4:37 p.m.]

Date of Adoption: July 24, 1989.

Purpose: Personal use fishing regulations.

Citation of Existing Rules Affected by this Order:  
 Repealing WAC 220-56-19000L; and amending chapter 220-56 WAC.

Statutory Authority for Adoption: RCW 75.08.080.

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

Reasons for this Finding: Quotas of coho and chinook are available for harvest. This regulation is adopted at the recommendation of the Pacific Fisheries Management Council. There is inadequate time to promulgate permanent regulations because the fishery, by prior agreement, must start on the dates specified.

Effective Date of Rule: July 27, 1989, midnight.

July 24, 1989  
 Judith Merchant  
 Deputy Director  
 for Joseph R. Blum  
 Director

#### NEW SECTION

WAC 220-56-19000N SALTWATER SEASONS AND BAG LIMITS. Notwithstanding the provisions of WAC 220-56-180 and WAC 220-56-190, effectively 12:01 AM July 27, 1989, until further notice it is unlawful to take, fish for, or possess salmon in Punchcard Area 4, Pacific Ocean waters, and Washington waters west of Buoy 10 line except as provided for in this section:

(1) Open to salmon angling:

Sekiu River to Bonilla-Tatoosh Line, Saturday through Thursday, August 16 to Sept. 15, 1989, or until a quota of 20,000 coho are caught.

Queets River to Leadbetter Point, Sunday through Thursday, July 27 to Sept. 28, 1989, or until a quota of 91,100 coho are caught.

Leadbetter Pt. to Cape Falcon, Sunday through Thursday, July 27 to Sept. 28, 1989, or until a quota of 111,400 coho are caught.

OR

Until a quota of 47,500 chinook are caught.

(2) Bag Limit - 2 salmon per day. Size limit for coho, 16 inch minimum, no maximum. Size limit for chinook, 24 inch minimum, no maximum.

(3) Gear Restriction: It is unlawful to use any terminal gear other than gear with barbless single point hooks.

(4) Closed at the mouth of the Columbia River in a conservation zone bounded on the north by a line projected due west from North Head along 46 18'00" north latitude out 200 nautical miles (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 (Columbia River Buoy) then northeast along Red Buoy Line to the tip of the south jetty, from which conservation zone no salmon may be taken, except that within these waters it is lawful to angle from the bank only of the north jetty of the Columbia River.

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

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-56-19000L SALTWATER SEASONS AND BAG LIMITS. (89-49)

### WSR 89-16-028

#### PROPOSED RULES

#### DEPARTMENT OF ECOLOGY

[Filed July 25, 1989, 1:56 p.m.]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Department of Ecology intends to adopt, amend, or repeal rules concerning Bellevue, city of, amending WAC 173-19-2503.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on September 5, 1989.

The authority under which these rules are proposed is RCW 90.58.120 and 90.58.200.

This notice is connected to and continues the matter in Notice Nos. WSR 89-08-112 and 89-12-087 filed with the code reviser's office on April 5, 1989, and June 7, 1989.

Dated: July 25, 1989

By: Fred Olson  
 Deputy Director

**AMENDATORY SECTION** (Amending Order DE-83-3, filed 3/23/83)

WAC 173-19-2503 BELLEVUE, CITY OF. City of Bellevue master program approved February 26, 1975. Revision approved January 8, 1979. Revision approved May 14, 1981. Revision approved February 24, 1983. Revision approved September 5, 1989.

**WSR 89-16-029**  
**PERMANENT RULES**  
**DEPARTMENT OF PERSONNEL**  
**(Personnel Board)**

[Order 326—Filed July 25, 1989, 2:06 p.m.]

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

This action is taken pursuant to Notice No. WSR 89-11-089 filed with the code reviser on May 24, 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 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 July 13, 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 permanent 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) "Employee's relative" normally shall be limited to the employee'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 employee'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 by the recipient 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 89-16-030**  
**PERMANENT RULES**  
**DEPARTMENT OF PERSONNEL**  
**(Personnel Board)**

[Order 327—Filed July 25, 1989, 2:09 p.m.—Eff. September 1, 1989]

Be it resolved by the State Personnel Board, acting at the Department of Personnel, 521 South Capitol Way, Olympia, WA, that it does adopt the annexed rules relating to:

Amd WAC 356-18-220 Leave without pay—Effect on anniversary date and periodic increment date.  
Amd WAC 356-05-390 Seniority.

This action is taken pursuant to Notice No. WSR 89-13-039 filed with the code reviser on June 15, 1989. These rules shall take effect at a later date, such date being September 1, 1989.

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 July 13, 1989.

By Robert Boysen  
Acting Director

AMENDATORY SECTION (Amending Order 314, filed 2/24/89, effective 4/1/89)

WAC 356-18-220 LEAVE WITHOUT PAY—EFFECT ON ANNIVERSARY DATE, ~~((AND))~~ PERIODIC INCREMENT DATE, AND SENIORITY. (1) Leave without pay of fifteen consecutive calendar days or less will not affect an employee's anniversary date or periodic increment date.

(2) When an employee is on leave without pay for more than fifteen consecutive days, the employee's seniority anniversary date and periodic increment date will not be affected when the absence is due to any of the following reasons:

(a) Military or United States Public Health Service ~~((and Peace Corps))~~;

(b) Government service and leave to enter the Peace Corps, not to exceed two years, which had the director of personnel's approval;

(c) Leave taken by employees receiving time loss compensation due to ~~((f))~~ injuries sustained while performing the employee's state job;

(d) Educational leave in accordance with the provisions of WAC 356-39-120;

(e) Leave without pay taken voluntarily under the provisions of WAC 356-30-335 to reduce the effect of an agency reduction in force.

(3) When an employee is on leave without pay for more than fifteen consecutive calendar days and the absence is not due to one of the reasons listed in subsection (2) of this section, the employee's anniversary date and periodic increment date shall be moved forward in an amount equal to the duration of the leave of absence.

(4) When an employee's position is assigned to a program or facility whose primary purpose is academic and/or vocational education, and the program or facility follows the customary public school practice of less than a twelve-month school year, the employing agency may place the employee on leave without pay while the program or facility is closed for customary school vacations without adjusting the employee's anniversary and periodic increment dates.

(5) Leave without pay taken for any of the reasons listed in subsection (2) of this section shall not affect an employee's seniority.

AMENDATORY SECTION (Amending Order 267, filed 1/2/87)

WAC 356-05-390 SENIORITY. A measure of the last period of unbroken time served in positions in the classified service under the jurisdiction of the state personnel board. Service in positions brought under the jurisdiction of the state personnel board by statute is counted as though it had previously been under the jurisdiction of the state personnel board. Leaves of absence granted by agencies and separations due to reduction in force are not considered a break in service. Time spent on leaves of absence without pay is not credited unless it is approved for ((educational leaves)) the reasons cited in WAC 356-18-220(2), or statutes require it be credited ~~((; or it is taken at the specific request of an agency so employees may perform work specifically related to state work))~~. Time spent off the state payroll due to reduction in force will be credited for that period of time the employee is eligible to be placed on the reduction in force register. ~~((Leaves without pay granted to directly or indirectly reduce the possible effect of reduction in force will be credited in accordance with WAC 356-18-140 and 356-18-220. Leaves of absence without pay granted to employees who are drawing worker's compensation because of injury or illness while employed by the state will be credited.))~~ Time spent in exempt appointments listed in RCW 41.06.070 will be credited and the service will not be regarded as broken when employees return from exempt service in accordance to RCW 41.06.070(26), WAC 356-06-055 and 356-30-330. Time spent under the jurisdiction of the higher education personnel board will be added when the employee comes under the jurisdiction of the state personnel board through the provisions of WAC 356-49-040. The length of active military service of a veteran, not to exceed five years, shall be added to the state service for such veteran or the deceased veteran's spouse as defined in WAC 356-05-470.



**WSR 89-16-031**  
**PERMANENT RULES**  
**DEPARTMENT OF PERSONNEL**  
**(Personnel Board)**

[Order 328—Filed July 25, 1989, 2:11 p.m.]

Be it resolved by the State Personnel Board, acting at the Department of Personnel, 521 South Capitol Way, Olympia, WA, that it does adopt the annexed rules relating to schedule change and compensation, WAC 356-15-090.

This action is taken pursuant to Notice No. WSR 89-11-090 filed with the code reviser on May 24, 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 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 July 13, 1989.

By Robert Boysen  
Acting Director

AMENDATORY SECTION (Amending Order 317, filed 4/28/89, effective 6/1/89)

WAC 356-15-090 SCHEDULE CHANGE AND COMPENSATION. (1) The appointing authority shall schedule the working days and hours of scheduled work period employees. This schedule shall remain in effect for at least seven calendar days, and may be changed only with seven or more calendar days notice. If seven calendar days notice is not given, a new schedule does not exist until the notice period expires. Agencies may notify employees of more than one future schedule change in a single notice.

The seven calendar days notice of changes in working days and/or hours must be given to the affected employees during their scheduled working hours. The day that notification is given shall constitute a day of notice.

(2) If the appointing authority changes the assigned hours or days of scheduled work period employees without giving them at least seven days notice of the change, employees will be paid for all time worked outside the scheduled hours or days at the overtime rate for the duration of the notice period.

(a) When changes in employees' assigned hours or days are made without proper notice, employees may work their scheduled hours or days unless the appointing authority deems that:

(i) The employees are unable to perform satisfactorily as the result of excessive overtime hours; or

(ii) The work which normally would have been performed within the scheduled hours or days cannot be performed.

(b) The state is not obligated to pay for those scheduled hours or days not worked, unless the employee is on an authorized leave of absence with pay.

(c) Overtime pay and shift or schedule change pay shall not be paid for the same incident.

(3) Regardless of whether advance notice is given, an agency is not obligated to pay overtime due to a change in work schedule, when such a change is in response to a request from an employee, provided the employee works no more than forty hours in a workweek.

When the majority of employees in a work unit ask, in writing, for such a change, and the work unit can function properly only if all employees in the unit work the proposed schedule or scheduling plan, the agency is authorized to approve the change for the entire unit as an employee-initiated change. A written request for a schedule change from the exclusive representative shall constitute a request of employees within a certified bargaining unit.

(4) When an agency initiates a scheduled change from one scheduled standard work schedule to another scheduled standard work schedule, there is created a seven-day transition period.

(a) The transition period starts at the beginning of the shift of the previous schedule which would have begun a new five-consecutive-day work cycle.

(Example: An eight-to-five Tuesday through Saturday employee changes to a Sunday-Thursday schedule beginning on Sunday. The transition period starts at eight a.m. on the last Tuesday of the old schedule, and runs until eight a.m. on the first Tuesday under the new schedule.)

(b) If, during the transition period, the employee must work more than five of the seven workdays, then the work in excess of forty non-overtime hours will be paid at overtime rates.

(c) If, during the transition period, the schedule change causes an employee to begin work on an earlier day of the workweek or at an earlier hour of the workday than was required under the old schedule, the employee will be paid at the overtime rate for the first hours worked in the new schedule which precede the next hours which the employee would have worked under the old schedule.

(5) Contingency scheduling is allowed for employees having the following responsibilities: Highway snow, ice, and avalanche control, grain inspection, horticulture inspection; and in the departments of natural resources or corrections, controlling forest fires, or performing work in a fire camp in support of fire crews, "hoot owl," forest fuels management and aerial applications.

(a) Therefore: For non-forest-fire personnel in scheduled work period positions, the appointing authority shall not be bound by the above scheduled shift change notice requirement if the appointing authority notifies affected employees of the contingency schedule in writing when they enter the position or not less than 30 days prior to implementation.

When conditions mandate the activating of the contingency schedule, the appointing authority shall pay affected employees the overtime rate for all hours worked outside the original schedule at least for the employee's

first shift of the contingency schedule and for other overtime hours covered by subsection (6) of this section.

(b) For forest-fire control and fire-camp support personnel in scheduled work period positions, the above schedule change notice requirement shall not apply if the appointing authority notifies affected employees in writing that they are subject to contingency scheduling when they enter the position or not less than 30 days prior to implementation.

When an employee's forest fire contingency schedule requires him or her to change working hours from the previous schedule, the appointing authority shall pay the affected employee the overtime rate for all hours worked outside the previous schedule for the employee's first shift of the new contingency schedule.

When such employees have completed the first eight hours of their assigned contingency shift (10 hours in the case of 10-40 work schedule employees), they shall receive overtime rates for all subsequent work performed until released from duty for a period of five consecutive hours.

(6) In the department of corrections, division of prisons, the agency and the employees may agree that employees sent to forest fire camps in charge of inmate fire fighters for a period of twenty four hours or more will be on "extended duty assignment". Employees on extended duty assignment will be considered to be on continuous duty from the time they commence such duty including travel time to the fire, until they are released from duty including travel time for return to their non-fire duty station.

(a) During the extended duty assignment, all time will be paid as work time, except that the employer may deduct up to eight hours of non-work time each day for sleep, plus up to three hours for meals, provided that:

(i) The employee has no responsibility during time deducted for meal periods.

(ii) The time deducted for sleep includes a period of five continuous hours which are not interrupted by a call to work.

(iii) No sleep time shall be deducted if the employer does not furnish adequate sleeping facilities. Adequate sleeping facilities are those which are usual and customary for forest fire camps.

(b) Scheduled work period employees shall be entitled to call back pay to the extent described in WAC 356-15-100 and 356-15-110 for a maximum of one payment, equal to three straight-time hours, at the commencement of an extended duty assignment. No call-back payment shall be made for any work during the hours of an extended duty assignment, or the transition back to the regular work schedule.

(c) The beginning of each work week on extended duty assignment shall be unchanged from the last previous work week on the employee's regular work schedule. All compensable hours of work on extended duty assignment shall be at overtime rates except eight in any work day. All compensable hours on a holiday shall be at overtime rates.

(d) There are no scheduled days off during an extended duty assignment. However, compensable hours on a

holiday, and all compensable hours in excess of forty straight time hours in any workweek (including hours worked within the same workweek either before or after the extended duty assignment), shall be paid at overtime rates.

(e) During an extended duty assignment, all hours are duty hours; there is no eligibility for standby pay.

(f) Employees whose regular scheduled work shift entitles them to shift premium for their full shift, or a portion thereof, shall be paid shift premium as follows:

(i) Employees whose regular schedules are all night shifts will continue to receive night shift premium for all paid hours of the extended duty assignment.

(ii) Employees whose regular schedules call for some, but less than four hours of, night shift work each day will continue to receive the same number of hours at shift premium during each workday of the extended duty assignment.

(iii) Employees whose regular schedules call for some, but not all, full night shifts each week will receive shift premium for all paid hours on those same days during the extended duty assignment.

((6)) (7) When a scheduled or nonscheduled work period employee experiences a schedule change (within or between agencies) which causes an overlap in workweeks and requires work in excess of forty hours in either the old or the new workweek, the employee must receive overtime compensation at least equal to the amount resulting from the following calculations:

(a)(i) Starting at the beginning of the "old" workweek, count all hours actually worked before the end of that workweek, and calculate the straight-time pay and the overtime pay (based on "regular rate" as defined in WAC 356-05-353).

(ii) Starting at the conclusion of the "new" workweek, count back to include all hours actually worked since the beginning of that workweek, and calculate the straight-time and overtime (based on "regular rate" as defined in WAC 356-05-353).

(iii) Pay the larger amount calculated under (a)(i) and (ii) of this subsection.

(b) If any other combination of straight-time and time-and-one-half-rate pay required by these rules results in an amount of pay, for either workweek, which is greater than the amount calculated in (a)(iii) of this subsection, then only the larger amount should be paid.

((7)) (8) If overtime is incurred as a result of employee movement between state agencies, the overtime will be borne by the receiving agency.

WSR 89-16-032

ATTORNEY GENERAL OPINION

Cite as: AGO 1989 No. 14

[July 20, 1989]

STATE—STATE TREASURER—STATE INVESTMENT BOARD—COMMISSIONER OF PUBLIC LANDS—TRUSTS—STATE TRUST MONIES—AUTHORITY TO INVEST PROCEEDS FROM SALE OR USE OF TRUST LANDS

1. The State Treasurer may invest funds contained in the natural resources deposit fund established pursuant to RCW 43.85.130 (1)(c), except for funds derived from the sale or disposition of public lands.
2. The State Investment Board may invest funds contained in the natural resources deposit fund and derived from the sale or disposition of public lands, and held in a temporary depository, pursuant to RCW 43.33A.010.
3. The State Treasurer may, pursuant to RCW 43.84-.080, invest funds in the resource management cost account (RCW 79.64.020).
4. The State Treasurer may, pursuant to RCW 43.84-.090, deduct twenty percent of all income received from the investment of the surplus contained in the natural resources deposit fund and the resource management cost account, except for income from the investment of trust moneys; this income must be apportioned to the appropriate funds pursuant to RCW 79.64.055.
5. RCW 43.84.090 does not authorize the State Treasurer to deduct any portion of income received from the investment of trust funds which obtain their revenue from the management of trust lands; the Legislature could authorize such a deduction to the extent consistent with general trust principles.

## Requested by:

Brian Boyle  
Commissioner of Public Lands  
Department of Natural Resources  
Olympia, WA 98504

Daniel Grimm  
State Treasurer  
Legislative Building  
Olympia, WA 98504-0423

**WSR 89-16-033**

ATTORNEY GENERAL OPINION

Cite as: AGO 1989 No. 15

[July 21, 1989]

## COMPENSATION—SCHOOL DISTRICTS—TEACHERS—INCENTIVE PAYMENTS

1. In order to be lawful, "incentive payments" made to certificated school district personnel under the authority of RCW 28A.58.0951(4) must be related to some identifiable, measurable "incentive" defined in a district policy or contract and amounting to more than the performance of duties and functions defined by statute as "basic education".
2. A school district must retain documentation of eligibility for payments made under RCW 28A.58.0951(4), but the exact form of the documentation depends on the nature of the payments and the policy choices of the State Auditor under RCW 43.09.200.

## Requested by:

Honorable Robert V. Graham  
State Auditor  
Legislative Building, AS-21  
Olympia, WA 98504-0421

**WSR 89-16-034**

RULES COORDINATOR

EVERETT COMMUNITY COLLEGE

[Filed July 25, 1989, 2:13 p.m.]

As required by RCW 34.05.310(3), please find the name and mailing address of the Everett Community College rules coordinator: Ms. Marilyn Abel, Administrative Assistant to the President, Everett Community College, 801 Wetmore, Everett, WA 98201.

**WSR 89-16-035**

RULES COORDINATOR

WASHINGTON STATE  
SCHOOL FOR THE DEAF

[Filed July 25, 1989, 2:14 p.m.]

The Washington State School for the Deaf is planning to initiate rule-making proceedings under the new Administrative Procedure Act. In accordance with RCW 34.05.310, the rules coordinator for the Washington State School for the Deaf is Larry Drotz, 611 Grand Boulevard, S-26, Vancouver, WA 98661, phone (206) 696-6620, 476-6620 scan.

**WSR 89-16-036**

NOTICE OF PUBLIC MEETINGS

WHATCOM COMMUNITY COLLEGE

[Memorandum—July 20, 1989]

The board of trustees of Whatcom Community College has cancelled its regular August 8, 1989, meeting at 2:00 p.m. in the Board Room at the Cordata Facility, 237 West Kellogg Road, Bellingham, WA 98226.

**WSR 89-16-037**

PERMANENT RULES

DEPARTMENT OF LICENSING

[Order PM 856—Filed July 25, 1989, 3:55 p.m.]

I, Mary G. Faulk, director of the Department of Licensing, do promulgate and adopt at 1300 North Quince Street, Olympia, WA, the annexed rules relating to Application for examination—Out-of-state education, new section WAC 308-115-065.

This action is taken pursuant to Notice No. WSR 88-17-051 filed with the code reviser on August 17, 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 Licensing as authorized in RCW 18.50.135.

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 July 17, 1989.

By Mary G. Faulk  
Director

### NEW SECTION

WAC 308-115-065 APPLICATION FOR EXAMINATION—OUT-OF-STATE EDUCATION. (1) A midwife not licensed in the State of Washington may sit for the licensing examination without completing the required coursework or the Midwife-In-Training program provided the midwife meets the following requirements:

(a) Has completed a program preparing candidates to practice as a midwife provided such program is equivalent to the minimum course requirements of approved midwifery programs in Washington at the time of applicant's program completion. Proof of equivalency shall be submitted by the applicant with the application.

(b) The transcript of the applicant's completed midwifery program verifies that:

(i) All courses were completed with a grad of C (pass) or better; and

(ii) At least fifteen managed births were completed under the preceptorship of an experienced midwife approved by the candidate's educational program.

(c) If managed births completed under the preceptorship in (1)(b)(ii) are less than fifty, then affidavits of births the applicant has managed must be submitted in a sufficient number to prove that the applicant has managed a total of at least fifty births.

(2) The applicant shall submit to the department:

(i) A complete notarized application with the required fee. The fee is non-refundable.

(ii) Notarized copies of educational preparation or an official transcript verifying educational preparation or an official transcript verifying educational preparation to practice midwifery.

(iii) Affidavits of managed births as required in (1)(c).

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

**WSR 89-16-038**  
**EMERGENCY RULES**  
**DEPARTMENT OF FISHERIES**  
[Order 89-69—Filed July 25, 1989, 4:13 p.m.]

Date of Adoption: July 25, 1989.

Purpose: Amend commercial fishing regulations.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-44-05000W; and amending WAC 220-44-050.

Statutory Authority for Adoption: RCW 75.08.080.

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

Reasons for this Finding: The Pacific Fishery Management has projected that landings of Pacific Ocean perch will have exceeded the 1989 quota on July 29, 1989, and that the yellowtail rockfish harvest guideline will be exceeded on August 24, 1989, unless measures are implemented to reduce landings of these species. Accordingly, the council has recommended that the following regulations be effective at 12:01 a.m. July 26, 1989. This regulation is adopted at the recommendation of the Pacific Fisheries Management Council and is interim until permanent rules can take effect.

Effective Date of Rule: Immediately.

July 25, 1989

J. McKillip  
for Joseph R. Blum  
Director

### NEW SECTION

WAC 220-44-05000X COASTAL BOTTOM-FISH CATCH LIMITS. Notwithstanding the provisions of WAC 220-544-050, effective 12:01 A.M. July 26, 1989, until further notice it is unlawful to possess, transport through the waters of the state, or land in any Washington State port bottomfish taken for commercial purposes from Coastal Marine Fish-Shellfish Management and Catch Reporting Areas 58B, 59A, 59B,, 60A, 61, 62, or 63 in excess of the amounts or less than the minimum sizes shown below for the species indicated:

(1) Widow Rockfish (*Sebastes entomelas*) – 10,000 pounds per vessel trip per calendar week, defined as Wednesday through the following Tuesday. Except that a fisherman having made a 1989 declaration of intent may make one landing of not more than 20,000 pounds biweekly, defined as Wednesday through the second Tuesday following. It is unlawful for any vessel to make more than one landing in excess of 3,000 pounds of widow rockfish per calendar week.

(2) Shortbelly rockfish (*Sebastes jordani*) – no maximum poundage per vessel trip; no minimum size.

(3) Pacific ocean perch (*Sebastes alutus*) – No restrictions on landing up to 1,000 pounds per vessel trip. Landings above 1,000 pounds allowed only if Pacific Ocean perch represent 20 per cent or less of total weight of fish on board. Under no circumstances may a vessel land more than 2,000 pounds of Pacific Ocean perch in any one vessel trip.

(4) All other species of rockfish includes all rockfish except Pacific ocean perch (*Sebastes alutus*), widow rockfish (*Sebastes entomelas*), shortbelly rockfish (*Sebastes jordani*) and idiot rockfish (*Sebastolobus* spp.) – 25,000 pounds of all other species of rockfish combined

per vessel trip per calendar week, defined as Wednesday through the following Tuesday, of which no more than 3,000 pounds or 20 percent may be yellowtail rockfish (*Sebastes flavidus*) except that a fisherman having made a 1989 declaration of intent, may make either one landing of no more than 50,000 pounds of all other species of rockfish combined per vessel trip biweekly, defined as Wednesday through the second Tuesday following of which no more than 6,000 pounds, or 20 percent may be yellowtail rockfish or two landings of not more than 12,500 pounds of all other species of rockfish in any one calendar week of which no more than 1,500 pounds or 20 percent may be yellowtail rockfish. It is unlawful for any vessel to make other than one landing in excess of 3,000 pounds of other rockfish species in any calendar week, if no declaration to land other species of rockfish twice weekly has been made.

(5) Deepwater Complex – Sablefish, Dover Sole, Arrowtooth Flounder, and Thorneyhead (or idiot) Rockfish (*Sebastes* spp.) – 30,000 pounds of the deepwater complex per vessel trip per calendar week, defined as Wednesday through the following Tuesday except that a fisherman having made a 1989 declaration of intent, may make either one landing of no more than 60,000 pounds of the deepwater complex per vessel trip biweekly, defined as Wednesday through the second Tuesday following or two landings of not more than 15,000 pounds of the deepwater complex in any one calendar week. It is unlawful for any vessel to make more than one landing in excess of 4,000 pounds of the deepwater complex per calendar week (including no more than 1,000 pounds of sablefish; see below) if no declaration to land the deepwater complex twice weekly has been made.

(a) Sablefish taken from trawl vessels – No restrictions on landing up to 1,000 pounds per vessel trip. Landings above 1,000 pounds allowed only if sablefish represent 25 percent or less of total combined round weight of the deepwater complex on board. To convert from round weight to dressed weight multiply the dressed weight by 1.75. Minimum size 22 inches in length, unless dressed in which case minimum size 15.5 inches in length from the anterior insertion of the first dorsal fin to the tip of the tail. Trawl vessels are allowed an incidental catch less than the minimum size of 1,000 pounds or 25 percent of the total combined round weight of the deep water complex on board but not to exceed 5,000 pounds per trip.

(b) Sablefish taken from non-trawl vessels – Limit 1000 pounds per vessel trip.

(6) 1989 Declarations of Intent – All previous 1989 declaration forms remain in effect. If no declaration has been made, to make other than one vessel trip per week and land in excess of the minimum amounts as provided for in this section, a new declaration form must be completed as provided for in this subsection. The 1989 declaration of intent to make other than one vessel trip per week must be mailed or delivered to the Department of Fisheries, 115 General Administration Building Olympia, Wa., 98504, and must be received prior to the beginning of such fishing. The declaration of intent must

contain the name and address of the fishermen, the name and registration number of the vessel, the date on which such fishing will commence and must be signed and dated by the fisherman. The fisherman may return to the one vessel trip per calendar week fishing by filing a declaration of intent to stop fishing other than once weekly with the department in the above manner. The declaration to stop such fishing and begin one vessel trip per calendar week fishing must be received prior to the beginning of the week in which the one vessel trip per calendar week fishing will resume. The date of first landing will determine the beginning of biweekly periodicity. Biweekly periodicity will restart after a landing that occurs more than four calendar weeks after the immediate prior landing. A calendar week is defined as Wednesday through the following Tuesday.

(7) It is unlawful during unloading of the catch and prior to its being weighed or leaving the unloading facility to intermix with any other species a species or category of bottomfish having a vessel trip limit.

(8) For purposes of this section, a vessel trip is defined as having occurred upon the initiation of transfer of catch from the fishing vessel, and all fish aboard the vessel are considered part of the vessel trip limit at the initiation of transfer of catch.

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

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-44-05000W COASTAL BOTTOM-FISH CATCH LIMITS. (89-58)

#### WSR 89-16-039

#### EMERGENCY RULES

#### STATE BOARD OF EDUCATION

[Filed July 25, 1989, 4:20 p.m.]

Date of Adoption: July 20, 1989.

Purpose: To set forth definitions for the classification of a school district as either a high school or a nonhigh district.

Citation of Existing Rules Affected by this Order: Amending [new] WAC 180-24-205.

Statutory Authority for Adoption: RCW 28A.04.130.

Other Authority: RCW 28A.04.120(9).

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

Reasons for this Finding: Definitions for classification must be in place prior to 1989-90 school year to ensure proper allocation of state funding.

Effective Date of Rule: Immediately.

July 25, 1989  
Monica Schmidt  
Secretary

Effective Date of Rule: Immediately.

July 25, 1989  
Monica Schmidt  
Secretary

**NEW SECTION**

**WAC 180-24-205 CLASSIFICATION SYSTEM OF SCHOOL DISTRICTS.** (1) Authority. The authority for this section is RCW 28A.04.130 which authorizes the state board of education to establish the classification system for school districts.

(2) Purpose. The purpose of this section is to set forth the definitions for the classification of a school district as either a high school or a nonhigh school district.

(3) High school district. A high school district is one which conducts a ninth through twelfth grade program for district residents eligible to enroll therein which:

(a) Has been approved by the state board of education as may be required by RCW 28A.04.120(7); and

(b) Meets the basic education program requirements set forth in chapter 180-16 WAC.

(4) Nonhigh school district. A nonhigh school district is one that is not classified as a high school district under subsection (3) of this section.

(5) Applicability. The classifications of school districts established in subsections (3) and (4) of this section shall apply for the purposes of chapter 28A.44 RCW, RCW 84.52.0531, and the application of other laws under which a district's classification as either a high school or nonhigh school district is material.

**WSR 89-16-040**

**EMERGENCY RULES**

**STATE BOARD OF EDUCATION**

[Filed July 25, 1989, 4:24 p.m.]

Date of Adoption: July 20, 1989.

Purpose: Provide a limited authority for districts to proceed with construction projects subject to future eligibility standards.

Citation of Existing Rules Affected by this Order: Amending WAC 180-25-300.

Statutory Authority for Adoption: RCW 28A.47.830.

Other Authority: RCW 28A.47.060 and 28A.47.802.

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

Reasons for this Finding: The 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.

**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 89-16-041**

**EMERGENCY RULES**

**STATE BOARD OF EDUCATION**

[Filed July 25, 1989, 4:25 p.m.]

Date of Adoption: July 20, 1989.

Purpose: Provide a limited authority for districts to proceed with construction projects subject to future eligibility standards.

Citation of Existing Rules Affected by this Order: Amending WAC 180-27-057.

Statutory Authority for Adoption: RCW 28A.47.830.

Other Authority: RCW 28A.47.060 and 28A.47.802.

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

Reasons for this Finding: The 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.

Effective Date of Rule: Immediately.

July 25, 1989  
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 89-16-042****EMERGENCY RULES****STATE BOARD OF EDUCATION**

[Filed July 25, 1989, 4:28 p.m.]

Date of Adoption: July 20, 1989.

Purpose: Provide a limited timeline extension for re-design and rebid of a construction project in the event of a high bid over estimates.

Citation of Existing Rules Affected by this Order: Amending WAC 180-29-108.

Statutory Authority for Adoption: RCW 28A.47.830.

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

Reasons for this Finding: The emergency action by the state board is required in order to make this rule change effective in time for this summer's school project bid/construction season. Without action at this time, school districts could lose up to a full year before facilities are available for instructional programs.

Effective Date of Rule: Immediately.

July 25, 1989  
Monica Schmidt  
Secretary

AMENDATORY SECTION (Amending Order 24-85, filed 11/27/85)

WAC 180-29-108 CONDITION PRECEDENT TO APPROVAL TO BID. Any project for which the superintendent of public instruction authorizes a district to open bids pursuant to WAC 180-29-107 shall request

an authorization for contract award pursuant to WAC 180-29-110 within ninety calendar days of receipt of approval pursuant to WAC 180-29-107 ((or)): PROVIDED, That the ninety-day period shall be automatically extended for an additional ninety calendar days if:

(1) The lowest legally acceptable base bid, exclusive of alternates, received by a district exceeds the cost estimate submitted to the superintendent of public instruction pursuant to WAC 180-29-085 by ten percent or more; and

(2) Prior to the expiration on or after June 15, 1989, of the initial ninety-day period the district has rejected, or hereafter rejects, all bids in order to solicit new bids.

A district which fails to request an authorization for contract award pursuant to WAC 180-29-110 within the time period allowed by this section shall have its authority to proceed withdrawn. Districts with such projects withdrawn may ((reapply)) reinitiate an application for state assistance by first reapplying for ((a school district)) project approval pursuant to WAC 180-25-040.

**WSR 89-16-043****EMERGENCY RULES****STATE BOARD OF EDUCATION**

[Filed July 25, 1989, 4:30 p.m.]

Date of Adoption: July 20, 1989.

Purpose: Provide a limited authority for districts to proceed with construction projects subject to future eligibility standards.

Citation of Existing Rules Affected by this Order: Amending WAC 180-29-300.

Statutory Authority for Adoption: RCW 28A.47.830.

Other Authority: RCW 28A.47.060 and 28A.47.802.

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

Reasons for this Finding: The 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.

Effective Date of Rule: Immediately.

July 25, 1989  
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 89-16-044**  
EMERGENCY RULES  
**STATE BOARD OF EDUCATION**  
[Filed July 25, 1989, 4:33 p.m.]

Date of Adoption: July 20, 1989.

Purpose: To establish rules for implementation of pilot program to expand student teaching experiences and opportunities.

Citation of Existing Rules Affected by this Order: Repealing WAC 180-115-070; and amending WAC 180-115-010, 180-115-020, 180-115-035, 180-115-045, 180-115-060, 180-115-085, 180-115-090 and 180-115-105.

Statutory Authority for Adoption: RCW 28A.70.400.

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

Reasons for this Finding: Recent legislative mandates require immediate rule changes to provide uninterrupted support of program to recipients, chapter 253, Laws of 1989.

Effective Date of Rule: Immediately.

July 25, 1989  
Monica Schmidt  
Secretary

AMENDATORY SECTION (Amending Order 8-88, filed 4/4/88)

WAC 180-115-010 PURPOSE. The purpose of this chapter is to establish policies, procedures, and directions for a ((two-year)) pilot program that enhances the student teaching component of teacher preparation programs by supporting innovative ways to expand student teaching experiences and opportunities for student placement in school districts throughout the state.

AMENDATORY SECTION (Amending Order 8-88, filed 4/4/88)

WAC 180-115-020 GRANT PROJECT PARTICIPANTS-DEFINITION. As used in this chapter

"grant project participants" means those school building and school district personnel, teacher preparatory program personnel, ((program-unit)) professional education advisory board members, and other appropriate personnel who have cooperated in the joint development of the pilot project grant application.

AMENDATORY SECTION (Amending Order 8-88, filed 4/4/88)

WAC 180-115-035 RESPONSIBILITIES OF THE GRANTEE AGENCY. The responsibilities of the grantee agency are to:

- (1) Submit a grant proposal which meets specifications set forth in chapter 180-115 WAC.
- (2) Administer the project in accordance with chapter 180-115 WAC, ensuring that all conditions set forth in chapter 180-115 WAC are met.
- (3) File a ((final)) preliminary written assessment of the program's effectiveness with the superintendent of public instruction no later than July 31, 1989, and a final report no later than July 31, 1990.

AMENDATORY SECTION (Amending Order 8-88, filed 4/4/88)

WAC 180-115-045 PROGRAM DEVELOPMENT, IMPLEMENTATION, AND ADMINISTRATION. Each grant submitted to the superintendent of public instruction under this program shall be jointly developed through a documented process that demonstrates joint development of the pilot program by school building and school district personnel, teacher preparatory program personnel, ((program-unit)) professional education advisory board members, and other personnel as appropriate. Primary administration for each grant project shall be the responsibility of one or more of the cooperating grant project participants as determined by the grant project participants. One or more college(s)/university(ies) with teacher education programs approved by the state board of education must be a participant in the submitted pilot project.

AMENDATORY SECTION (Amending Order 8-88, filed 4/4/88)

WAC 180-115-060 ADVISORY COMMITTEE. The professional education advisory committee established under WAC 180-78-015 shall be responsible for the following:

- (1) Assist the state board of education and the pilot projects in addressing issues relating to the roles and responsibilities of the participating parties in implementing the projects.
- (2) Assist the state board of education in studying issues relating to the roles and responsibilities of the common school and higher education elements of the state's education system in the preparation of prospective teachers.
- (3) Select five members of its committee to review and rank order grant proposals submitted under this chapter. ((Additionally, the committee will))

(4) Advise as to modification or elimination of components contained within specific grant requests and forward recommendations to the superintendent of public instruction for determination of final grant allocations. The committee recommendation will then be submitted to the state board of education.

#### NEW SECTION

WAC 180-115-081 CONTINUATION OF 1987-89 PILOT PROJECTS. Notwithstanding the approval process established in this chapter, pilot projects approved by the state board of education for funding during the 1987-89 biennium are hereby approved by the state board of education for continuation during the 1989-91 biennium subject to the condition stated in WAC 180-115-105.

AMENDATORY SECTION (Amending Order 8-88, filed 4/4/88)

WAC 180-115-085 ASSURANCE OF ASSESSMENT. Each prospective grantee agency must provide an assurance that a ~~((final))~~ preliminary written assessment of the program's effectiveness will be submitted to the superintendent of public instruction no later than July 31, 1989, and a final report no later than July 1, 1990.

AMENDATORY SECTION (Amending Order 8-88, filed 4/4/88)

WAC 180-115-090 DATE FOR RECEIPT OF PROPOSALS BY THE SUPERINTENDENT OF PUBLIC INSTRUCTION. In order to be considered for funding, supplemental or revised proposals must be received by superintendent of public instruction by 5:00 p.m., ~~((Tuesday, March 1, 1988))~~ Friday, July 28, 1989.

AMENDATORY SECTION (Amending Order 8-88, filed 4/4/88)

WAC 180-115-105 TIMELINE FOR PROJECTS. The state funds for this project must be expended by ~~((June 30, 1989))~~ December 31, 1990.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 180-115-070 ADVISORY COMMITTEE DEADLINE.

#### WSR 89-16-045

#### EXECUTIVE ORDER

#### OFFICE OF THE GOVERNOR

[EO 89-07]

#### 21ST CENTURY INSTITUTE FOR ADVANCED TECHNOLOGY IN SCHOOLS

WHEREAS, there exists a need to encourage and foster a substantially increased level of development, dissemination and utilization of advanced technology in the common schools in Washington; and

WHEREAS, the Advisory Council on Advanced Technology in Schools which I created with Executive Order 88-08 has made an important and substantial recommendation to establish a 21st Century Institute for Advanced Technology in Schools; and

WHEREAS, such Institute needs to be established and is in need of a Board of Advisors, and Executive Director and other support staff, facilities, equipment, and operating funds; and

WHEREAS, the level of student achievement in Washington should be enhanced by the result of the activities of such Institute; and

WHEREAS, such Institute will be an active partnership between Washington business and Washington schools, and therefore be established, operated and funded as a public/private partnership with an emphasis and reliance on private involvement;

NOW, THEREFORE, I, Booth Gardner, Governor of the State of Washington, by virtue of the authority vested in me, do hereby create a 21st Century Institute for Advanced Technology in Schools.

- A. The Institute shall have an Executive Director and a Board of Advisors appointed by the Governor. The membership shall consist of the Governor as Chair, the Superintendent of Public Instruction as Vice-Chair, the Lieutenant Governor as a member, and up to 13 additional members who have expertise and experience in business, higher education and K-12 education. The Governor's Office shall provide the staff director for the Board of Advisors, and for its travel and expenses.
- B. The Institute shall be guided by the recommendations of the Report issued by the Governor's Advisory Council on Advanced Technology in Schools, and provide services in six broad areas:

- training, consulting, and providing grants;
- technology information exchange;
- liaison for specific technological services and information;
- awareness and promotion of educational technology;
- research and evaluation of educational technology;
- and information for legislative understanding.

- C. The Institute should seek cooperation and support between public and private sectors as the foundation for these services.
- D. The Institute may receive gifts, grants, and endowments from public and private sources that are made for the use or benefit of the Institute, and expend, without appropriation, the same or any income therefrom according to the terms of such gifts, grants or endowments.
- E. The mission of the Institute should be to increase the level of student achievement through the increased use of advanced technology by all schools, teachers and students. The Institute should also provide assistance to projects in the Schools for the 21st Century program.
- F. The Institute's Board of Advisors shall issue annual reports, propose additional public and private avenues of financial and resource support, and conduct an analysis and sunset review of the Institute by September 1, 1992 and make recommendations as to its continued existence. The Institute will otherwise expire on December 31, 1992.

IN WITNESS WHERE-  
OF, I have hereunto set my hand and caused the Seal of the State of Washington to be affixed at Olympia this 24th day of July, A.D., nineteen hundred and eighty-nine.

Booth Gardner

Governor of Washington

BY THE GOVERNOR:

Ralph Munro

Secretary of State

**WSR 89-16-046**  
**NOTICE OF PUBLIC MEETINGS**  
**BUILDING CODE COUNCIL**  
[Memorandum—July 26, 1989]

1989 Meeting Schedule

January 20	9:00 a.m.	Sea-Tac
February 10	9:00 a.m.	Lacey
March 10	9:00 a.m.	Sea-Tac
April 14	9:00 a.m.	Sea-Tac
May 12	9:00 a.m.	Sea-Tac
June 9	9:00 a.m.	Sea-Tac
July 14	9:00 a.m.	Sea-Tac
August 11	9:00 a.m.	Sea-Tac
September 21	9:00 a.m.	Sea-Tac*
September 22	9:00 a.m.	Sea-Tac*
October 12	9:00 a.m.	Spokane*
October 13	9:00 a.m.	Spokane*

November 9	9:00 a.m.	Sea-Tac*
December 8	9:00 a.m.	Sea-Tac

Council committee meetings may be held as part of the regular council meeting.

\*Note location changes from previous schedule.

**WSR 89-16-047**  
**PROPOSED RULES**  
**UTILITIES AND TRANSPORTATION**  
**COMMISSION**

[Filed July 26, 1989, 4:44 p.m.]

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 discontinuance of service by gas utilities, WAC 480-90-071, Docket No. U-89-2707-R;

that the agency will at 9:00 a.m., Wednesday, August 2, 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.

This notice is connected to and continues the matter in Notice No. WSR 89-13-071 filed with the code reviser's office on June 21, 1989.

Dated: July 26, 1989

By: Paul Curl

Acting Secretary

**WSR 89-16-048**  
**PROPOSED RULES**  
**UTILITIES AND TRANSPORTATION**  
**COMMISSION**

[Filed July 26, 1989, 4:47 p.m.]

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, Docket No. U-89-2966-R;

that the agency will at 9:00 a.m., Wednesday, August 9, 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.

This notice is connected to and continues the matter in Notice No. WSR 89-13-090 filed with the code reviser's office on June 21, 1989.

Dated: July 26, 1989  
By: Paul Curl  
Acting Secretary

**WSR 89-16-049**  
**NOTICE OF PUBLIC MEETINGS**  
**DEPARTMENT OF NATURAL RESOURCES**  
[Memorandum—July 27, 1989]

The August 29 and September 26, 1989, meetings of the Mount Si Natural Resources Conservation Area Advisory Committee have been cancelled. Direct questions to the Department of Natural Resources, Land and Water Conservation, Mailstop EG-11, Olympia, Washington 98504.

**WSR 89-16-050**  
**PROPOSED RULES**  
**DEPARTMENT OF PERSONNEL**  
**(Personnel Board)**  
[Filed July 27, 1989, 1:53 p.m.]

Original Notice.

Title of Rule: WAC 356-30-270 Probationary period—Dismissal—Notice—Rights acquired.

Purpose: This rule describes the procedure for dismissing an employee during the probationary period.

Statutory Authority for Adoption: RCW 41.06.040.

Statute Being Implemented: RCW 41.06.150.

Summary: This proposal deletes the requirement that an agency has to send a copy of a dismissal notice of a probationary employee, to the director of personnel and the Personnel Appeals Board.

Reasons Supporting Proposal: This deletion is proposed on advice from the assistant attorney general for the State Personnel Board and the Personnel Appeals Board. Neither agency needs to act on the notifications and unnecessary exposure of personal information should be avoided.

Name of Agency Personnel Responsible for Drafting: Paul Peterson, 521 South Capitol Way, Olympia, 586-1769; Implementation and Enforcement: Department of Personnel.

Name of Proponent: Department of Personnel, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: This rule along with providing procedures on how to dismiss an employee during a probationary period also explains any rights of that employee. Included in the procedures of dismissal is a statement that the reasons for dismissal shall be filed with the director of personnel

and the Personnel Appeals Board. Due to unnecessary exposure of personal information and the fact that neither agency needs to act upon this, the information is not needed by either agency.

Proposal does not change existing rules.

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

Hearing Location: Department of Personnel, Board Hearings Room, 521 South Capitol Way, Olympia, WA, on September 14, 1989, at 10:00 a.m.

Submit Written Comments to: Paul Peterson, Department of Personnel, FE-11, by September 12, 1989.

Date of Intended Adoption: September 14, 1989.

July 20, 1989  
Robert Boysen  
Acting Director

**AMENDATORY SECTION** (Amending Order 191, filed 8/31/83)

WAC 356-30-270 PROBATIONARY PERIOD—DISMISSAL—NOTICE—RIGHTS ACQUIRED. (1) An employee may be dismissed during a probationary period after being given written notice five working days prior to the effective date of dismissal. However, if the agency believes the good of the service requires the immediate dismissal of the probationary employee, written notice of only one full working day prior to the effective date of the dismissal will be required. ((The reasons for the dismissal shall be filed with the director of personnel and the personnel appeals board:))

(2) An employee dismissed during a probationary period shall not have the right to appeal the dismissal. When proper advance notice of the dismissal is not given, the employee may enter an appeal for payment of salary for up to five days which the employee would have worked had proper notice been given. If such a claim is sustained, the employee will be entitled to the appropriate payment of salary but will not be entitled to reinstatement.

**WSR 89-16-051**  
**PERMANENT RULES**  
**DEPARTMENT OF AGRICULTURE**  
[Order 2013—Filed July 28, 1989, 9:02 a.m.]

I, C. Alan Pettibone, director of the Washington State Department of Agriculture, do promulgate and adopt at Olympia, Washington, the annexed rules relating to caneberry stock certification in chapter 16-333 WAC.

This action is taken pursuant to Notice No. WSR 89-12-063 filed with the code reviser on June 7, 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 chapter 15.14 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 July 28, 1989.

By Michael V. Schwisow  
Deputy Director

AMENDATORY SECTION (Amending Order 1932, filed 6/9/87)

## WAC 16-333-050 REQUIREMENTS FOR PRODUCTION OF CANEBERRY FOUNDATION AND REGISTERED STOCK. (1) Land requirements:

(a) A field to be eligible for the production of foundation or registered planting stock shall not have grown or have been planted to caneberry plants or solanaceous crops during the previous five years, unless planted with plants of same cultivar and classification. This requirement may be modified upon approval of the certification agency when tarp fumigated with chloropicrin and methyl bromide fumigant. An inspection and approval of the land by the certification agency is required after treatment prior to planting to ensure adequate varietal purity of the caneberry planting:

(b) Acceptable records shall be presented to the department of nematode sampling of the land in question which show that plant parasitic nematodes are not present in harmful quantities; and

(c) Fumigate the land in accordance with approved commercial practices compatible with current recommendations of the Washington State University extension service; and

(d) An insect-proof screenhouse or greenhouse may be used for production of foundation or registered planting stock: PROVIDED, That all other land requirements are met.

## (2) Isolation requirements:

(a) Plantings entered for certification shall be grown in areas sufficiently isolated from sources of caneberry viruses by distance or natural barriers to minimize current infection.

(b) Cultivars within the plantings entered for certification shall be separated by not less than fourteen feet. The space between cultivars shall be kept deeply cultivated to prevent intermingling roots.

## (3) Plant requirements:

(a) Only nuclear planting stock which has been indexed and regularly reindexed for virus diseases by qualified Washington State University or United States Department of Agriculture personnel or personnel acceptable to the director may be entered for the production of foundation stock.

(b) Only foundation or nuclear planting stock may be entered for the production of registered stock.

(i) One percent, not to exceed twelve plants, of each foundation lot shall be maintained by the grower to allow some fruiting in order to permit evaluation for trueness to name and fruit character; or

(ii) Ten percent, not to exceed three plants, of each nuclear lot shall be maintained by Washington State University, or the United States Department of Agriculture, or department personnel to allow some fruiting to permit evaluation for trueness to name and fruit character; and

(iii) Plant harvest from a foundation or registered lot shall be limited to two growing seasons.

(c) Foundation stock shall not be maintained longer than three years.

## (4) Miscellaneous requirements:

(a) At the time of the first field inspection, department inspectors shall clearly mark all plants that are off-type, crown and cane-gall infected, virus-infected or exhibiting virus-like symptoms.

(b) Growers shall dig or otherwise destroy all plants and their roots which are marked by a department inspector within one week from the date of the first field inspection.

(c) At the time of the second field inspection, department inspectors shall clearly mark all plants that are off-type, crown and cane-gall infected, virus-infected or exhibiting virus-like symptoms.

(d) Growers shall dig or otherwise destroy all off-type plants and their roots which are marked by a department inspector, as well as all off-type plants and their roots (~~(in a rectangular area that is not less than ten feet in each direction in the row from the off-type plant)~~) observed by the grower and not less than forty inches in each direction across the row from the off-type plant within two weeks from the date of the second field inspection.

(e) Growers shall dig or otherwise destroy all plants and their roots which are marked by a department inspector as being crown and cane-gall infected, virus-infected or showing virus-like symptoms.

(f) Insect pests, diseases and vectors of diseases shall be effectively controlled by dusting, spraying, or any other approved method.

(g) All plant beds shall be relatively free from weeds.

AMENDATORY SECTION (Amending Order 1876, filed 11/5/85)

## WAC 16-333-060 REQUIREMENTS FOR PRODUCTION OF CANEBERRY CERTIFIED PLANTING STOCK. (1) Land requirements:

(a) Land proposed for the establishment of foundation, registered, and certified stock shall be inspected prior to planting in order to determine the absence of volunteer or holdover caneberry plants. Growers shall notify the department prior to planting the land; and

(b) A field to be eligible for the production of certified planting stock shall not have grown or shall not have been planted to caneberry plants or solanaceous crops during the previous five years, unless planted with plants of the same cultivar and classification; and

~~((b))~~ (c) Acceptable records shall be presented to the department of nematode sampling of the land in question which show that plant parasitic nematodes are not present in harmful quantities; and

~~((c))~~ (d) Fumigate the land in accordance with approved commercial practices compatible with current recommendations of the Washington State University extension service. Fumigation shall be supervised by a representative of the department.

## (2) Isolation requirements:

(a) Plantings entered for certification shall be grown in areas sufficiently isolated from sources of caneberry viruses by distance or natural barriers to minimize current infection.

(b) Cultivars within the plantings entered for certification shall be separated by not less than fourteen feet.

The space between cultivars shall be kept deeply cultivated to prevent intermingling roots.

(3) Plant requirements:

(a) Fields shall be planted with nuclear planting stock, foundation planting stock, or registered planting stock.

(b) Root cuttings and/or soft succulent plants from like plants may be accepted.

(c) Root or shoot cuttings may be used for sale to plant propagating beds.

(d) Plant harvest from a certified field shall be limited to two growing seasons.

(4) Miscellaneous requirements:

(a) At the time of the first field inspection, department inspectors shall clearly mark all plants that are off-type, crown and cane-gall infected, virus-infected or exhibiting virus-like symptoms.

(b) Growers shall dig or otherwise destroy all plants and their roots which are marked by a department inspector within one week from the date of the first field inspection.

(c) At the time of the second field inspection, department inspectors shall clearly mark all plants that are off-type, crown and cane-gall infected, virus-infected or exhibiting virus-like symptoms.

(d) Growers shall dig or otherwise destroy all off-type plants and their roots which are marked by a department inspector, as well as all plants and their roots in a rectangular area that is not less than ten feet in each direction in the row from the off-type plant and not less than forty inches in each direction across the row from the off-type plant within two weeks from the date of the second field inspection.

(e) Growers shall dig or otherwise destroy all plants and their roots which are marked by a department inspector as being crown and cane-gall infected, virus-infected or showing virus-like symptoms.

(f) Insect pests, diseases and vectors of diseases are to be effectively controlled by dusting, spraying or any other approved method.

(g) All plant beds shall be relatively free from weeds.

**WSR 89-16-052**  
**PROPOSED RULES**  
**DEPARTMENT OF PERSONNEL**  
**(Personnel Board)**  
 [Filed July 28, 1989, 2:30 p.m.]

Original Notice.

Title of Rule: New WAC 356-05-097 Continuous state service.

Purpose: To establish a definition for the term "continuous state service" found in the merit system rules.

Statutory Authority for Adoption: RCW 41.06.040.

Statute Being Implemented: RCW 41.06.150.

Summary: To establish a new rule which will define "continuous state service." This term is found in various sections of the merit system rules.

Reasons Supporting Proposal: "Continuous state service" is an operative term which affects employee rights under the merit system rules, however, the term has no

definition. The proposal will provide a clear definition in a centralized location. The language is not new, most of the language is borrowed from the definition of seniority.

Name of Agency Personnel Responsible for Drafting: Paul Peterson, Department of Personnel, 521 South Capitol Way, Olympia, 586-1769; Implementation and Enforcement: Department of Personnel.

Name of Proponent: Washington Public Employees Association, private.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The term "continuous state service" is found in various sections of the merit system rules. There is no definition of this term. The proposed rule will provide a definition that is consistent with rule language referencing continuous state service.

Proposal does not change existing rules.

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

Hearing Location: Department of Personnel, 521 South Capitol Way, Olympia, WA, on September 14, 1989, at 10:00 a.m.

Submit Written Comments to: Paul Peterson, Department of Personnel, 521 South Capitol Way, FE-11, by September 12, 1989.

Date of Intended Adoption: September 14, 1989.

July 27, 1989

Robert Boysen  
 Acting Director

NEW SECTION

WAC 356-05-097 CONTINUOUS STATE SERVICE. All time served in positions within the classified service under the jurisdictions of the state personnel board and higher education personnel board except the following conditions shall constitute a break in service: retirement, termination for cause or disability, resignation, layoff in excess of three years and leaves of absence without pay in excess of twelve months in any consecutive five-year period except for those conditions identified in WAC 356-18-140.

**WSR 89-16-053**  
**PROPOSED RULES**  
**DEPARTMENT OF PERSONNEL**  
**(Personnel Board)**  
 [Filed July 28, 1989, 2:34 p.m.]

Original Notice.

Title of Rule: New WAC 356-34-015 Predisciplinary notice.

Purpose: This proposal will establish specific requirements for notifying employees of the charges and evidence against them and allowing them a reasonable opportunity to respond prior to formal discipline.

Statutory Authority for Adoption: RCW 41.06.040.

Statute Being Implemented: RCW 41.06.150.

Summary: This rule proposal is derived from rules adopted by the Higher Education Personnel Board and the Federal Civil Service. The rule is consistent with practice already recommended by the State Personnel Board in the supervisor's guide to corrective action.

Name of Agency Personnel Responsible for Drafting: Paul Peterson, Department of Personnel, 521 South Capitol Way, Olympia, 586-1769; Implementation and Enforcement: Department of Personnel.

Name of Proponent: Andrew Wiesenfeld, Washington Public Employees Association, private.

Rule is necessitated by federal court decision, *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 89 LED.2d, 105 S. Ct. 1487 (1985), *Kenney v. DNR*, Thurston Co. No. 82-2-00133-3 (1988).

Explanation of Rule, its Purpose, and Anticipated Effects: This rule will incorporate into the merit system rules the protections required for civil service employees under *Cleveland Board of Education v. Loudermill*, 105 S. Ct. 1487 (1985). Subsequent to that decision, a draft rule appeared on the board's agenda for discussion, but no action was ever taken. WPEA is once again proposing this rule because in May 1988 the Thurston County Superior Court held that the procedure under chapter 41-.06 RCW and the merit system rules are not adequate to comply with the requirements of *Loudermill*. Adoption of this rule will remove ambiguity and confusion relating to proper predisciplinary procedures, reduce agency and individual supervisor liability exposure and bring Department of Personnel rules into parity with other civil service systems in the state. In addition, the rule is consistent with good personnel practice.

Proposal does not change existing rules.

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

Hearing Location: Department of Personnel, 521 South Capitol Way, Olympia, WA, on September 14, 1989, at 10:00 a.m.

Submit Written Comments to: Paul Peterson, Department of Personnel, 521 South Capitol Way, FE-11, Olympia, WA, by September 12, 1989.

Date of Intended Adoption: September 14, 1989.

July 27, 1989  
Robert Boysen  
Acting Director

#### NEW SECTION

WAC 356-34-015 PRE-DISCIPLINARY NOTICE. (1) Prior to the dismissal, reduction in salary, or demotion of a permanent employee pursuant to WAC 356-34-020, 356-34-030, 356-34-040 and 356-34-050, the appointing authority shall provide the employee:

- (a) written notice of the charges against the employee;
- (b) an oral or written statement of the evidence which forms the basis for the charges;
- (c) an oral or written statement of the action being contemplated by the appointing authority;
- (d) a reasonable opportunity for the employee to present reasons orally and in writing why the proposed action should not be taken, including time to furnish documentary evidence in support of the answer and to be represented by a representative of the employee's choice.

(2) Copies of the notice of proposed action, the answer of the employee when written, a summary thereof if made orally, and any resulting disciplinary notice and supporting material shall be maintained by the agency and shall be provided to the personnel appeals board upon request and to the employee affected upon the employee's request.

**WSR 89-16-054**  
**EMERGENCY RULES**  
**DEPARTMENT OF FISHERIES**  
[Order 89-70—Filed July 28, 1989, 4:52 p.m.]

Date of Adoption: July 28, 1989.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:  
Repealing WAC 220-47-500.

Statutory Authority for Adoption: RCW 75.08.080.

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

Reasons for this Finding: Restrictions in Areas 4B, 5, 6, 6A, 6C, 7 and 7A provide protection for United States and Canadian origin chinook stocks. Openings in Areas 7B, 7C, 12B and 12C provide opportunity to harvest non-indian allocation of chinook destined for the Nooksack-Samish and Hood Canal regions of origin, and to prevent wastage. All other Puget Sound areas are closed to prevent overharvest of local salmon stocks.

Effective Date of Rule: July 30, 1989.

July 28, 1989  
Judith Merchant  
Deputy Director  
for Joseph R. Blum  
Director

#### NEW SECTION

WAC 220-47-504 PUGET SOUND ALL-CITIZEN COMMERCIAL SALMON FISHERY. *Notwithstanding the provisions of Chapter 220-47 WAC, effective 12:01 AM Sunday July 30, 1989, until further notice, it is unlawful to take, fish for, or possess salmon or Atlantic salmon for commercial purposes taken from the following Puget Sound Salmon Management and Catch Reporting Areas except in accordance with the following open periods and restrictions:*

- \* Areas 4B, 5, 6, 6A, 6C, 7, and 7A – Under the control of the Pacific Salmon Commission. Drift gill net gear restricted to 5-inch minimum, 6-inch maximum mesh when open.
- \* Areas 7B and 7C – Gillnets using 7-inch minimum mesh may fish from 7 PM to 9:30 AM nightly, Monday, Tuesday, and Wednesday, July 31 and August 1 and 2.
- \* Areas 12B and 12C – Purse Seines using the 5-inch strip may fish from 5 AM to 9 PM daily, Tuesday, Wednesday, and Thursday, August 1, 2, and 3, and from 5 AM – 4 PM Friday, August 4, and gill nets using 7-inch minimum mesh may fish from 7 PM to 9:30 AM nightly, Monday, Tuesday, Wednesday, and Thursday, July 31, and August 1, 2, and 3. This opening excludes those waters of area 12B north of a line projected from Hood Point to Quatsap Point and those waters of area 12C



south of a line projected from the Cushman powerhouse to the public boat ramp at Union.

- \* Areas 6B, 6D, 7D, 7E, 8, 8A, 8D, 9, 9A, 10, 10A, 10C, 10D, 10E, 10F, 10G, 11, 11A, 12, 12A, 12D, 13, 13A, 13C, 13D, 13E, 13F, 13G, 13H, 13I, 13J, and 13K and all freshwater areas - Closed.

### REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 AM Sunday July 30:

WAC 220-47-500 PUGET SOUND ALL-CITIZEN COMMERCIAL SALMON FISHERY (89-63)

**WSR 89-16-055**  
**PROPOSED RULES**  
**DEPARTMENT OF FISHERIES**

[Filed July 28, 1989, 4:55 p.m.]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Washington State Department of Fisheries intends to adopt, amend, or repeal rules concerning commercial fishing rules.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on July 28, 1989.

The authority under which these rules are proposed is RCW 75.08.080.

The specific statute these rules are intended to implement is RCW 75.08.080.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before July 28, 1989.

This notice is connected to and continues the matter in Notice No. WSR 89-12-085 filed with the code reviser's office on June 7, 1989.

Dated: July 18, 1989  
 By: Judith Merchant  
 Deputy  
 for Joseph R. Blum  
 Director

**WSR 89-16-056**  
**PERMANENT RULES**  
**DEPARTMENT OF FISHERIES**

[Order 89-71—Filed July 28, 1989, 4:58 p.m.]

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 89-12-085 filed with the code reviser on June 7, 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 July 28, 1989.

By Judith Merchant  
 Deputy  
 for Joseph R. Blum  
 Director

### NEW SECTION

WAC 220-40-015 WILLAPA BAY—GILL NET GEAR SPECIFICATIONS. It is unlawful to fish for food fish in Willapa Bay for commercial purposes with gill net gear or to possess food fish taken from those waters with gill net gear unless:

(1) The gill net does not exceed 1,500 feet in length along the cork line; and

(2) Except as otherwise provided in this chapter, the mesh size of the gill net is not less than 5 inches or greater than 6-1/2 inches stretch measure.

AMENDATORY SECTION (Amending Order 86-55, filed 7/10/86)

WAC 220-40-020 WILLAPA ((HARBOR)) BAY SALMON—SEASONS AND LAWFUL GEAR—SALMON. It shall be unlawful to take, fish for or possess salmon taken ((with troll line gear)) for commercial purposes in Willapa ((Harbor)) Bay fishing areas except for salmon taken with gill net gear as provided for in this chapter.

AMENDATORY SECTION (Amending Order 88-116, filed 9/20/88)

WAC 220-40-021 WILLAPA ((HARBOR)) BAY SALMON—((GILL NET)) SUMMER FISHERY. ((It is unlawful to fish for or possess salmon taken for commercial purposes with gill net gear in Willapa Harbor fishing areas, except as provided for in this section:

(1) Area 2G =

6:00 p.m. August 25, to 6:00 p.m. August 26, 1988; 8 inch maximum mesh:

6:00 p.m. August 31, to 6:00 p.m. September 1, 1988; 8 inch maximum mesh:

6:00 p.m. September 7, to 6:00 p.m. September 8, 1988; 6-1/2 inch maximum mesh:

6:00 p.m. September 15, to 6:00 p.m. October 14, 1988; 6-1/2 inch maximum mesh:

6:00 p.m. October 20, to 6:00 p.m. October 22, 1988; 6-1/2 inch maximum mesh:

6:00 p.m. October 27, to 6:00 p.m. October 29, 1988; 6-1/2 inch maximum mesh:

6:00 p.m. November 1, to 11:59 p.m. November 19, 1988; 6-1/2 inch maximum mesh:

11:59 p.m. November 19, to 6:00 p.m.

~~November 30, 1988, 7-1/2 inch maximum mesh.~~

~~Area 2H=~~

~~6:00 p.m. September 21, to 11:59 p.m. November 19, 1988, 6-1/2 inch maximum mesh.~~

~~11:59 p.m. November 19, to 6:00 p.m. November 30, 1988, 7-1/2 inch maximum mesh.~~

~~Areas 2J and 2K=~~

~~6:00 p.m. September 22, to 6:00 p.m. September 23, 1988, 6-1/2 inch maximum mesh.~~

~~6:00 p.m. September 26, to 6:00 p.m. September 27, 1988, 6-1/2 inch maximum mesh.~~

~~6:00 p.m. September 29, to 6:00 p.m. September 30, 1988, 6-1/2 inch maximum mesh.~~

~~6:00 p.m. October 3, to 6:00 p.m. October 4, 1988, 6-1/2 inch maximum mesh.~~

~~6:00 p.m. October 6, to 6:00 p.m. October 7, 1988, 6-1/2 inch maximum mesh.~~

~~6:00 p.m. October 10, to 6:00 p.m. October 11, 1988, 6-1/2 inch maximum mesh.~~

~~6:00 p.m. October 13, to 6:00 p.m. October 14, 1988, 6-1/2 inch maximum mesh.~~

~~6:00 p.m. October 20, to 6:00 p.m. October 22, 1988, 6-1/2 inch maximum mesh.~~

~~6:00 p.m. October 27, to 6:00 p.m. October 29, 1988, 6-1/2 inch maximum mesh.~~

~~6:00 p.m. November 1, to 11:59 p.m. November 19, 1988, 6-1/2 inch maximum mesh.~~

~~11:59 p.m. November 19, to 6:00 p.m. November 30, 1988, 7-1/2 inch maximum mesh.~~

~~Area 2M=~~

~~6:00 p.m. September 21, to 6:00 p.m. October 14, 1988, 6-1/2 inch maximum mesh.~~

~~6:00 p.m. October 20, to 6:00 p.m. October 22, 1988, 6-1/2 inch maximum mesh.~~

~~6:00 p.m. October 27, to 6:00 p.m. October 29, 1988, 6-1/2 inch maximum mesh.~~

~~6:00 p.m. November 1, to 11:59 p.m. November 19, 1988, 6-1/2 inch maximum mesh.~~

~~11:59 p.m. November 19, to 6:00 p.m. November 30, 1988, 7-1/2 inch maximum mesh.~~

~~Naselle River = in those waters upstream of Highway 101 bridge to the boundary marker near the mouth of Roaring Creek slough.~~

~~6:00 p.m. October 1, to 6:00 p.m. October 14, 1988, 6-1/2 inch maximum mesh.~~

~~Willapa River = in those waters downstream from the overhead powerline crossing located between Willapa River markers #55 and #56.~~

~~6:00 p.m. October 1, to 11:59 p.m. November 19, 1988, 6-1/2 inch maximum mesh.~~

~~12:01 a.m. November 20, to 6:00 p.m. November 30, 1988, 7-1/2 inch maximum mesh.~~

~~(2) It is unlawful to fish for salmon in Willapa Harbor using gill net gear longer than 1,500 feet in length or containing mesh less than 5 inches.~~

~~(3) It is unlawful to fish for or possess salmon taken with gill net gear in that portion of Willapa Harbor Area 2J between Long Island and the North Beach Peninsula, south of a line drawn true east-west through Marker Piling 18 after 6:00 p.m., October 7.)~~

NEW SECTION

WAC 220-40-026 SALMON—WILLAPA BAY LATE SUMMER FISHERY. From August 16 through September 20 of each year, it is unlawful to fish for salmon in Willapa Bay for commercial purposes or to possess salmon taken from those waters for commercial purposes, except that:

FISHING PERIOD

(1) Gill net gear may be used to fish for salmon from: 6:00 p.m. September 17 through 6:00 p.m. September 21 in SMCRA 2G.

GEAR

(2) Gill net gear shall be used as provided in WAC 220-40-015.

NEW SECTION

WAC 220-40-027 SALMON—WILLAPA BAY FALL FISHERY. From August 16 through December 31 of each year, it is unlawful to fish for salmon in Willapa Bay for commercial purposes or to possess salmon taken from those waters for commercial purposes, except that:

FISHING PERIOD

(1) Gill net gear may be used to fish for salmon from:  
(a) 6:00 p.m. September 17 to 6:00 p.m. November 30 in SMCRA 2H;

(b) 6:00 p.m. September 21 to 6:00 p.m. October 14 in SMCRA 2G and 2M;

(c) 6:00 p.m. Monday to 6:00 p.m. Tuesday and 6:00 p.m. Thursday to 6:00 p.m. Friday of each week September 21 to October 14 in SMCRA 2J and 2K;

(d) 6:00 p.m. October 1 to 6:00 p.m. October 14 in the Naselle River upstream of Highway 101 to the boundary marker near the mouth of Roaring Creek slough;

(e) 6:00 p.m. October 20 to 6:00 p.m. October 21 in SMCRA 2G, 2J, 2K and 2M; and

(f) 6:00 p.m. November 1 to 6:00 p.m. November 30 in SMCRA 2G, 2J, 2K and 2M.

## GEAR

(2) Gill net gear shall be used as provided in WAC 220-40-015 except, after November 19, the mesh size shall not be less than 7-1/2 inches stretch measure.

NEW SECTION

WAC 220-36-015 GILL NET GEAR—GRAYS HARBOR SPECIFICATIONS. It is unlawful to fish for food fish in Grays Harbor for commercial purposes with gill net gear or to possess food fish taken from those waters with gill net gear unless:

(1) The gill net does not exceed 1,500 feet in length along the cork line; and

(2) Except as otherwise provided in this chapter, the mesh size of the gill net is not less than 5 inches or greater than 6-1/2 inches stretch measure.

AMENDATORY SECTION (Amending Order 86-55, filed 7/10/86)

WAC 220-36-020 GRAYS HARBOR SALMON FISHING ((AREAS))—((SEASONS AND)) LAW-FUL GEAR((=SALMON)). It shall be unlawful to take, fish for or possess salmon taken ((with troll line gear)) for commercial purposes in Grays Harbor fishing areas except for salmon taken with gill net gear as provided for in this chapter.

AMENDATORY SECTION (Amending Order 88-116, filed 9/20/88)

WAC 220-36-021 SALMON ((FISHING AREAS))—GRAYS HARBOR—((GILL NET)) SUMMER FISHERY. ((It is unlawful to take, fish for or possess salmon for commercial purposes with gill net gear in Grays Harbor fishing areas except as provided in this section:))

## (1) Area 2B =

~~6:00 p.m. October 26, to 6:00 p.m. October 27, 1988; 6-1/2 inch maximum mesh.~~

~~6:00 p.m. October 29, to 6:00 p.m. October 31, 1988; 6-1/2 inch maximum mesh.~~

~~6:00 p.m. November 2, to 6:00 p.m. November 4, 1988; 6-1/2 inch maximum mesh.~~

## (2) Area 2C =

~~6:00 p.m. September 6, to 6:00 p.m. September 8, 1988; 7-1/2 inch minimum mesh.~~

~~6:00 p.m. September 12, to 6:00 p.m. September 14, 1988; 7-1/2 inch minimum mesh.~~

~~6:00 p.m. September 19, to 6:00 p.m. September 21, 1988; 6-1/2 inch maximum mesh.~~

~~6:00 p.m. September 26, to 6:00 p.m. September 28, 1988; 6-1/2 inch maximum mesh.~~

~~(3) It is unlawful to fish for salmon in Grays Harbor using gill net gear longer than 1,500 feet or containing mesh less than 5 inches.)~~

NEW SECTION

WAC 220-36-023 GRAYS HARBOR SALMON—FALL FISHERY. From August 16 through December 31 of each year, it is unlawful to fish for salmon in Grays Harbor for commercial purposes or to possess salmon taken from those waters for commercial purposes, except that:

## FISHING PERIOD

(1) Gill net gear may be used to fish for salmon from:  
6:00 a.m. to 6:00 p.m. August 28 in SMCRA 2A, 2B, 2C, and 2D;

6:00 a.m. to 6:00 p.m. September 5 in SMCRA 2A, 2B, 2C, and 2D;

6:00 a.m. to 6:00 p.m. September 11 in SMCRA 2A, 2B, 2C, and 2D;

6:00 a.m. to 6:00 p.m. September 18 in SMCRA 2C;

6:00 a.m. to 6:00 p.m. September 25 in SMCRA 2C;

6:00 p.m. October 27 to 6:00 p.m. October 28 in SMCRA 2B;

6:00 p.m. October 30 to 6:00 p.m. October 31 in SMCRA 2B.

## GEAR

(2) Gill net gear shall be used as provided in WAC 220-36-015 except, prior to October 1, there is no maximum mesh size.

## WSR 89-16-057

## EMERGENCY RULES

## DEPARTMENT OF AGRICULTURE

[Filed July 31, 1989, 11:07 a.m.]

Date of Adoption: July 31, 1989.

Purpose: In response to repeated herbicide drift problems in the lower Yakima Valley and Tri-Cities area, emergency measures are necessary to continue restrictions on application of pesticides in that area.

Citation of Existing Rules Affected by this Order: Repealing WAC 16-232-440 through 16-232-490.

Statutory Authority for Adoption: Chapters 17.21 and 15.58 RCW.

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

Reasons for this Finding: Herbicide drift from applications of pesticides in Benton County and portions of Franklin and Walla Walla counties are a continuing problem. This emergency order must be in effect prior to permanent rules becoming effective August 30.

Effective Date of Rule: Immediately.

July 31, 1989  
C. Alan Pettibone  
Director

**NEW SECTION**

WAC 16-232-500 APPLICATION OF PESTICIDES IN BENTON COUNTY AND PORTIONS OF FRANKLIN AND WALLA WALLA COUNTIES—AREA UNDER ORDER. The area under order shall include:

(1) All lands lying within the boundaries of Benton County; and

(2) Portions of Franklin and Walla Walla Counties as follows: All lands lying within a boundary line beginning at the intersection of the Esquatzel Diversion Channel drain and the Columbia River thence east along the Esquatzel Channel to its intersection with Road 68; thence southeasterly approximately one mile along Road 68 to its intersection with Fraser Drive near the northeast corner of Section 24, T10N, R28E; thence south approximately one mile along Fraser Drive to its intersection with Selph Landing Road; thence east seven miles along Selph Landing Road to its intersection with Highway 395 near the northeast corner of Section 30, T10N, R30E; thence south two miles along Highway 395 to the southeast corner of Section 31, T10N, R30E; thence east three miles along section lines to the northeast corner of Section 3, T9N, R30E; thence south one mile along the section line to the southeast corner of Section 3, T9N, R30E; thence east seven miles along section lines and a portion of the Pasco-Kahlotus Road to its intersection with the Ice Harbor Dam Road at the northeast corner of Section 11, T9N, R31E; thence southerly approximately four miles along Ice Harbor Dam Road and Ice Harbor Drive to the west section line of Section 25, T9N, R31E; thence south approximately eleven miles along section lines to the Walla Walla River; thence west along the Walla Walla River to the Columbia River and the Walla Walla-Benton County line; thence northwesterly along the Walla Walla-Benton County line to the Benton-Franklin County line; thence northwesterly along the Benton-Franklin County line and the Columbia River to the point of beginning.

**NEW SECTION**

WAC 16-232-505 APPLICATION OF PESTICIDES IN BENTON COUNTY AND PORTIONS OF FRANKLIN AND WALLA WALLA COUNTIES—RECORDKEEPING. (1) No portion of this section shall relieve any commercial pesticide applicator, public operator, private-commercial applicator, demonstration and research applicator or private applicator from recordkeeping requirements of WAC 16-228-190 and WAC 16-228-164.

(2) All persons who apply pesticides within the area under order in WAC 16-230-800 shall keep records for each application per day for all pesticides, except those labeled or used only for the following sites or functions:

- (a) Swimming pools and fountains
- (b) Disinfectants
- (c) Cooling tower or industrial system biocides
- (d) Pets or livestock
- (e) Lawns or home gardens
- (f) Use within or around buildings or similar structures (does not include irrigation canals)

(g) Wood or lumber treatment

(h) Baits or repellants registered solely for vertebrate pest control

(i) Seed treatments

(j) Enclosed food processing systems

(k) Air conditioners, humidifiers, and heating systems

(3) The following information shall be kept on a form prescribed by the department:

(a) Applicator's name, address and name of the individual making the application;

(b) Address or location of the land where the pesticide was applied, specifying township, range, and section: PROVIDED, That right-of-way application records may omit township, range and section.

(c) Year, month, day, and time the pesticide was applied;

(d) Trade name and/or common name of the pesticide applied, and the EPA registration number for that product;

(e) Direction and estimated velocity of the wind and temperature at the time the pesticide was applied;

(f) Amount and concentration (pounds or gallons per acre and percentage of active ingredient and/or concentration per one hundred gallons) of the pesticide used;

(g) Specific crop or site to which the pesticide was applied.

(h) Acreage or area treated per section: PROVIDED, That right-of-way application records may record acreage or area only.

(4) If an application of a restricted use pesticide as defined in WAC 16-230-810 is performed by a licensed commercial pesticide applicator within the area defined in WAC 16-230-800, the person in control of the treated land shall keep records which shall include the following information:

(a) Address or location of the land where the pesticide was applied, specifying township, range, and section: PROVIDED, That right-of-way application records may omit township, range and section;

(b) Year, month, and day the pesticide was applied;

(c) Name of the commercial applicator.

(d) Trade name and/or common name of the pesticide applied.

(5) All records required by this section shall be completed and available to the department the same day the pesticide was applied.

(6) All records required by this section shall be kept for a period of seven years from the date of application. The department shall be furnished, upon request in writing, with a copy of the records required in subsection

(3) and (4) of this section, and any additional information required in WAC 16-228-190 and 16-228-164.

**NEW SECTION**

WAC 16-232-510 APPLICATION OF PESTICIDES IN BENTON COUNTY AND PORTIONS OF FRANKLIN AND WALLA WALLA COUNTIES—RESTRICTED USE PESTICIDES. For the purposes of WAC 16-230-800 through WAC 16-230-865, the following pesticides are declared to be restricted use pesticides:

- (1) Restricted use herbicides:

- (a) Sulfonylurea herbicides (such as Glean, Telar, Finesse, Escort)
- (b) Desiccants and defoliant (such as Paraquat, Diquat, Endothall)
- (c) Glyphosate (such as Roundup, Landmaster)
- (d) Phenoxy type herbicides (such as 2,4-D, MCPA)
- (e) dicamba (such as Banvel)
- (f) Bromoxynil (such as Brominal, Bucril, ME4 Brominal)
- (2) Restricted use insecticides:
  - (a) All category I insecticides with the signal words Danger/Poison on the label, except granular and pellet formulations;
  - (b) Additionally, all insecticides, except granular and pellet formulations, are declared to be restricted use in Area 1 as described in WAC 16-230-835.

#### NEW SECTION

WAC 16-232-515 APPLICATION OF PESTICIDES IN BENTON COUNTY AND PORTIONS OF FRANKLIN AND WALLA WALLA COUNTIES—PARAQUAT AND DIQUAT. Aerial application of paraquat and diquat is prohibited in the entire area under order listed in WAC 16-230-800.

#### NEW SECTION

WAC 16-232-520 APPLICATION OF PESTICIDES IN BENTON COUNTY AND PORTIONS OF FRANKLIN AND WALLA WALLA COUNTIES—SULFONYLUREA HERBICIDES. Application of sulfonylurea herbicides (such as Glean, Telar, Finesse, Escort) to fallow land or to land during the time between harvest and emergence above the furrows of the subsequent cereal grain crop is prohibited.

#### NEW SECTION

WAC 16-232-525 APPLICATION OF PESTICIDES IN BENTON COUNTY AND PORTIONS OF FRANKLIN AND WALLA WALLA COUNTIES—PERMITS. The following conditions will apply to all permits issued under the authority of WAC 16-230-800 through 16-230-865.

- (1) Application for a permit may be made to the Washington State Department of Agriculture, Compliance Branch, 2015 S. 1st Street, Yakima, Washington 98903. Applications may also be taken in person or by phone.
- (2) The department may make on-site monitoring of the application a condition of any permit. A representative of the department may condition, deny, or revoke a permit at any time, if the representative determines that the situation at the application site creates an unreasonable risk of drift. In determining whether the situation at the application site creates an unreasonable risk of drift, the representative may consider all relevant factors such as temperature, air inversions, time of day, burning restrictions, wind direction, wind velocity, topography, and type and condition of application equipment.
- (3) No permit shall be issued to apply any pesticide unless that permit is consistent with existing department laws and rules.

- (4) Application records prescribed in WAC 16-230-805 shall be submitted to the Washington State Department of Agriculture, Compliance Branch, 2015 So. 1st Street, Yakima, Washington 98903, within three days after the aerial application under permit is performed.

#### NEW SECTION

WAC 16-232-530 APPLICATION OF PESTICIDES IN BENTON COUNTY AND PORTIONS OF FRANKLIN AND WALLA WALLA COUNTIES—EMERGENCY CLAUSE. In the event of an emergency, as declared by the director, the department may issue permits for the use of restricted use pesticides in variation of any restrictions contained in the area under order as defined in WAC 16-230-800. An emergency under this section may be declared if the director determines that the risk and amount of economic harm to any agriculture crop substantially outweighs the risk and amount of damage likely to occur if a variance permit is issued.

#### NEW SECTION

WAC 16-232-535 APPLICATION OF PESTICIDES IN BENTON COUNTY AND PORTIONS OF FRANKLIN AND WALLA WALLA COUNTIES—AREA 1. (1) Area 1 description (Northeast Horse Heaven Hills). An area including all lands lying within a boundary line beginning at the southwest corner of Section 24, T8N, R26E; thence north approximately 7 miles along section lines to the intersection with the Kennewick Irrigation District (K.I.D.) main canal; thence easterly along the K.I.D. main canal to the Amon pumping station located in Section 7, T8N, R29E; thence southeasterly along the K.I.D. Division Four Canal to the Columbia River in Section 8, T7N, R31E; thence south approximately one and one-half miles along the Columbia River to the south section line of Section 17, T7N, R31E; thence west approximately seventeen miles along section lines to the southwest corner of Section 15, T7N, R28E; thence north one mile along the section line to the northwest corner of Section 15, T7N, R28E; thence west four miles along section lines to the intersection with Badger Canyon Road at the southwest corner of Section 12, T7N, R27E; thence north two miles along Badger Canyon Road and section lines to the intersection with Sellards Road at the southeast corner of Section 35, T8N, R27E; thence west one mile along Sellards Road and the section line to the southwest corner of Section 35, T8N, R27E; thence north one mile along the section line to the northwest corner of Section 35, T8N, R27E; thence west three miles along section lines to the southwest corner of Section 29, T8N, R27E; thence north one mile along the section line to the intersection with Cemetery Road at the northwest corner of Section 29, T8N, R27E; thence west two miles along Cemetery Road and section lines to the point of beginning.

- (2) Area 1 restrictions. Application by air of restricted use pesticides as defined in WAC 16-230-810 is prohibited: PROVIDED, That the department may issue

written permits for application of insecticides not containing the signal words *Danger/Poison* on the label.

#### NEW SECTION

WAC 16-232-540 APPLICATION OF PESTICIDES IN BENTON COUNTY AND PORTIONS OF FRANKLIN AND WALLA WALLA COUNTIES—AREA 2. (1) Area 2 description. Tri-Cities, Benton City area. An area including all lands lying within a boundary line beginning at the northwest corner of Section 25, T10N, R26E; thence south approximately five miles along section lines to the intersection with the Kennewick Irrigation District (K.I.D.) main canal; thence easterly along the K.I.D. main canal to the Amon pumping station located in Section 7, T8N, R29E; thence southeasterly along the K.I.D. Division Four Canal to the Columbia River in Section 8, T7N, R31E; thence south approximately one-half mile along the Columbia River to the south section line of Section 8, T7N, R31E; thence east approximately three miles across the Columbia River to the intersection with U.S. Highway 12 at the south section line of Section 10, T7N, R31E; thence northwesterly along Highway 12 to its intersection with Interstate 182; thence westerly along Interstate 182 to the west shoreline of the Columbia River; thence northerly approximately six and one-half miles along the Columbia River to the United States Department of Energy Hanford Site south boundary line; thence west approximately one mile and south approximately two and one-half miles along the south boundary line to the southeast corner of Section 27, T10N, R28E; thence west seven miles along section lines to the southwest corner of Section 27, T10N, R27E; thence north one mile along the section line to the northwest corner of Section 27, T10N, R27E; thence west four miles along section lines to the point of beginning.

(2) Area 2 restrictions. Application by air of restricted use pesticides as defined in WAC 16-230-810 is prohibited.

#### NEW SECTION

WAC 16-232-545 APPLICATION OF PESTICIDES IN BENTON COUNTY AND PORTIONS OF FRANKLIN AND WALLA WALLA COUNTIES—AREA 3. (1) Area 3 description.

(a) Eastern Yakima Valley. An area including all lands lying within a boundary line beginning at the northwest corner of Section 25, T10N, R26E; thence west four miles along section lines to the northwest corner of Section 29, T10N, R26E; thence south one mile along the section line to the southwest corner of Section 29, T10N, R26E; thence west eleven miles along section lines to the southeast corner of Section 29, T10N, R24E; thence north one mile along the section line to the intersection with Anderson Road at the northeast corner of Section 29, T10N, R24E; thence west two miles along Anderson Road and section lines to the Benton-Yakima County line at the northwest corner of Section 30, T10N, R24E; thence south approximately thirteen miles along the Benton-Yakima County line to the northwest

corner of Section 31, T8N, R24E; thence east approximately two miles along section lines to the southeast corner of Section 29, T8N, R24E; thence north one mile along the section line to the northeast corner of Section 29, T8N, R24E; thence east four miles along section lines to the southeast corner of Section 24, T8N, R24E; thence north one mile along the section line to the northeast corner of Section 24, T8N, R24E; thence east two miles along section lines to the southeast corner of Section 16, T8N, R25E; thence north one mile along Burt James Road and the section line to the intersection with County Well Road at the northeast corner of Section 16, T8N, R25E; thence east two miles along County Well Road and section lines to the southeast corner of Section 10, T8N, R25E; thence north one mile along the section line to the northeast corner of Section 10, T8N, R25E; thence east three miles along section lines to the intersection with Gould Road at the southeast corner of Section 6, T8N, R26E; thence north one mile along Gould Road and the section line to the northeast corner of Section 6, T8N, R26E; thence east four miles along section lines to the southeast corner of Section 35, T9N, R26E; thence north eight miles along section lines to the point of beginning.

(b) Cold Creek Area. An area including all lands lying within a boundary line beginning at the intersection of the Benton-Yakima County line and the Columbia River in Section 7, T13N, R24E; thence south approximately six and one-half miles along the Benton-Yakima County line to the southwest corner of Section 7, T12N, R24E; thence east five miles along section lines to the southeast corner of Section 11, T12N, R24E; thence north approximately seven miles along section lines to the Columbia River; thence west approximately five miles along the Columbia River to the point of beginning.

(2) Area 3 restrictions. Application by air of restricted use herbicides as defined in WAC 16-230-810 is prohibited.

#### NEW SECTION

WAC 16-232-550 APPLICATION OF PESTICIDES IN BENTON COUNTY AND PORTIONS OF FRANKLIN AND WALLA WALLA COUNTIES—AREA 4. (1) Area 4 description.

(a) Tri-Cities northwest buffer zone. An area including all lands lying within a boundary line beginning at the northwest corner of Section 25, T10N, R26E; thence north two miles along section lines to the northwest corner of Section 13, T10N, R26E; thence east one mile along the section line to the northeast corner of Section 13, T10N, R26E; thence north approximately one-half mile along the section line to the United States Department of Energy Hanford Site south boundary line; thence easterly approximately ten miles and south approximately two and one-half miles along the south boundary line to the south section line of Section 27, T10N, R28E; thence west approximately six and three-fourths miles along section lines to the southwest corner of Section 27, T10N, R27E; thence north one mile along the section line to the northwest corner of Section 27,

T10N, R27E; thence west four miles along section lines to the point of beginning.

(b) Tri-Cities northeast buffer zone. An area including all lands lying within a boundary line beginning at the intersection of the Esquatzel Diversion Channel drain and the Columbia River, thence east along the Esquatzel Channel to its intersection with Road 68; thence southeasterly approximately one mile along Road 68 to its intersection with Fraser Drive near the northeast corner of Section 24, T10N, R28E; thence south approximately four miles along section lines and portions of Fraser Drive and Dent Road to the southwest corner of Section 6, T9N, R29E; thence east approximately eight and one-half miles along section lines and a portion of Foster Wells Road to its intersection with the Bonneville Power Administration power line in Section 4, T9N, R30E; thence southeasterly approximately seven miles along the power line to its intersection with SR 124 in Section 32, T9N, R31E; thence easterly approximately two and one-half miles along SR 124 to the east section line of Section 34, T9N, R31E near the intersection of SR 124 and the Union Pacific Railroad; thence south approximately three miles along section lines to the southeast corner of Section 15, T8N, R31E; thence west approximately one-fourth mile along the section line to the Union Pacific Railroad; thence southerly approximately four and one-half miles along the railroad to its intersection with U.S. Highway 12 near the Boise Cascade paper mill; thence northwesterly along Highway 12 to its intersection with Interstate 182; thence westerly along I-182 to the west shoreline of the Columbia River, thence northerly approximately six and one-half miles along the Columbia River to the U.S. Department of Energy Hanford Site south boundary line in Section 14, T10N, R28E; thence east approximately one-half mile across the Columbia River to its east shoreline; thence northerly approximately one-half mile to the point of beginning.

(c) Horse Heaven Hills east buffer zone. An area including all lands lying within a boundary line beginning at the southwest corner of Section 24, T8N, R26E; thence south three miles along section lines and Tyacke Road to the southwest corner of Section 1, T7N, R26E; thence east three miles along section lines to the northeast corner of Section 8, T7N, R27E; thence south one mile along the section line and Travis Road to the intersection with Reese Road at the southeast corner of Section 8, T7N, R27E; thence east one mile along the section line and Reese Road to the northeast corner of Section 16, T7N, R27E; thence south two miles along section lines to the intersection with Tyrell Road at the northwest corner of Section 27, T7N, R27E; thence east one mile along the section line and Tyrell Road to the northeast corner of Section 27, T7N, R27E; thence south one mile along the section line to the southeast corner of Section 27, T7N, R27E; thence east approximately twenty-two miles along section lines to the Columbia River, thence northerly approximately two miles along the Columbia River to the south section line of Section 17, T7N, R31E; thence west approximately seventeen miles along section lines to the southwest corner of Section 15, T7N, R28E; thence north one mile

along the section line to the northwest corner of Section 15, T7N, R28E; thence west four miles along section lines to the intersection with Badger Canyon Road at the southwest corner of Section 12, T7N, R27E; thence north two miles along Badger Canyon Road and section lines to the intersection with Sellards Road at the southeast corner of Section 35, T8N, R27E; thence west one mile along Sellards Road and the section line to the southwest corner of Section 35, T8N, R27E; thence north one mile along the section line to the northwest corner of Section 35, T8N, R27E; thence west three miles along section lines to the southwest corner of Section 29, T8N, R27E; thence north one mile along the section line to the intersection with Cemetery Road at the northwest corner of Section 29, T8N, R27E; thence west two miles along Cemetery Road and section lines to the point of beginning.

(2) Area 4 restrictions. Application by air of restricted use pesticides as defined in WAC 16-230-810 may be made by written permit only.

#### NEW SECTION

WAC 16-232-555 APPLICATION OF PESTICIDES IN BENTON COUNTY AND PORTIONS OF FRANKLIN AND WALLA WALLA COUNTIES—AREA 5. (1) Area 5 description.

(a) Cold Creek buffer zone. An area including all lands lying within a boundary line beginning at the southwest corner of Section 7, T12N, R24E; thence east five miles along section lines to the southeast corner of Section 11, T12N, R24E; thence north approximately seven miles along section lines to the Columbia River, thence easterly approximately two miles along the Columbia River to the east section line of Section 6, T13N, R25E, near the Vernita Bridge; thence south approximately eight and one-half miles along section lines to the southeast corner of Section 18, T12N, R25E; thence west seven miles along section lines to the Benton-Yakima County line at the southwest corner of Section 18, T12N, R24E; thence north one mile along the county line to the point of beginning.

(b) Roza buffer zone. An area including all lands lying within a boundary line beginning at the northwest corner of Section 25, T10N, R26E; thence west four miles along section lines to the northwest corner of Section 29, T10N, R26E; thence south one mile along the section line to the southwest corner of Section 29, T10N, R26E; thence west eleven miles along section lines to the southeast corner of Section 29, T10N, R24E; thence north one mile along the section line to the intersection with Anderson Road at the northeast corner of Section 29, T10N, R24E; thence west two miles along Anderson Road and section lines to the Benton-Yakima County line at the northwest corner of Section 30, T10N, R24E; thence north two miles along the county line to the northwest corner of Section 18, T10N, R24E; thence east four miles along section lines to the northeast corner of Section 15, T10N, R24E; thence south one mile along the section line to the southeast corner of Section 15, T10, R24E; thence east seven miles along section lines to the southwest corner of Section 13, T10N, R25E; thence north one mile along the section line to the northwest



corner of Section 13, T10N, R25E; thence east six miles along section lines to the northwest corner of Section 13, T10N, R26E; thence south two miles along section lines to the point of beginning.

(c) West Horse Heaven buffer zone. An area including all lands lying within a boundary line beginning at the northwest corner of Section 31, T8N, R24E; thence east approximately two miles along section lines to the southeast corner of Section 29, T8N, R24E; thence north one mile along the section line to the northeast corner of Section 29, T8N, R24E; thence east four miles along section lines to the southeast corner of Section 24, T8N, R24E; thence north one mile along the section line to the northeast corner of Section 24, T8N, R24E; thence east two miles along section lines to the southeast corner of Section 16, T8N, R25E; thence north one mile along Burt James Road and the section line to the intersection with County Well Road at the northeast corner of Section 16, T8N, R25E; thence east two miles along County Well Road and section lines to the southeast corner of Section 10, T8N, R25E; thence north one mile along the section line to the northeast corner of Section 10, T8N, R25E; thence east three miles along section lines to the intersection with Gould Road at the southeast corner of Section 6, T8N, R26E; thence north one mile along Gould Road and the section line to the northeast corner of Section 6, T8N, R26E; thence east four miles along section lines to the southeast corner of Section 35, T9N, R26E; thence south seven miles along section lines and a portion of Tyacke Road to the southwest corner of Section 1, T7N, R26E; thence west approximately seventeen miles along section lines to the Benton-Yakima County line at the southwest corner of Section 6, T7N, R24E; thence north two miles along the county line to the point of beginning.

(2) Area 5 restrictions. Application by air of restricted use herbicides as defined by WAC 16-230-810 may be made by written permit only.

#### NEW SECTION

WAC 16-232-560 APPLICATION OF PESTICIDES IN BENTON COUNTY AND PORTIONS OF FRANKLIN AND WALLA WALLA COUNTIES—AREA 6. (1) Area 6 description. All remaining lands in the area under order.

(2) Area 6 restrictions. Records shall be kept as required in WAC 16-230-805.

#### [NEW SECTION]

WAC 16-232-565 OTHER RULES. Provisions of WAC 16-232-500 through WAC 16-232-560 shall take precedence over all existing, less restrictive rules of the department affecting the application of pesticides in Benton, Franklin or Walla Walla Counties. No provision of WAC 16-232-500 through WAC 16-232-560 shall be construed as relieving any requirement of existing rules except those in direct conflict.

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

#### REPEALER

The following sections of the Washington Administrative Code are repealed (Emergency Order 1998, filed 3/24/89):

- (1) WAC 16-232-440 Area under order.
- (2) WAC 16-232-450 Restricted use pesticides.
- (3) WAC 16-232-460 Permits.
- (4) WAC 16-232-470 Recordkeeping.
- (5) WAC 16-232-480 Required records submission.
- (6) WAC 16-232-490 Other rules.

#### WSR 89-16-058

#### NOTICE OF PUBLIC MEETINGS CONVENTION AND TRADE CENTER

[Memorandum—July 26, 1989]

The International Development Committee of the Washington State Convention and Trade Center will meet on Monday, July 31, 1989, at 3:00 p.m. The meeting location will be the 5th Floor Administrative Offices of the Convention and Trade Center, 800 Convention Place, Seattle.

The committee will discuss the final report prepared by Tradec.

#### WSR 89-16-059

#### PROPOSED RULES BOARD OF HEALTH

[Filed July 31, 1989, 11:36 a.m.]

Original Notice.

Title of Rule: WAC 248-100-207, HIV testing—Ordering—Laboratory screening—Interpretation—Reporting.

Purpose: Establish State Board of Health requirements for persons ordering, prescribing or requiring HIV tests and standards for HIV tests.

Other Identifying Information: Insurers' responsibilities when requiring applicants to have HIV tests.

Statutory Authority for Adoption: RCW 70.24.130.

Statute Being Implemented: Chapter 70.24 RCW.

Summary: Amends board rules on responsibilities of insurers when requiring applicants to have HIV tests, consistent with chapter 387, Laws of 1989, amending chapter 70.24 RCW.

Reasons Supporting Proposal: Amendments proposed maintain Board of Health rules implementing chapter 70.24 RCW consistent with chapter 387, Laws of 1989, amending chapter 70.24 RCW.

Name of Agency Personnel Responsible for Drafting: Jean Ullom, Department of Health, ET-24, 753-5824; Implementation and Enforcement: John Peppert, HIV/AIDS, LJ-17, 586-0427.

Name of Proponent: State Board of Health, governmental.

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

**Explanation of Rule, its Purpose, and Anticipated Effects:** The amended rule requires insurers and health care service contractors to provide certain written information to applicants for insurance when the insurer requires an HIV test as a condition for insurance; obtain specific written consent for an HIV test; and establish procedures for facilitating post-test counseling for applicants testing HIV positive.

**Anticipated Effects:** Clarifies ambiguity between State Board of Health rules and amendment to chapter 70.24 RCW.

**Proposal Changes the Following Existing Rules:** Amends board rules adopted June 22, 1989, WSR 89-14-003, by striking language requiring insurers to "ensure" post-test counseling of applicants who are HIV positive. Another amendment requires insurers to provide an applicant's positive or indeterminate HIV test to the local health department unless the applicant designates a health care provider or health care agency.

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

Minor or negligible economic impact under section 5, chapter 374, Laws of 1989.

**Hearing Location:** Richland City Hall, 505 Swift Boulevard, Richland, WA 99352, on September 13, 1989, at 9:30 a.m.

**Submit Written Comments to:** Graham Tollefson, Chair, Washington State Board of Health, Olympia, Washington 98504, ET-23, by September 5, 1989.

**Date of Intended Adoption:** September 22, 1989.

July 27, 1989

Lucille Christenson

Acting Secretary

Department of Health

#### AMENDATORY SECTION (Amending Order 329, filed 6/22/89)

WAC 248-100-207 HUMAN IMMUNODEFICIENCY VIRUS (HIV) TESTING—ORDERING—LABORATORY SCREENING—INTERPRETATION—REPORTING. (1) Any person ordering or prescribing an HIV test for another, except for seroprevalent studies under chapter 70.24 RCW or provided under subsections (2) and (3) of this section, shall:

(a) Provide or refer for pretest counseling described under WAC 248-100-209; (~~and~~)

(b) Obtain or ensure informed specific consent of the individual to be tested separate from other consents prior to ordering or prescribing an HIV test, unless accepted under provisions in chapter 70.24 RCW; and

(c) Provide or refer for post-test counseling described under WAC 248-100-209 if HIV test is positive for or suggestive of HIV infection.

(2) Blood banks, tissue banks, and others collecting or processing blood, sperm, tissues, or organs for transfusion/transplanting shall:

(a) Obtain or ensure informed specific consent of the individual prior to ordering or prescribing an HIV test, unless excepted under provisions in chapter 70.24 RCW;

(b) Explain that the reason for HIV testing is to prevent contamination of the blood supply (~~or~~), tissue, or organ bank donations; and

(c) At the time of notification regarding a positive HIV test, provide or ensure at least one individual counseling session.

(3) Persons subject to regulation under Title 48 RCW and requesting an insured, (~~a~~) subscriber, or (~~a~~) potential insured or subscriber(~~s~~) to furnish the results of an HIV test for underwriting purposes, as a condition for obtaining or renewing coverage under an insurance contract, health care service contract, or health maintenance organization agreement shall:

(a) Before drawing blood to perform an HIV test, provide written information to the individual tested explaining:

(i) What an HIV test is;

(ii) Behaviors placing a person at risk for HIV infection;

(iii) The purpose of HIV testing in this setting is to determine eligibility for coverage;

(iv) The potential risks of HIV testing; and

(v) Where to obtain HIV pretest counseling.

(b) Obtain informed specific written consent for an HIV test. The written informed consent shall include:

(i) An explanation of confidential treatment of test result reports limited to persons involved in handling or determining applications for coverage or claims for the applicant or claimant; and

(ii) Requirements under subsection (3)(c) of this section.

(c) Establish procedures to inform (~~and ensure~~) an applicant of the following:

(i) Post-test counseling(~~s~~) specified under WAC 248-100-209(4)(~~s~~) is required if an HIV test is positive or indeterminate;

(ii) Post-test counseling is done at the time any positive or indeterminate HIV test result is given to the tested individual;

(iii) The applicant is required to designate a health care provider or health care agency to whom positive or indeterminate HIV test results are to be provided for interpretation and post-test counseling; and

(iv) When an individual applicant does not identify a designated health care provider or health care agency and the applicant's HIV test results are positive or indeterminate, the ((insurance contractor)) insurer, health care service contractor, or health maintenance organization shall ((ensure that)) provide the test results to the local health department for interpretation and post-test counseling ((is offered to the individual)).

(4) Laboratories and other places where HIV testing is performed shall demonstrate complete and satisfactory participation in an HIV proficiency testing program approved by the Department Laboratory Quality Assurance Section, Mailstop B17-9, Seattle, Washington 98104.

(5) The department laboratory quality assurance section shall accept substitutions for EIA screening only as approved by the United States Food and Drug Administration (FDA) and a published list or other written FDA communication.

(6) Medical laboratories testing for the presence of HIV shall:

(a) Send an HIV test prevalence results report by telephone or in writing to the department office on AIDS (MS B17-9, Seattle, Washington 98104), quarterly or more often; and

(b) Include in the report:

(i) Number of samples tested;

(ii) Number of samples repeatedly reactive by enzyme immuno assay (EIA);

(iii) Number of samples tested by western blot assay (WBA) or other confirmatory test as approved by department office on AIDS;

(iv) Number of positive test results by WBA or other confirmatory test as approved by department office on AIDS;

(v) Number of specimens tested by viral culture; and

(vi) Number of positive test results from viral cultures.

(7) Persons informing a tested individual of positive laboratory test results indicating HIV infection shall do so only when:

(a) HIV is isolated by viral culture technique; or

(b) HIV antibodies are identified by a sequence of tests which are reactive and include:

(i) A repeatedly reactive screening test such as the enzyme immunoassay (EIA); and

(ii) An additional, more specific, assay such as a positive western blot assay (WBA) or other tests as defined and described in the AIDS office manual, April, 1988, DSHS, Mailstop LP-20, Olympia, Washington 98504.

(c) Such information consists of relevant, pertinent facts communicated in such a way that it will be readily understood by the recipient.

**WSR 89-16-060**

**PROPOSED RULES**

**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

**(Public Assistance)**

[Filed July 31, 1989, 11:40 a.m.]

Original Notice.

Title of Rule: Pregnant women and infants; and Children—Seven years of age and under.

Purpose: To incorporate the changes in the level of income for pregnant women and children from 90 percent of the federal poverty level to 185% for pregnant women and infants under one year of age and to 100% for children born after September 30, 1983, and are under 8 years of age. The rules clarify that citizenship and residence under chapter 388-82 WAC are eligibility requirements for this program. Resources are not considered.

Statutory Authority for Adoption: RCW 74.08.090.

Statute Being Implemented: Chapter 74.09 RCW.

Summary: Pregnant women and infants are eligible for categorically needy Medicaid when their family income does not exceed one hundred eighty-five percent of the federal poverty level and otherwise qualify under Title XIX requirements. The income of unmarried father is excluded.

Reasons Supporting Proposal: This rule is necessary to implement provisions of the Maternity Care Access Act of 1989, HB 2244.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Bobbe Andersen, Division of Medical Assistance, 753-0529.

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

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

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

Proposal Changes the Following Existing Rules: Same as above.

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

Hearing Location: OB-2, 12th and Franklin, Olympia, Washington 98504, on September 5, 1989, at 10:00 a.m.

Submit Written Comments to: Troyce Warner, Chief, Office of Issuances, Department of Social and Health Services, Mailstop OB-33H, Olympia, Washington 98504, by September 5, 1989.

Date of Intended Adoption: October 2, 1989.

July 28, 1989

Leslie F. James, Director  
Administrative Services

#### AMENDATORY SECTION (Amending Order 2798, filed 5/17/89)

WAC 388-83-032 (~~NEEDY INFANTS, CHILDREN AND~~) PREGNANT WOMEN AND INFANTS. (1) The department shall find ~~((the following groups))~~ pregnant women and infants one year of age or younger eligible for Medicaid as categorically needy, if ~~((they))~~ the pregnant women and infants meet:

- (a) The income ~~((and resource))~~ requirements of this section:
  - ~~((a))~~ Effective July 1, 1987:
    - ~~((i))~~ Women during pregnancy and during the sixty-day period beginning on the last day of pregnancy); and
    - ~~((iii))~~ Infants under one year of age;)
  - ~~((b))~~ ((Effective October 1, 1988, children two years of age)) Citizenship, enumeration, and residence requirements under chapter 388-82 WAC.
- (2) If the pregnant woman applies on or before the last day of pregnancy, the department shall find her eligible for continued Medicaid coverage through the end of the month containing the sixtieth day from the day pregnancy ends.

#### (3) Income eligibility:

(a) Total family income shall not exceed ~~((ninety))~~ one hundred eighty-five percent of the poverty income guidelines as published and updated by the secretary of health and human services. ~~((Ninety))~~ One hundred eighty-five percent of the 1989 poverty income guidelines is:

	Family Size	Monthly
(i)	One	\$ <del>((499.00))</del> 922
(ii)	Two	\$ <del>((602.00))</del> 1,236
(iii)	Three	\$ <del>((755.00))</del> 1,551
(iv)	Four	\$ <del>((908.00))</del> 1,865
(v)	Five	\$ <del>((1,061.00))</del> 2,180
(vi)	Six	\$ <del>((1,214.00))</del> 2,494
(vii)	Seven	\$ <del>((1,367.00))</del> 2,809
(viii)	Eight	\$ <del>((1,520.00))</del> 3,123

(ix) For family units with nine members or more, add \$~~((153.00))~~ 315 to the monthly income for each additional member.

(b) The department shall determine family income:

(i) ~~((Determine family income))~~ According to AFDC methodology, except ((for the exclusions)) the department shall exclude the income of the unmarried father of the unborn unless the income is actually contributed; and

(ii) Apply the special situations under WAC 388-83-130 (5) and 6)((-and

(iii) Not use the costs incurred for medical care or for any other type of remedial care to reduce the family income)).

(3) ~~((Resource eligibility:~~

(a) ~~The total value of the family's countable resources shall not exceed five thousand dollars; and~~

(b) ~~The department shall count as resources only cash, savings accounts, checking accounts, and certificates of deposit))~~ The department shall not consider resources in determining the eligibility of groups in this section.

(4) ~~((During pregnancy and during the sixty-day period beginning on the last day of pregnancy, changes in a pregnant woman's income or living situations))~~ Changes in family income shall not affect eligibility for medical assistance during pregnancy and when eligible under subsection (2) of this section through the sixtieth day from the last day of pregnancy:

(a) ~~Once the department determines a pregnant woman ((is-determined))~~ eligible under this section; or

(b) ~~If at any time while eligible for and receiving medical assistance a pregnant woman meets the eligibility requirements of this section.~~

(5) ~~An infant ((or child who attains the maximum age, described under subsection (1)(a) or (b) of this section;))~~ shall ((continue to)) be eligible until the later of:

(a) ~~The end of the month in which the infant ((or child attains the maximum))~~ becomes one year of age; or

(b) ~~The end of the month in which the infant ((or child))~~ receives inpatient services if:

(i) ~~The infant ((or child))~~ is receiving inpatient services on the last day of the month in which the child ((attains the maximum)) becomes one year of age; and

(ii) ~~The stay for inpatient services continues into the following month or months; and~~

(iii) ~~The infant ((or child))~~ is eligible for medical assistance under this section except for age.

#### NEW SECTION

WAC 388-83-033 ~~CHILDREN--((OPTIONAL CATEGORICALLY NEEDY))~~ SEVEN YEARS OF AGE AND UNDER. (1) The department shall find children seven years of age and under, born after September 30, 1983, eligible for Medicaid as categorically needy if the children meet:

- (a) The income requirements of this section; and
- (b) Citizenship, enumeration, and residence under chapter 388-82 WAC ~~((-and~~

~~((Enumeration requirements under chapter 388-82 WAC)).~~

(2) Income eligibility:

(a) Total family income shall not exceed one hundred percent of the poverty income guidelines as published and updated by the secretary of health and human services. One hundred percent of the 1988 poverty income guidelines is:

FAMILY SIZE	MONTHLY
(i) One	\$ 498.00
(ii) Two	\$ 668.00
(iii) Three	\$ 838.00
(iv) Four	\$ 1,008.00
(v) Five	\$ 1,178.00
(vi) Six	\$ 1,348.00
(vii) Seven	\$ 1,518.00
(viii) Eight	\$ 1,688.00

(ix) For family units with more than eight members, add \$170 to the monthly income for each additional member.

(b) The department shall determine family income:

(i) According to AFDC methodology; and

(ii) Applying the special situations under WAC 388-83-130 (5) and (6).

(3) The department shall not consider resources in determining eligibility of children included in this section.

(4) A child who (~~attains~~) becomes eight years of age shall be eligible until the later of:

(a) The end of the month of the child's eighth birthday; or

(b) The end of the month in which the child receives inpatient services if:

(i) The child is receiving inpatient services on the last day of the month in which the child (~~attains~~) becomes eight years of age; and

(ii) The stay for inpatient services continues into the following months; and

(iii) Who, but for (~~attaining~~) becoming such age, would be eligible for assistance under this section.

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

**WSR 89-16-061  
PROPOSED RULES  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES  
(Public Assistance)  
[Filed July 31, 1989, 11:44 a.m.]**

**Original Notice.**

Title of Rule: Standards of assistance—Basic requirements, amending WAC 388-29-100.

Purpose: Increase the need standards for basic requirements.

Statutory Authority for Adoption: RCW 74.08.090.

Statute Being Implemented: Chapter 74.08 RCW.

Summary: Updates the need and 185% need standards.

Reasons Supporting Proposal: This rule amendment is necessary to conform to RCW 74.04.770. The need standards are updated annually.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Dave Monfort, Division of Income Assistance, 586-4594.

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

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

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

Proposal Changes the Following Existing Rules: Same as above.

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

Hearing Location: OB-2 Auditorium, 12th and Franklin, Olympia, Washington 98504, on September 5, 1989, at 10:00 a.m.

Submit Written Comments to: Troyce Warner, Chief, Office of Issuances, Department of Social and Health Services, Mailstop OB-33H, Olympia, Washington 98504, by September 5, 1989.

Date of Intended Adoption: September 15, 1989.

July 31, 1989

Leslie F. James, Director  
Administrative Services

**AMENDATORY SECTION** (Amending Order 2677, filed 9/1/88)

WAC 388-29-100 STANDARDS OF ASSISTANCE—BASIC REQUIREMENTS. (1) The statewide monthly need standards for basic requirements shall be:

(a) Households with an obligation to pay shelter costs effective (~~October 1, 1988~~) August 1, 1989.

Treat households residing in a lower income housing project, assisted under the United States Housing Act of 1937 or Section 236 of the National Housing Act, as renters if (~~they~~) the household member makes any utility payment in lieu of a rental payment.

Recipients in Household	Need Standard
1	\$ ((557)) <u>579</u>
2	((705)) <u>733</u>
3	((872)) <u>907</u>
4	((1,026)) <u>1,068</u>
5	((1,182)) <u>1,230</u>
6	((1,341)) <u>1,395</u>
7	((1,504)) <u>1,612</u>
8	((1,671)) <u>1,784</u>
9	((1,843)) <u>1,959</u>
10 or more	((2,046)) <u>2,129</u>

(b) Households without shelter costs effective (~~October 1, 1988~~) August 1, 1989.

The monthly standard for clients without shelter costs includes requirements for food, clothing, personal maintenance and necessary incidentals, household maintenance, and transportation.

Recipients in Household	Need Standard
1	\$ ((328)) <u>341</u>
2	((416)) <u>432</u>
3	((514)) <u>535</u>
4	((605)) <u>630</u>
5	((697)) <u>725</u>
6	((791)) <u>823</u>
7	((914)) <u>951</u>
8	((1,011)) <u>1,052</u>
9	((1,111)) <u>1,155</u>
10 or more	((1,207)) <u>1,256</u>

(2) One hundred eighty-five percent of the state-wide monthly need standard for basic requirements is:

(a) Households with shelter costs effective (~~October 1, 1988~~) August 1, 1989.

Recipients in Household	185% of Need Standard
1	\$ ((1,030)) <u>1,071</u>
2	((1,304)) <u>1,356</u>
3	((1,613)) <u>1,677</u>
4	((1,898)) <u>1,975</u>
5	((2,186)) <u>2,275</u>
6	((2,480)) <u>2,580</u>
7	((2,865)) <u>2,982</u>
8	((3,172)) <u>3,300</u>
9	((3,483)) <u>3,624</u>
10 or more	((3,785)) <u>3,938</u>

(b) Households without shelter costs effective (~~October 1, 1988~~) August 1, 1989.

Recipients in Household	185% of Need Standard
1	\$ ((606)) 630
2	((769)) 799
3	((950)) 989
4	((1,119)) 1,165
5	((1,289)) 1,341
6	((1,463)) 1,522
7	((1,690)) 1,759
8	((1,870)) 1,946
9	((2,055)) 2,136
10 or more	((2,232)) 2,323

(3) The state-wide monthly payment standard shall be:

(a) Effective (~~October 1, 1988~~) August 1, 1989, payment standards for households with shelter costs reflecting a ratable reduction of (~~43.7~~) 45.9 percent of need standards.

Treat households residing in a lower income housing project, assisted under the United States Housing Act of 1937 or Section 236 of the National Housing Act, as renters if (~~they~~) the household member makes any utility payment in lieu of a rental payment.

Recipients in Household	Payment Standard
1	\$ 314
2	397
3	492
4	578
5	666
6	756
7	873
8	966
9	1,061
10 or more	1,153

(b) Effective (~~October 1, 1988~~) August 1, 1989, payment standards for households without shelter costs reflecting a ratable reduction of (~~43.7~~) 45.8 percent of the need standard.

The monthly payment standard for clients without shelter costs shall include requirements for food, clothing, personal maintenance and necessary incidentals, transportation, and household maintenance.

Recipients in Household	Payment Standard
1	\$ 186
2	235
3	290
4	342
5	393
6	446
7	515
8	570
9	626
10 or more	680

**WSR 89-16-062  
PROPOSED RULES  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES  
(Public Assistance)**

[Filed July 31, 1989, 11:45 a.m.]

Original Notice.

Title of Rule: WAC 388-87-010 Conditions of payment—General.

Purpose: To clarify the limitations of when a provider may bill a recipient.

Statutory Authority for Adoption: RCW 74.08.090.

Statute Being Implemented: Chapter 74.09 RCW.

Summary: The provider may bill the department only for covered services provided to eligible recipients. The provider may bill a recipient for noncovered services only if there is written agreement prior to receiving the services.

Reasons Supporting Proposal: This rule is necessary to provide rules for provider billing when the recipient is not obligated to pay.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Bobbe Andersen, Division of Medical Assistance, 753-0529.

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

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

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

Proposal Changes the Following Existing Rules: Same as above.

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

Hearing Location: OB-2 Auditorium, 12th and Franklin, Olympia, Washington 98504, on September 5, 1989, at 10:00 a.m.

Submit Written Comments to: Troyce Warner, Chief, Office of Issuances, Department of Social and Health Services, Mailstop OB-33H, Olympia, Washington 98504, by September 5, 1989.

Date of Intended Adoption: October 2, 1989.

July 28, 1989

Leslie F. James, Director  
Administrative Services

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

WAC 388-87-010 CONDITIONS OF PAYMENT—GENERAL. (1) The department shall be responsible for payment of service rendered to a recipient only when:

(a) The services are within the scope of care(;) of the medical assistance program under chapter 388-86 WAC;

(b) The services are properly authorized; (and)

(c) The services are billed properly;

(d) The services are timely billed as described under WAC 388-88-015;

(e) The recipient is certified as eligible; and

(f) Third-party payment procedures are followed.

(2) The fees and rates ((established by)) the department establishes shall constitute the maximum allowable payment for approved medical care and services provided to recipients by the providers, except as specified in chapter 388-86 WAC.

(3) ((When a provider of service furnishes services to an eligible recipient and does not bill the department for services for which the department is responsible for payment, or fails to satisfy department conditions of payment such as prior approval and timely billing, the recipient is under no obligation to pay the provider)) An "eligible recipient" shall mean a person the department finds eligible for any medical program, regardless of whether the provider is aware of the person's eligibility status. The provider has the responsibility for deciding whether a client has medical coverage for the dates of service.

(4) A provider shall not bill, demand, or otherwise collect reimbursement from an eligible recipient, or from other persons on behalf of the recipient, for any service included in the medical program's scope of benefits, and the recipient is not liable for payment for such services if the provider:

(a) Does not properly bill the department for services the department is responsible for payment; or

(b) Fails to satisfy department conditions of payment, including but not limited to:

(i) Prior approval when required;

- (ii) Timely billing and billing according to department instructions;  
(iii) Pursuit of third-party liability; or  
(iv) Adequate documentation of medical necessity.  
(5) The department shall not pay for services not included in the medical program's scope of benefits.  
(6) A provider may bill an eligible recipient for services only when:  
(a) The recipient signs a specific written agreement with the provider before receiving the services stating the:  
(i) Specific service provided;  
(ii) Service is not covered by the medical assistance program;  
(iii) Recipient chooses to receive the specific service;  
(iv) Agreement is to pay for the services; and  
(v) Agreement is void and unenforceable and the recipient is under no obligation to pay the provider if the:  
(A) Service is covered by the medical program; or  
(B) Provider fails to satisfy department conditions of payment as described under WAC 388-87-010 (4)(b).  
(b) The recipient received reimbursement directly from a third party for services the department has no payment responsibility for; or  
(c) The bill counts toward a spenddown liability as described under WAC 388-99-030 and chapter 388-100 WAC.  
(7) A provider shall not bill a recipient for additional payment for a covered service when a third party is responsible for payment up to the department's rate.  
(8) The department shall not be responsible for payment of medical care or services if the third-party benefits are available to pay the recipient's medical expenses at the time the provider bills the department. The recipient shall not be responsible for payment except to the extent the recipient has directly received third-party reimbursement for such services.  
(9) A provider shall not refuse to furnish covered services to an eligible recipient because of a third party's potential liability for the services.  
(10) Payment for any service ((furnished)) a provider furnishes to a recipient ((by a provider)) may not be made to or through a factor who advances money to that provider for accounts receivable.  
((5)) (11) The department ((with)) shall not be responsible for payment for medical care and goods and/or services provided to a recipient:  
(a) Enrolled in a department-contracted, prepaid medical plan ((who fails)); and  
(b) Failing to use the provider under contract unless:  
(i) Emergency conditions exist; or  
(ii) The department has approved payment to another provider for provision of a service not covered by the prepaid plan.  
((6) The department will not be responsible for payment of that portion of medical care or services reimbursable within a reasonable time by a third-party resource available to the recipient such as health insurance coverage, casualty insurance or when medical needs result from accident or injury caused by another party. See chapter 388-83 WAC.  
((7)) (12) Payment for care under the medical assistance or limited casualty-medically needy programs ((will be)) are retroactive for three months ((prior to)) before the month of application provided the applicant ((would have been)) was eligible when the care was received. The applicant need not be eligible at the time of actual application. The central authorization unit's (CAU) medical consultant shall approve medical services that require approval ((must be approved by the ESO medical consultant)) for the retroactive period.  
((8)) (13) Payment for care under the limited casualty program-medically indigent may be retroactive for seven days ((prior to)) before the date of application if applicant is otherwise eligible. Medical services that require approval ((must)) shall be approved by the ((ESO)) CAU medical consultant for the retroactive period.  
((9)) (14) The department may pay a claim ((by)) a provider submits for payment for services rendered to a person ((who)) subsequently ((is)) determined ((to be)) ineligible at the time of service ((was rendered may be paid)) under the following conditions only:  
(a) The ineligible person ((must have been)) was certified at the time of service as both financially and medically eligible((:));  
(b) Payment ((has)) was not ((been)) made from sources outside the department((:)); and  
(c) A request for such payment ((must be)) is submitted to and approved by the division of medical assistance.

~~((+0)) (15) ((Payment)) The department shall pay for medically necessary services ((shall be made)) on the basis of usual and customary charges or the rates ((established by)) the department establishes, whichever is lower.~~

~~((+1)) (16) The department shall not authorize payment for well-baby care ((is not authorized)) except as provided under the early periodic screening, diagnosis and treatment (EPSDT) program. See WAC 388-86-027.~~

~~((+2)) (17) In counties/areas where transportation is provided as a medical service, payment for medically necessary transportation services, provided by nonprofit organizations, shall be based on the operating costs incurred in providing the service but shall not exceed the rates established by the department. See WAC 388-87-035 for transportation payment other than provided by a nonprofit organization.~~

**WSR 89-16-063**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
**(Public Assistance)**

[Order 2835—Filed July 31, 1989, 11:47 a.m.]

I, Leslie F. James, director of Administrative Services, do promulgate and adopt at Olympia, Washington, the annexed rules relating to Social Security number, amending WAC 388-49-320.

This action is taken pursuant to Notice No. WSR 89-11-099 filed with the code reviser on May 24, 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 74.04.510 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 July 24, 1989.

By Leslie F. James, Director  
 Administrative Services

**AMENDATORY SECTION** (Amending Order 2575, filed 12/31/87)

WAC 388-49-320 SOCIAL SECURITY NUMBER. (1) Categorically eligible households, ((as)) defined ((in)) under WAC 388-49-180, are not subject to the provisions of this section.

(2) Prior to certification, a person applying for or participating in the food stamp program shall:

(a) Provide ((his or her)) the Social Security number or numbers (SSN)((:)) for each member of the household; or

(b) Apply for and provide verification of SSN application if number is unknown or has not been issued.

(3) The department shall inform households:

(a) Where to apply for an SSN((:));

(b) What information is needed((:)); and

(c) Failure to apply for or provide an SSN shall result in the disqualification of the person for whom the SSN is not obtained.

(4) The department shall disqualify any person failing to provide or apply for an SSN. The disqualification shall continue until the person provides ~~((a))~~ an SSN.

(5) The department shall allow the person to participate for one month in addition to the month of application if a household member can show good cause why ~~((a))~~ an SSN application has not been completed in a timely manner. The following criteria shall determine good cause:

(a) Good cause shall exist when:

~~((a))~~ (i) Documentary evidence or collateral information verifies the person has ~~((applied))~~ attempted to apply for an SSN; ~~((or))~~ and

~~((b))~~ (ii) The person has made every effort to supply Social Security Administration with necessary information ~~((; and)).~~

~~((c))~~ (b) Good cause does not include delays due to illness, lack of transportation, or temporary absence.

(6) The department shall make every effort to assist the household member to obtain documents necessary for SSN application.

(7) The department shall determine good cause for failure to apply monthly to allow ~~((persons))~~ the household member to continue on the food stamp program.

~~((8))~~ ~~((Disqualified persons may become eligible when they provide their SSN.~~

~~((9))~~ The department shall not delay certification of an eligible household for verification of an SSN.

(9) The department shall determine the whole household to be ineligible if, after being notified an SSN was returned by the Social Security Administration (SSA) as not validated, the household refuses to provide the:

(a) Correct information; or

(b) Information SSA needs to verify the SSN.

**WSR 89-16-064**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
**(General Provisions)**

[Order 2839—Filed July 31, 1989, 11:49 a.m.]

I, Leslie F. James, director of Administrative Services, do promulgate and adopt at Olympia, Washington, the annexed rules relating to Overpayment—Repayment, amending chapter 440-44 WAC.

This action is taken pursuant to Notice No. WSR 89-12-076 filed with the code reviser on June 7, 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 43.20B-.110 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 July 28, 1989.

By Leslie F. James, Director  
Administrative Services

AMENDATORY SECTION (Amending Order 1825, filed 6/4/82)

WAC 440-44-023 **AMBULANCES AND FIRST-AID VEHICLES LICENSING AND INSPECTION FEES.** ~~((The following))~~ The department shall assess no annual fees ~~((shall be assessed))~~ for inspection and licensing of ambulances and first-aid vehicles~~((:~~

~~(1) Ambulance vehicles—Forty-five dollars.~~

~~(2) First-aid vehicles—Twenty-five dollars.)~~ since municipal corporations providing emergency medical care and transportation services pursuant to chapter 18-.73 RCW ~~((shall be))~~ are exempt from such fees and constitute ninety-five percent of all agencies requiring licenses.

AMENDATORY SECTION (Amending Order 2493, filed 7/1/87)

WAC 440-44-040 **MEDICAL FACILITIES ~~((AND BOARDING HOMES))~~ LICENSING FEES.**

(1) Hospitals licensed under chapter 70.41 RCW shall: ~~((The annual fee shall be nineteen dollars for each bed space within the licensed bed capacity of the hospital. The licensed bed capacity of a hospital shall include all bed spaces in rooms in compliance with the physical plant and movable equipment requirements of chapter 248-18 WAC for twenty-four hour assigned patient rooms including neonatal intensive care bassinet spaces. Bed spaces not used for twenty-four hour assigned patient use, in compliance with the physical plant requirements of chapter 248-18 WAC but not containing the required movable equipment, shall be included in the licensed bed capacity. PROVIDED, That the hospital certifies to the department the hospital currently possesses the required movable equipment. The licensed bed capacity shall exclude all normal infant bassinets. The number of licensed bed spaces shall be limited in accordance with decisions made under chapter 70.38 RCW, and bed additions subsequent to the establishment of each hospital's licensed bed capacity by the department shall be subject to review under chapter 70.38 RCW. The number of twenty-four hour assigned patient beds set up in a hospital shall not exceed the hospital's licensed bed capacity))~~

(a) Submit an annual license fee of nineteen dollars for each bed space within the licensed bed capacity of the hospital to the department;

(b) Include all bed spaces in rooms complying with physical plant and movable equipment requirements of chapter 248-18 WAC for twenty-four-hour assigned patient rooms;

(c) Include neonatal intensive care bassinet spaces;

(d) Include bed spaces assigned for less than twenty-four-hour patient use as part of the licensed bed capacity when:

(i) Physical plant requirements of chapter 248-18 WAC are met without movable equipment; and



(ii) The hospital currently possesses the required movable equipment and certifies this fact to the department.

(e) Exclude all normal infant bassinets;

(f) Limit licensed bed spaces as required under chapter 70.38 RCW;

(g) Submit an application for bed additions to the department for review and approval under chapter 70.38 RCW subsequent to department establishment of the hospital licensed bed capacity; and

(h) Set up twenty-four-hour assigned patient beds only within the licensed bed capacity approved by the department.

(2) Private psychiatric hospitals licensed under chapter 71.12 RCW shall: ((The annual fee shall be twenty-seven dollars for each bed space within the licensed bed capacity of the private psychiatric hospital. The licensed bed capacity of a private psychiatric hospital shall include all bed spaces in rooms in compliance with the physical plant and movable equipment requirements of chapter 248-22 WAC for twenty-four hour assigned patient rooms. Bed spaces not used for twenty-four hour assigned patient use, in compliance with the physical plant requirement of chapter 248-22 WAC but not containing the required movable equipment, will be included in the licensed bed capacity. PROVIDED, That the private psychiatric hospital certifies to the department the private psychiatric hospital currently possesses the required movable equipment.

The number of licensed bed spaces shall be limited in accordance with decisions made under chapter 70.38 RCW, and bed additions subsequent to the establishment of each private psychiatric hospital's licensed bed capacity by the department shall be subject to review under chapter 70.38 RCW. The number of twenty-four hour assigned patient beds set up in a private psychiatric hospital shall not exceed the private psychiatric hospital's licensed bed capacity))

(a) Submit an annual fee of twenty-seven dollars for each bed space within the licensed bed capacity of the hospital to the department;

(b) Include all bed spaces and rooms complying with physical plant and movable equipment requirements of chapter 248-22 WAC for twenty-four-hour assigned patient rooms;

(c) Include bed spaces assigned for less than twenty-four-hour patient use as part of the licensed bed capacity when:

(i) Physical plant requirements of chapter 248-22 WAC are met without movable equipment; and

(ii) The private psychiatric hospital currently possesses the required movable equipment and certifies this fact to the department.

(d) Limit licensed bed spaces as required under chapter 70.38 RCW;

(e) Submit applications for bed additions to the department for review and approval under chapter 70.38 RCW subsequent to department establishment of the private psychiatric hospital's licensed bed capacity; and

(f) Set up twenty-four-hour assigned patient beds only within the licensed bed capacity approved by the department.

(3) Alcoholism hospitals licensed under chapter 71.12 RCW shall: ((The annual fee shall be twenty dollars for each bed space within the licensed bed capacity of the alcoholism hospital. The licensed bed capacity of an alcoholism hospital shall include all bed spaces in rooms in compliance with the physical plant and movable equipment requirements of chapter 248-22 WAC for twenty-four hour assigned patient rooms. The number of twenty-four hour assigned patient beds set up in an alcoholism hospital shall not exceed the alcoholism hospital's licensed bed capacity))

(a) Submit an annual fee of twenty dollars for each bed space within the licensed bed capacity of the alcoholism hospital to the department;

(b) Include all bed spaces in rooms complying with physical plant and movable equipment requirements of chapter 248-22 WAC for twenty-four-hour assigned patient rooms;

(c) Include bed spaces assigned for less than twenty-four-hour patient use as part of the licensed bed capacity when:

(i) Physical plan requirements of chapter 248-22 WAC are met without movable equipment; and

(ii) The alcoholism hospital currently possesses the required movable equipment and certifies this fact to the department.

(d) Limit licensed bed spaces as required under chapter 70.38 RCW;

(e) Submit an application for bed additions to the department for review and approval under chapter 70.38 RCW subsequent to the department establishment of the alcoholism hospital's licensed bed capacity; and

(f) Set up twenty-four-hour assigned patient beds only within the licensed bed capacity approved by the department.

(4) ((Alcoholism treatment facilities: The annual fee shall be twelve dollars and fifty cents for each bed space within the licensed bed capacity of the alcoholism treatment facility. The licensed bed capacity of an alcoholism treatment facility shall include all bed spaces in rooms in compliance with the physical plant and movable equipment requirements of chapter 248-22 WAC for twenty-four hour assigned patient rooms. The number of twenty-four hour assigned patient beds set up in an alcoholism treatment facility shall not exceed the alcoholism treatment facility's licensed bed capacity.

(5) Boarding homes: The annual fee shall be thirteen dollars times the licensed resident capacity of the boarding home. The licensed resident capacity is the capacity determined by the boarding home and approved by the department. The licensed resident capacity shall be consistent with the physical plant and movable equipment requirements of chapter 248-16 WAC for resident sleeping rooms. The number of residents in a boarding home shall not exceed the licensed resident capacity of the boarding home. The term "resident" as used herein is defined in WAC 248-16-001.

(6) Residential treatment facilities for psychiatrically impaired children and youth: The annual fee shall be fifty-two dollars for each bed space within the licensed bed capacity of the residential treatment facility for

~~psychiatrically impaired children and youth. The licensed bed capacity of a residential treatment facility for psychiatrically impaired children and youth shall include all bed spaces in rooms in compliance with the physical plant and movable equipment requirements of chapter 248-23 WAC for client sleeping rooms. The number of beds set up in a residential treatment facility for psychiatrically impaired children and youth shall not exceed the residential treatment facility for psychiatrically impaired children and youth licensed bed capacity.~~

~~(7) Pregnancy termination facilities. The annual fee for licensing and certification of facilities for induction or termination of pregnancy in the second trimester shall be two hundred fifty dollars.~~

~~(8) Child birth centers. The annual fee shall be five hundred dollars. PROVIDED, That no fee shall be required of charitable, nonprofit or government-operated institutions (as required by RCW 18.46.030).~~

~~(9) Residential treatment and rehabilitation facilities for psychiatrically impaired adults. The annual fee shall be fifty dollars for each bed space within the licensed bed capacity of the residential treatment and rehabilitation facility for psychiatrically impaired adults. The licensed bed capacity of a residential treatment and rehabilitation facility for psychiatrically impaired adults shall include all bed spaces in rooms in compliance with the physical plant and movable equipment requirements of chapter 248-25 WAC for client sleeping rooms. The number of beds set up in a residential treatment and rehabilitation facility for psychiatrically impaired adults shall not exceed the residential treatment and rehabilitation facility for psychiatrically impaired adults licensed bed capacity.~~

~~(10) Hospice care centers. Each application for a license shall be accompanied by a license fee of three hundred dollars.~~

~~(11) Hospice agencies. The annual fee for each facility certified under chapter 70.126 RCW shall be three hundred dollars.~~

~~(12) Home health agencies. The annual fee for each facility certified under chapter 70.126 RCW shall be three hundred dollars.) Hospice care centers licensed under chapter 70.41 RCW shall include a license fee of three hundred dollars with each application for a license.~~

#### NEW SECTION

WAC 440-44-041 **CHILDBIRTH CENTERS AND PREGNANCY TERMINATION FACILITIES.**

(1) Childbirth centers licensed under chapter 18.46 RCW shall submit an annual fee of five hundred dollars to the department unless a center is a charitable, nonprofit, or government-operated institution under RCW 18.46.030.

(2) Pregnancy termination facilities certified under chapter 9.02 RCW shall submit an annual fee of two hundred and fifty dollars to the department for licensing and certification of facilities for induction or termination of pregnancy in the second trimester.

#### NEW SECTION

WAC 440-44-043 **BOARDING HOMES AND TREATMENT FACILITIES LICENSING FEES.** (1) Boarding homes licensed under chapter 18.20 RCW shall:

(a) Submit an annual fee of fourteen dollars multiplied by the department-approved capacity of the boarding home;

(b) Define "resident" as defined under WAC 248-16-001;

(c) Define "licensed resident capacity" as the resident occupancy level determined by the boarding home and approved by the department, consistent with physical plant and movable equipment requirements for resident sleeping rooms under chapter 248-16 WAC; and

(d) Maintain occupancy level at or below the licensed resident capacity of the boarding home.

(2) Alcoholism treatment facilities licensed under chapter 71.12 RCW shall:

(a) Submit an annual fee of fifteen dollars for each bed space within the licensed bed capacity of the alcoholism treatment facility to the department;

(b) Include all bed spaces in rooms complying with physical plant and movable equipment requirements of chapter 248-26 WAC for twenty-four-hour assigned patient rooms; and

(c) Set up twenty-four-hour assigned patient beds only within the licensed bed capacity approved by the department.

(3) Residential treatment facilities for psychiatrically impaired children and youth (RTF-CY) licensed under chapter 71.12 RCW shall:

(a) Submit an annual fee of thirty-five dollars for each bed space within the licensed bed capacity of the RTF-CY;

(b) Include all bed spaces and rooms complying with physical plant and movable equipment requirements of chapter 248-23 WAC; and

(c) Set up twenty-four-hour assigned patient beds only within the licensed bed capacity approved by the department.

(4) Adult residential rehabilitation centers (ARRC) licensed under chapter 71.12 RCW shall:

(a) Submit an annual fee of thirty-five dollars for each bed space within the licensed bed capacity of the ARRC;

(b) Include all bed spaces in rooms complying with physical plant and movable equipment requirements in chapter 248-25 WAC for client sleeping rooms; and

(c) Set up twenty-four-hour assigned client beds only within the licensed bed capacity approved by the department.

AMENDATORY SECTION (Amending Order 2359, filed 3/28/86)

WAC 440-44-050 **RADIATION MACHINE FACILITY REGISTRATION FEES.** ((The following biennial fees are required at the time of application or renewal. For any facility or group of facilities under one administrative control the maximum fee of three thousand dollars has been established.))

(1) Persons owning and/or leasing and using radiation-producing machines shall submit a fifty dollar registration fee to the department at the time of application and every two years thereafter. In addition:

(a) For dentists, veterinarians, and podiatrists, add: ((A fifty dollar registration fee plus))

(i) Sixty dollars for the first tube ((plus twenty-five)); and

(ii) Twenty dollars for each additional tube.

((2)) (b) For hospitals(;) and medical ((and) or chiropractic facilities, add: ((A fifty dollar registration fee plus))

(i) One hundred ((seventy-five)) eighty dollars for the first tube ((plus fifty)); and

(ii) Sixty dollars for each additional tube.

((3)) (c) For industrial, research, and ((others)) other uses, add: ((A fifty dollar registration fee plus))

(i) One hundred dollars for the first tube ((plus fifty)); and

(ii) Thirty dollars for each additional tube.

((4)) (2) ((For dentists: A fifty dollar registration fee plus forty-five dollars for the first tube plus twenty dollars for each additional tube)) The department shall charge a maximum of three thousand dollars total fee for any facilities under one administration.

Within ((30)) thirty days following the declaration of a critical water supply service area, a water utility coordinating committee composed of not less than three voting members shall be appointed by the declaring ((agency(ies))) authority.

(2) The water utility coordinating committee shall consist of one representative from each of the following:

(a) ((Each)) County legislative authority within the declared area((;));

(b) ((Each)) County planning agency having jurisdiction within the declared area((;));

(c) ((Each)) Health agency having jurisdiction within the declared area ((f)) under chapters 70.08, 70.05, 43.20 RCW((;)); and

(d) ((Each)) Water purveyor with over fifty services within the declared area.

(Other ((agencies or purveyors shall)) interested persons may be appointed as ((ex-officio)) nonvoting members of the committee by the authority declaring the critical water supply service area if determined appropriate ((by the county legislative authority(ies) or the department)).

(3) ((In order for the water utility coordinating committee to conduct business, at least half but not less than three representatives from the entities listed in subsection (2) shall be present.

((4)) At the first meeting of the water utility coordinating committee, the following shall be determined ((by consensus)):

(a) Chairperson; and

(b) Rules for conducting business, including voting procedure.

**WSR 89-16-065  
PERMANENT RULES  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES  
(Health)**

[Order 2840—Filed July 31, 1989, 11:53 a.m.]

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

- Amd WAC 248-56-500 Water utility coordinating committee—Establishment.
- Amd WAC 248-57-500 Minimum standards for fire flow.

This action is taken pursuant to Notice No. WSR 89-11-055 filed with the code reviser on May 17, 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 chapter 70.116 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 29, 1989.

By Leslie F. James, Director  
Administrative Services

**AMENDATORY SECTION (Amending Order 1309, filed 6/28/78)**

**WAC 248-56-500 WATER UTILITY COORDINATING COMMITTEE—ESTABLISHMENT. (1)**

**AMENDATORY SECTION (Amending Order 1378, filed 3/12/79)**

**WAC 248-57-500 MINIMUM STANDARDS FOR FIRE FLOW. (1) ((Minimum fire flows shall be those set forth by)) City, town, or county legislative authority shall set minimum fire flows where local standards ((have been promulgated in accordance with)) are adopted under WAC 248-57-900.**

**(2) Where local standards ((have)) are not ((been promulgated in accordance with)) adopted under WAC 248-57-900, ((minimim)) Table 1 shall identify minimum fire flows ((shall be those identified in Table 1)). Contact with the county and local fire protection authority shall be made before applying these standards in a water system plan or to design of individual development.**

TABLE 1

MINIMUM FIRE FLOWS \*

Development Classification	Minimum Fire Flow Requirement
(as described ((in)) under WAC 248-57-400)	
Rural	None
((20)) Residential	500 gallons per minute for 30 minutes
Commercial and multifamily structures greater than 4000 sq. ft.	750 gallons per minute for 60 minutes**

Development Classification	Minimum Fire Flow Requirement
(as described ((m)) under WAC 248-57-400)	

Industrial 1000 gallons per minute for 60 minutes\*\*

- \* Minimum flows are in addition to requirements for normal domestic maximum use.
- \*\* Commercial and industrial buildings may be subject to higher flow requirements when evaluated on an individual basis by the local fire protection authority.

Note: ((These)) Minimum standards in most cases require less flow than categories in the guidelines published by the Insurance Services Office (Municipal Survey Service, 160 Water Street, New York, New York 10038) and therefore may not result in lower insurance rates.

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

**WSR 89-16-066**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
**(Public Assistance)**

[Order 2841—Filed July 31, 1989, 11:55 a.m.]

Date of Adoption: July 31, 1989.

Purpose: To add enhanced maternity benefit rules.

Citation of Existing Rules Affected by this Order: Amending WAC 388-86-024 Enhanced benefits for pregnant women.

Statutory Authority for Adoption: RCW 74.08.090.

Other Authority: Chapter 74.09 RCW.

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

Reasons for this Finding: Certain enhanced benefits for pregnant women will be provided as optional services under the medical assistance program.

Effective Date of Rule: August 1, 1989, 12:01 a.m.

July 28, 1989

Leslie F. James, Director  
 Administrative Services

**NEW SECTION**

**WAC 388-86-024 ENHANCED BENEFITS FOR PREGNANT WOMEN.** (1) *The department shall provide enhanced benefits to a Medicaid recipient during pregnancy and through the end of the month containing the sixtieth day after the pregnancy ends.*

(2) *The enhanced benefits include:*

(a) *Maternity support services, by a provider approved by the bureau of parent-child health services, consisting of:*

- (i) *Nursing assessment and/or counseling visit;*
- (ii) *Psychosocial assessment and/or counseling visit;*

- (iii) *Nutrition assessment and/or counseling visit; and*
- (iv) *Child birth/parenting education.*

(b) *Outpatient alcohol and drug treatment consisting of:*

(i) *A chemical (abuse)) dependency assessment by an Alcohol and Drug Abuse Treatment and Service Act assessment center as defined under chapter 275-19 WAC; and*

(ii) *Chemical dependency treatment.*

(3) *The recipient has the freedom of choice:*

(a) *To receive maternity support services;*

(b) *Of qualified maternity support services providers; and*

(c) *To be referred for outpatient alcohol and drug treatment, unless ordered by the court.*

(4) *The department shall pay per recipient a maximum of:*

(a) *Ten contacts for assessment/counseling visits under subsection (2)(a) of this section;*

(b) *One contact for child birth/parenting education;*

(c) *One contact for an alcohol and drug treatment assessment under subsection (2)(b) of this section; and*

(d) *Two hundred hours of outpatient chemical dependency treatment.*

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

**WSR 89-16-067**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
**(Public Assistance)**

[Order 2842—Filed July 31, 1989, 11:56 a.m.]

Date of Adoption: July 31, 1989.

Purpose: To incorporate the changes in the level of income for pregnant women and children from 90 percent of the federal poverty level to 185% for pregnant women and infants under one year of age and to 100% for children born after September 30, 1983, and are under 8 years of age. The rules clarify that citizenship and residence under chapter 388-82 WAC are eligibility requirements for this program.

Citation of Existing Rules Affected by this Order: Amending WAC 388-83-032 Pregnant women and infants; and 388-83-033 Children—Seven years of age and under.

Statutory Authority for Adoption: RCW 74.08.090.

Other Authority: Chapter 74.09 RCW.

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

Reasons for this Finding: These rules are necessary to implement provisions of the Maternity Care Access Act of 1989, HB 2244.

Effective Date of Rule: August 1, 1989, 12:01 a.m.  
 July 28, 1989  
 Leslie F. James, Director  
 Administrative Services

AMENDATORY SECTION (Amending Order 2798, filed 5/17/89)

~~WAC 388-83-032 ((NEEDY INFANTS, CHILDREN AND)) PREGNANT WOMEN AND INFANTS.~~ (1) ~~The department shall find ((the following groups)) pregnant women and infants one year of age or younger eligible for Medicaid as categorically needy, if ((they)) the pregnant women and infants meet:~~

~~(a) The income ((and resource)) requirements of this section(:~~

- ~~(a) Effective July 1, 1987:~~
- ~~(i) Women during pregnancy and during the sixty-day period beginning on the last day of pregnancy); and~~
- ~~((ii) Infants under one year of age.))~~

~~(b) ((Effective October 1, 1988, children two years of age)) Citizenship, enumeration, and residence requirements under chapter 388-82 WAC.~~

~~(2) If the pregnant woman applies on or before the last day of pregnancy, the department shall find her eligible for continued Medicaid coverage through the end of the month containing the sixtieth day from the day pregnancy ends.~~

~~(3) Income eligibility:~~

~~(a) Total family income shall not exceed ((ninety)) one hundred eighty-five percent of the poverty income guidelines as published and updated by the secretary of health and human services. ((Ninety)) One hundred eighty-five percent of the 1989 poverty income guidelines is:~~

	Family Size	Monthly
(i)	One	\$ ((499.00)) 922
(ii)	Two	\$ ((602.00)) 1,236
(iii)	Three	\$ ((755.00)) 1,551
(iv)	Four	\$ ((908.00)) 1,865
(v)	Five	\$ ((1,061.00)) 2,180
(vi)	Six	\$ ((1,214.00)) 2,494
(vii)	Seven	\$ ((1,367.00)) 2,809
(viii)	Eight	\$ ((1,520.00)) 3,123

~~(ix) For family units with nine members or more, add \$((153.00)) 315 to the monthly income for each additional member.~~

~~(b) The department shall determine family income:~~

~~(i) ((Determine family income)) According to AFDC methodology, except ((for the exclusions)) the department shall exclude the income of the unmarried father of the unborn unless the income is actually contributed, and~~

~~(ii) Apply the special situations under WAC 388-83-130 (5) and (6)((-and~~

~~(ii) Not use the costs incurred for medical care or for any other type of remedial care to reduce the family income)).~~

~~(3) ((Resource eligibility:~~

~~(a) The total value of the family's countable resources shall not exceed five thousand dollars, and~~

~~(b) The department shall count as resources only cash, savings accounts, checking accounts, and certificates of deposit)) The department shall not consider resources in determining the eligibility of groups in this section.~~

~~(4) ((During pregnancy and during the sixty-day period beginning on the last day of pregnancy, changes in a pregnant woman's income or living situations)) Changes in family income shall not affect eligibility for medical assistance during pregnancy and when eligible under subsection (2) of this section through the sixtieth day from the last day of pregnancy:~~

~~(a) Once the department determines a pregnant woman ((is determined)) eligible under this section; or~~

~~(b) If at any time while eligible for and receiving medical assistance a pregnant woman meets the eligibility requirements of this section.~~

~~(5) An infant ((or child who attains the maximum age, described under subsection (1)(a) or (b) of this section,)) shall ((continue to)) be eligible until the later of:~~

~~(a) The end of the month in which the infant ((or child attains the maximum)) becomes one year of age, or~~

~~(b) The end of the month in which the infant ((or child)) receives inpatient services if:~~

~~(i) The infant ((or child)) is receiving inpatient services on the last day of the month in which the child ((attains the maximum)) becomes one year of age, and~~

~~(ii) The stay for inpatient services continues into the following month or months; and~~

~~(iii) The infant ((or child)) is eligible for medical assistance under this section except for age.~~

NEW SECTION

WAC 388-83-033 CHILDREN—((OPTIONAL CATEGORICALLY NEEDY)) SEVEN YEARS OF AGE AND UNDER. (1) The department shall find children seven years of age and under, born after September 30, 1983, eligible for Medicaid as categorically needy if the children meet:

~~(a) The income requirements of this section; and~~

~~(b) Citizenship, enumeration, and residence under chapter 388-82 WAC((-and~~

~~(c) Enumeration requirements under chapter 388-82 WAC)).~~

~~(2) Income eligibility:~~

~~(a) Total family income shall not exceed one hundred percent of the poverty income guidelines as published and updated by the secretary of health and human services. One hundred percent of the 1988 poverty income guidelines is:~~

	FAMILY SIZE	MONTHLY
(i)	One	\$ 498.00
(ii)	Two	\$ 668.00
(iii)	Three	\$ 838.00
(iv)	Four	\$ 1,008.00
(v)	Five	\$ 1,178.00
(vi)	Six	\$ 1,348.00
(vii)	Seven	\$ 1,518.00
(viii)	Eight	\$ 1,688.00

(ix) For family units with more than eight members, add \$170 to the monthly income for each additional member.

(b) The department shall determine family income:

(i) According to AFDC methodology; and

(ii) Applying the special situations under WAC 388-83-130 (5) and (6).

(3) The department shall not consider resources in determining eligibility of children included in this section.

(4) A child who ~~((attains))~~ becomes eight years of age shall be eligible until the later of:

(a) The end of the month of the child's eighth birthday; or

(b) The end of the month in which the child receives inpatient services if:

(i) The child is receiving inpatient services on the last day of the month in which the child ~~((attains))~~ becomes eight years of age; and

(ii) The stay for inpatient services continues into the following months; and

(iii) Who, but for ~~((attaining))~~ becoming such age, would be eligible for assistance under this section.

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

**WSR 89-16-068**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
**(Public Assistance)**  
 [Order 2843—Filed July 31, 1989, 11:57 a.m.]

Date of Adoption: July 31, 1989.

Purpose: Increase the need standards for basic requirements.

Citation of Existing Rules Affected by this Order: Amending WAC 388-29-100 Standards of assistance—Basic requirements.

Statutory Authority for Adoption: RCW 74.08.090.

Other Authority: Chapter 74.08 RCW.

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

Reasons for this Finding: This rule is necessary to increase the need standards for basic requirements.

Effective Date of Rule: August 1, 1989, 12:01 a.m.

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

AMENDATORY SECTION (Amending Order 2677, filed 9/1/88)

WAC 388-29-100 STANDARDS OF ASSISTANCE—BASIC REQUIREMENTS. (1) The statewide monthly need standards for basic requirements shall be:

(a) Households with an obligation to pay shelter costs effective ~~((October 1, 1988))~~ August 1, 1989.

Treat households residing in a lower income housing project, assisted under the United States Housing Act of 1937 or Section 236 of the National Housing Act, as renters if ~~((they))~~ the household member makes any utility payment in lieu of a rental payment.

Recipients in Household	Need Standard
1	\$ <del>((557))</del> <u>579</u>
2	<del>((705))</del> <u>733</u>
3	<del>((872))</del> <u>907</u>
4	<del>((1,026))</del> <u>1,068</u>
5	<del>((1,182))</del> <u>1,230</u>
6	<del>((1,341))</del> <u>1,395</u>
7	<del>((1,549))</del> <u>1,612</u>
8	<del>((1,715))</del> <u>1,784</u>
9	<del>((1,883))</del> <u>1,959</u>
10 or more	<del>((2,046))</del> <u>2,129</u>

(b) Households without shelter costs effective ~~((October 1, 1988))~~ August 1, 1989.

The monthly standard for clients without shelter costs includes requirements for food, clothing, personal maintenance and necessary incidentals, household maintenance, and transportation.

Recipients in Household	Need Standard
1	\$ <del>((328))</del> <u>341</u>
2	<del>((416))</del> <u>432</u>
3	<del>((514))</del> <u>535</u>
4	<del>((605))</del> <u>630</u>
5	<del>((697))</del> <u>725</u>
6	<del>((791))</del> <u>823</u>
7	<del>((914))</del> <u>951</u>
8	<del>((1,011))</del> <u>1,052</u>
9	<del>((1,111))</del> <u>1,155</u>
10 or more	<del>((1,207))</del> <u>1,256</u>

(2) One hundred eighty-five percent of the state-wide monthly need standard for basic requirements is:

(a) Households with shelter costs effective ~~((October 1, 1988))~~ August 1, 1989.

Recipients in Household	185% of Need Standard
1	\$ <del>((1,030))</del> <u>1,071</u>
2	<del>((1,304))</del> <u>1,356</u>
3	<del>((1,613))</del> <u>1,677</u>
4	<del>((1,898))</del> <u>1,975</u>
5	<del>((2,186))</del> <u>2,275</u>
6	<del>((2,480))</del> <u>2,580</u>
7	<del>((2,865))</del> <u>2,982</u>

Recipients in Household	185% of Need Standard
8	((3,172)) <u>3,300</u>
9	((3,483)) <u>3,624</u>
10 or more	((3,785)) <u>3,938</u>

(b) Households without shelter costs effective ((October 1, 1988)) August 1, 1989.

Recipients in Household	185% of Need Standard
1	\$ ((606)) <u>630</u>
2	((769)) <u>799</u>
3	((950)) <u>989</u>
4	((1,119)) <u>1,165</u>
5	((1,289)) <u>1,341</u>
6	((1,463)) <u>1,522</u>
7	((1,690)) <u>1,759</u>
8	((1,870)) <u>1,946</u>
9	((2,055)) <u>2,136</u>
10 or more	((2,232)) <u>2,323</u>

(3) The state-wide monthly payment standard shall be:

(a) Effective ((October 1, 1988)) August 1, 1989, payment standards for households with shelter costs reflecting a ratable reduction of ((43.7)) 45.9 percent of need standards.

Treat households residing in a lower income housing project, assisted under the United States Housing Act of 1937 or Section 236 of the National Housing Act, as renters if ((they)) the household member makes any utility payment in lieu of a rental payment.

Recipients in Household	Payment Standard
1	\$ 314
2	397
3	492
4	578
5	666
6	756
7	873
8	966
9	1,061
10 or more	1,153

(b) Effective ((October 1, 1988)) August 1, 1989, payment standards for households without shelter costs reflecting a ratable reduction of ((43.7)) 45.8 percent of the need standard.

The monthly payment standard for clients without shelter costs shall include requirements for food, clothing, personal maintenance and necessary incidentals, transportation, and household maintenance.

Recipients in Household	Payment Standard
1	\$ 186
2	235
3	290

Recipients in Household	Payment Standard
4	342
5	393
6	446
7	515
8	570
9	626
10 or more	680

**WSR 89-16-069**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
**(Public Assistance)**  
 [Filed July 31, 1989, 12:08 p.m.]

Original Notice.

Title of Rule: Amending [new] WAC 388-86-024 Enhanced benefits for pregnant women.

Purpose: To add enhanced maternity benefit rules.

Statutory Authority for Adoption: RCW 74.08.090.

Statute Being Implemented: Chapter 74.09 RCW.

Summary: Adding enhanced maternity benefit rules.

Reasons Supporting Proposal: This rule is necessary to implement provisions of the Maternity Care Access Act of 1989, HB 2244.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Bobbe Andersen, Division of Medical Assistance, 3-0529.

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

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

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

Proposal Changes the Following Existing Rules: See above.

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

Hearing Location: OB-2 Auditorium, 12th and Franklin, Olympia Washington 98504, on September 5, 1989, at 10:00 a.m.

Submit Written Comments to: Troyce Warner, Chief, Office of Issuances, Department of Social and Health Services, Mailstop OB-33H, Olympia, Washington 98504, by September 5, 1989.

Date of Intended Adoption: October 2, 1989.

July 28, 1989

Leslie F. James, Director  
 Administrative Services

NEW SECTION

WAC 388-86-024 ENHANCED BENEFITS FOR PREGNANT WOMEN. (1) The department shall provide enhanced benefits to a Medicaid recipient during pregnancy and through the end of the month containing the sixtieth day after the pregnancy ends.

(2) The enhanced benefits include:

(a) Maternity support services, by a provider approved by the bureau of parent-child health services, consisting of:

(i) Nursing assessment and/or counseling visit;



- (ii) Psychosocial assessment and/or counseling visit;
- (iii) Nutrition assessment and/or counseling visit; and
- (iv) Child birth/parenting education.
- (b) Outpatient alcohol and drug treatment consisting of:
  - (i) A chemical (~~abuse~~) dependency assessment by an Alcohol and Drug Abuse Treatment and Service Act assessment center as defined under chapter 275-19 WAC; and
  - (ii) Chemical dependency treatment.
- (3) The recipient has the freedom of choice:
  - (a) To receive maternity support services;
  - (b) Of qualified maternity support services providers; and
  - (c) To be referred for outpatient alcohol and drug treatment, unless ordered by the court.
- (4) The department shall pay per recipient a maximum of:
  - (a) Ten contacts for assessment/counseling visits under subsection (2)(a) of this section;
  - (b) One contact for child birth/parenting education;
  - (c) One contact for an alcohol and drug treatment assessment under subsection (2)(b) of this section; and
  - (d) Two hundred hours of outpatient chemical dependency treatment.

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

**WSR 89-16-070**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
**(Health)**

[Order 2844—Filed July 31, 1989, 12:10 p.m.]

Date of Adoption: July 31, 1989.

Purpose: Ambulance rules and regulations, amending chapter 248-17 WAC.

Citation of Existing Rules Affected by this Order: Amending chapter 248-17 WAC.

Statutory Authority for Adoption: RCW 18.73.080.

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

Reasons for this Finding: This rule is necessary for an emergency medical technician or first responder either to complete an ongoing program of continuing medical education and practical skills evaluation approved by the medical program director and the department; or obtain the required number of hours of continuing medical education annually and pass a final written and practical skills exam at the end of the three-year certification period.

Effective Date of Rule: August 1, 1989, 12:01 a.m.

July 31, 1989  
 Linda Zacharias  
 for Leslie F. James, Director  
 Administrative Services

AMENDATORY SECTION (Amending Order 2138, filed 8/10/84)

WAC 248-17-020 DEFINITIONS. For the purpose of these regulations, the following words and

phrases shall have the following meaning unless the context clearly indicates otherwise.

(1) "Advanced first aid" means a course of instruction recognized by the American Red Cross, Department of Labor and Industries, the U.S. Bureau of Mines, or state fire protection services/fire services training.

(2) "Aid director" means a person who is a director of a service which operates one or more aid vehicles provided by a volunteer organization or governmental agency.

(3) "Aid vehicle" means a vehicle used to carry first aid equipment and individuals trained in first aid or emergency medical procedures.

(4) "Aid vehicle operator" means a person who owns one or more aid vehicles and operates them as a private business.

(5) "Air ambulance" means a fixed or rotary winged aircraft that is currently certified under Federal Aviation Administration as an air taxi; that may be configured to accommodate a minimum of one litter and two medical attendants with sufficient space to provide intensive and life saving patient care without interfering with the performance of the flight crew; that has sufficient medical supplies and equipment to provide necessary medical treatment at the patient's origin and during flight; has radio equipment capable of two way communication ground-to-air, air-to-air, and air-to-ground including communication with physicians responsible for patient management; has been designed to avoid aggravating the patients condition as to cabin comfort, noise levels\* and cabin pressurization\*; has aboard survival equipment in sufficient quantity to accommodate crew and passengers; that has been inspected and licensed by the department as an air ambulance. \*Not applicable to rotary winged aircraft.

((2)) (6) "Air ambulance service" means a service that is currently certified under Federal Aviation Administration (FAA) rules, 14 CFR Part 135, (Air Taxi Operators and Commercial Operators of Small Aircraft); has been inspected by the department and licensed as an air ambulance service and meets the minimum requirements for personnel and equipment as described elsewhere in this chapter.

((3)) (7) "Ambulance" means a vehicle designed and used to transport the ill and injured and to provide facilities and equipment to treat patients before and during transportation.

((4)) "Attending physician" as applies to aeromedical evacuation, means a licensed doctor of medicine or osteopathy who provides direction for management of the patient either by attending the patient enroute, by ground-to-air radio communication or by written orders pertaining to inflight medical care. An attending physician must retain responsibility for the medical care of the patient until final destination is reached.

(5) "First aid vehicle" means a vehicle used to carry first aid equipment and individuals trained in first aid or emergency medical procedures.

(6) "Emergency medical technician (EMT)" means a person who has successfully completed a prescribed

~~course of instruction and who has achieved a demonstrable level of performance and competence to treat victims of severe injury or other emergent conditions.~~

~~(7) "Advanced first aid" means a course of instruction recognized by the American Red Cross, Department of Labor and Industry, the U.S. Bureau of Mines, or Fire Services training program.)~~

~~(8) ("Standard first aid" means such a prescribed course of instruction recognized and offered by the American Red Cross, Department of Labor and Industries, the U.S. Bureau of Mines, or Fire Services training program.~~

~~(9) "Ambulance driver" means that person who drives an ambulance.~~

~~(10)) "Ambulance attendant" means that person who has responsibility for the care of patients both before and during transportation.~~

~~((11) "Ambulance operator" means a person who owns one or more ambulances and operates them as a private business.~~

~~(12)) (9) "Ambulance director" means a person who is a director of a service which operates one or more ambulances provided by a volunteer organization or governmental agency.~~

~~((13) "First aid vehicle operator" means a person who owns one or more first aid vehicles and operates them as a private business))~~

(10) "Ambulance driver" means that person who drives an ambulance.

(11) "Ambulance operator" means a person who owns one or more ambulances and operates them as a private business.

(12) "Approved emergency medical services (EMS) medical program director" means a doctor of medicine or osteopathy who has been certified by the department under RCW 18.71.205 and WAC 248-15-020.

(13) "Attending physician," as applies to aeromedical evacuation, means a licensed doctor of medicine or osteopathy who provides direction for management of the patient either by attending the patient enroute, by ground-to-air radio communication or by written orders pertaining to inflight medical care. An attending physician must retain responsibility for the medical care of the patient until final destination is reached.

~~(14) ("First aid director" means a person who is a director of a service which operates one or more first aid vehicles provided by a volunteer organization or governmental agency))~~Committee" means the emergency medical services committee.

(15) "Communications system" means a radio or landline network connected with a dispatch center which makes possible the alerting and coordination of personnel, equipment and facilities.

(16) "Department" means the Washington state department of ((social and)) health ((services)).

(17) ("Shall" means compliance is mandatory.

~~(18) "Should" means a suggestion or recommendation, but not a requirement.~~

~~(19) "Committee" means the emergency medical services committee.~~

~~(20) "Approved emergency medical services (EMS) medical program director" means a doctor of medicine~~

~~or osteopathy who has been certified by the department under RCW 18.71.205 and WAC 248-15-020.~~

~~(21) "Medical control" means physician responsibility for supervision of EMT training programs, the establishment of field protocols, and the recommendation for certification and decertification of EMTs certified under this chapter.~~

~~(22) Medical control as defined above does not include first responders))~~Department form" means a form developed by the department or developed by another agency and approved by the department.

(18) "Emergency medical technician (EMT)" means a person who successfully completed a prescribed course of instruction and who achieved a demonstrable level of performance and competence to treat victims of severe injury or other emergent conditions.

(19) "First responder" means a person who successfully completed a department-approved course of instruction, follows medical program director field protocols, and was examined and certified by the department.

(20) "First responder supervisor" means a provider-designated individual responsible for the supervision of first responder agency personnel and recommending or not recommending personnel to the department for certification/recertification.

(21) "Medical control" means for:

(a) EMTs, the physician responsibility for supervision of training programs, establishment of field protocols, and recommendations for certification and decertification of EMTs certified under this chapter, and

(b) First responders, a successful completion of an approved course curriculum and adherence to medical program director-approved field protocols.

(22) "Shall" means compliance is mandatory.

(23) "Should" means a suggestion or recommendation, but not a requirement.

(24) "Standard first aid" means a prescribed course of instruction recognized and offered by the American Red Cross, Department of Labor and Industries, the U.S. Bureau of Mines, or state fire protection services/fire services training.

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

#### AMENDATORY SECTION (Amending Order 2138, filed 8/10/84)

WAC 248-17-213 EMERGENCY MEDICAL TECHNICIAN—CERTIFICATION AND RECERTIFICATION. (1) ((Upon successful completion of an EMT course;)) The department shall initially certify ((those eligible graduates who have passed either the state written examination or the NREMT written examination and the state practical examination and who have been recommended for certification by the physician coordinator)) an individual for a period of time not to exceed thirty-six months who successfully completed an EMT course when the individual has:

(a) Passed either the state written examination or the NREMT written examination;

(b) Passed the state practical examination; and

(c) Been recommended for certification by the EMS medical program director.

(2) The ((period of certification shall be for three years)) department shall consider currently certified EMTs eligible for recertification for a period of time not to exceed thirty-six months upon:

(a) Successful completion and documentation of a minimum of thirty hours of medical program director or department-approved continuing medical education (CME) during the thirty-six month certification period, including a minimum of six hours every twelve months in the following:

(i) Two hours of CPR and airway management;

(ii) One hour of patient medical extrication;

(iii) One hour of patient assessment; and

(iv) Two additional hours of CME.

(b) Successful completion of a program of ongoing training and evaluation approved by the EMS medical program director and the department and passing the state written examination; or

(c) Passing the state written and practical examinations.

(3) ((Recertification of currently certified EMTs eligible for such recertification under WAC 248-17-211, shall be accomplished in the following manner:

(a) Completion of a minimum of thirty hours of continuing education during the period of certification consisting of the following mandatory and optional subject matter as indicated and under physician supervision:

(i) Cardiopulmonary resuscitation update of at least one hour per year including both adult and infant manikins using one and two person techniques administered under the supervision of a certified CPR instructor (mandatory);

(ii) Vehicle extrication techniques employing skill knowledge of wrecking tools used in gaining access to victims and use of short and long board extrication. A minimum of one hour per year administered under the supervision of a senior EMT instructor (mandatory);

(iii) Formal inservice training sessions covering basic life support knowledge skills such as bandaging and splinting, emergency child birth, recognition and treatment of shock, cold and heat caused injuries, patient handling and other basic life support skills using physicians, senior EMT instructors, audio-visual aids or other technical experts. Four hours per year minimum required and verified by a senior EMT instructor (mandatory). Attendance at workshops or seminars approved by the department may satisfy this requirement when authorized by the regional EMS coordinator.

(iv) Emergency ambulance/aid car runs involving the application of emergency care techniques may be used for credit at one hour per twenty-five emergency runs not to exceed five total hours during a period of certification when verified by emergency department staff or official run records and used as formal critique (optional).

Note. EMT dispatchers, employed by central dispatching centers, may substitute dispatches involving emergency, life-threatening responses when instructions on emergency medical care are given by phone/radio to persons attending the victim.

(v) Hospital emergency department, ICU, CCU or OB delivery room experience may be credited not to exceed two hours per year when verified by hospital or clinic department head (optional).

(vi) Membership in a national EMS organization where such membership includes subscriptions to professional journals and/or newsletters may be used for a maximum of one hour credit per year when proof of membership is verified by a senior EMT instructor (optional).

(vii) Completion of formal courses such as dispatcher training, extrication training, emergency vehicle defensive driving, EMT/defibrillation, inflatable trousers or other EMS-related topics. Five hours total per period of certification. Verified by course instructor (optional).

Note. It is recommended that a minimum of ten hours of continuing education be accomplished annually. Failure to complete thirty hours of continuing education during a period of certification shall result in termination of certification.

(b) Pass the state written and practical examination and being recommended for recertification by the approved EMS medical program director.

Note. Currently certified senior EMT instructors who have fulfilled the provisions of the senior EMT instructor agreement may recertify by passing the written recertification examination and by being recommended by the approved EMS medical program director.

(4)) Certification by the department as an EMT does not warrant future performance of the individuals certified. It will indicate that the cognitive and performance capabilities met the requirements for certification established for the course at the time the testing or evaluation was performed.

(4) To meet the requirements of chapter 70.24 RCW, all persons certified under the authority of chapters 18.71 and 18.73 RCW shall:

(a) Complete four hours of training in infectious disease prevention with special emphasis on human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS) and Hepatitis B. Training shall be consistent with the curriculum manual Know - HIV/AIDS and HBV Prevention Education for EMS Personnel, June 15, 1989, published by the office on HIV/AIDS including, but not limited to, the following subjects:

(i) Etiology and epidemiology;

(ii) Clinical manifestation and treatment;

(iii) Infection control standards;

(iv) Psychosocial issues, including special populations; and

(v) Legal and ethical issues.

(b) Provide proof of the training required in subsection (4)(a) of this section:

(i) Using forms provided by the department; and

(ii) Retaining forms for three years or more from the date of training.

(c) Complete two hours of continuing medical education in each certification period including:

(i) Disease prevention;

(ii) Infection control standards; and

(iii) HIV/AIDS and hepatitis.

AMENDATORY SECTION (Amending Order 2138, filed 8/10/84)

WAC 248-17-260 FIRST RESPONDER(;;)—CERTIFICATION AND RECERTIFICATION. (1) The department shall initially certify ((eligible graduates for a period of three years)) an individual for a period of time not to exceed thirty-six months who has successfully completed the department's first responder course when the individual has passed the state written examination and the state practical examination.

(2) ((Recertification of eligible first responders shall be for three years providing that)) The department shall consider currently certified first responders eligible for recertification for a period of time not to exceed thirty-six months upon:

(a) ((The applicants have completed a minimum of fifteen hours of approved continuing education identified in the procedures and guidelines, and)) Successful completion and documentation of a minimum of fifteen hours of first responder supervisor and/or department-approved CME during the certification period, including a minimum of five hours every twelve months in the following:

- (i) Two hours of CPR and airway management;
- (ii) One hour of patient medical extrication;
- (iii) One hour of patient assessment; and
- (iv) One additional hour of CME.

(b) ((The applicant shall successfully complete required written and practical examinations)) Successful completion of a program of ongoing training and evaluation approved by the first responder supervisor and the department and passing the state written examination;  
or

(c) Passing the state written and practical examinations.

(3) A currently certified EMT whose duties no longer require EMT level of skill or who is not required to be in attendance to a patient during transport, may request reversion of the EMT certificate to that of first responder. In such case, the request shall be in writing and shall be accompanied by proof of required continuing education and the EMT certification card, which is being relinquished. A first responder certification will then be issued with the expiration date of the relinquished EMT certification.

(4) To meet the requirements of chapter 70.24 RCW, all persons certified under the authority of chapters 18.71 and 18.73 RCW shall:

(a) Complete four hours of training in infectious disease prevention with special emphasis on human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS) and Hepatitis B. Training shall be consistent with the curriculum manual Know - HIV/AIDS and HBV Prevention Education for EMS Personnel, June 15, 1989, published by the office on HIV/AIDS including, but not limited to, the following subjects:

- (i) Etiology and epidemiology;

(ii) Clinical manifestation and treatment;  
(iii) Infection control standards;  
(iv) Psychosocial issues, including special populations;  
and

(v) Legal and ethical issues.

(b) Provide proof of the training required in subsection (4)(a) of this section:

(i) Using forms provided by the department; and  
(ii) Retaining forms for three years or more from the date of training.

(c) Complete two hours of continuing medical education in each certification period including:

- (i) Disease prevention;
- (ii) Infection control standards; and
- (iii) HIV/AIDS and hepatitis.

### NEW SECTION

WAC 248-17-261 RECERTIFICATION—GENERAL REQUIREMENTS. (1) The department's recertification procedures for EMTs and first responders, dated August 1, 1989, shall outline the program for ongoing training and evaluation, the written and practical examination process, associated forms, and administrative requirements.

(2) The EMS committee, established under RCW 18.73.040, shall review the department's recertification procedures at least once a biennium and provide recommendations if appropriate.

(3) The department shall permit an individual no more than three attempts in a ninety-day period to pass:

- (a) Any skill in the ongoing evaluation program; or
- (b) The state practical recertification examination; and

(c) The state written recertification examination.

(4) An individual seeking recertification shall:

(a) Complete an ongoing program of training and evaluation and pass the state written recertification examination; or

(b) Pass the state practical and written recertification examinations.

(5) An individual wishing to change from a practical examination program to ongoing training and evaluation shall do so before the second attempt at the practical examination.

(6) An individual wishing to change from the ongoing training and evaluation program to the practical examination program may do so by taking the practical examination any time before the end of the certification period.

(7) Each skill in the ongoing training and evaluation program will be evaluated at least once every certification period.

(8) An individual not completing the ongoing training and evaluation program, failing the practical examination program, or otherwise demonstrating inadequate performance is subject to the provisions of WAC 248-17-220, Revocation, Suspension or Modification of Certificate.

**WSR 89-16-071**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
**(Public Assistance)**

[Order 2834—Filed July 31, 1989, 12:14 p.m.]

Date of Adoption: July 31, 1989.

Purpose: Social Security number, amending WAC 388-49-320.

Citation of Existing Rules Affected by this Order: Amending WAC 388-49-320.

Statutory Authority for Adoption: RCW 74.04.510.

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

Reasons for this Finding: This amendment is necessary to require information to validate a Social Security number in order to obtain food stamps in accordance with 7 CFR 243.2(d) and Food and Nutrition Service Administrative Notice 89-34.

Effective Date of Rule: August 1, 1989, 12:01 a.m.

July 31, 1989

Linda Zacharias

for Leslie F. James, Director  
 Administrative Services

AMENDATORY SECTION (Amending Order 2575, filed 12/31/87)

WAC 388-49-320 SOCIAL SECURITY NUMBER. (1) Categorically eligible households, ~~((as))~~ defined ~~((in))~~ under WAC 388-49-180, are not subject to the provisions of this section.

(2) Prior to certification, a person applying for or participating in the food stamp program shall:

(a) Provide ~~((his or her))~~ the Social Security number or numbers (SSN)(;) for each member of the household; or

(b) Apply for and provide verification of SSN application if number is unknown or has not been issued.

(3) The department shall inform households:

(a) Where to apply for an SSN(;) ;

(b) What information is needed(;) ; and

(c) Failure to apply for or provide an SSN shall result in the disqualification of the person for whom the SSN is not obtained.

(4) The department shall disqualify any person failing to provide or apply for an SSN. The disqualification shall continue until the person provides ~~((a))~~ an SSN.

(5) The department shall allow the person to participate for one month in addition to the month of application if a household member can show good cause why ~~((a))~~ an SSN application has not been completed in a timely manner. The following criteria shall determine good cause:

(a) Good cause shall exist when:

~~((a))~~ (i) Documentary evidence or collateral information verifies the person has ~~((applied))~~ attempted to apply for an SSN; ~~((or))~~ and

~~((b))~~ (ii) The person has made every effort to supply Social Security Administration with necessary information ~~((; and))~~.

~~((c))~~ (b) Good cause does not include delays due to illness, lack of transportation, or temporary absence.

(6) The department shall make every effort to assist the household member to obtain documents necessary for SSN application.

(7) The department shall determine good cause for failure to apply monthly to allow ~~((persons))~~ the household member to continue on the food stamp program.

~~((8))~~ ~~((Disqualified persons may become eligible when they provide their SSN.~~

~~((9))~~ The department shall not delay certification of an eligible household for verification of an SSN.

~~((9))~~ The department shall determine the whole household to be ineligible if, after being notified an SSN was returned by the Social Security Administration (SSA) as not validated, the household refuses to provide the:

(a) Correct information; or

(b) Information SSA needs to verify the SSN.

**WSR 89-16-072**

**PROPOSED RULES**

**HIGHER EDUCATION COORDINATING BOARD**

[Filed July 31, 1989, 1:40 p.m.]

Original Notice.

Title of Rule: WAC 250-68-010 through 250-68-070.

Purpose: Adoption of rules implementing ESB 6152, chapter 9, Laws of 1989, the health professionals loan repayment program.

Statutory Authority for Adoption: ESB 6152, chapter 9, Laws of 1989.

Statute Being Implemented: ESB 6152, chapter 9, Laws of 1989.

Summary: A program to provide loan repayments to health professionals serving for three years in shortage areas.

Reasons Supporting Proposal: Implementation of ESB 6152.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Gloria Grant, HECB, 917 Lakeridge Way, Olympia, WA 98504, (206) 753-5902.

Name of Proponent: Higher Education Coordinating Board, governmental.

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

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

Proposal does not change existing rules.

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

Hearing Location: Conference Room, Higher Education Coordinating Board, 917 Lakeridge Way, Olympia, WA 98504, on September 5, 1989, at 9:30 a.m.

Submit Written Comments to: Gloria Grant, c/o Higher Education Coordinating [Board], 917 Lakeridge Way, Olympia, WA 98504, by September 5, 1989.

Date of Intended Adoption: September 20, 1989.

July 31, 1989

James C. Sainsbury  
for Ann Daley  
Executive Director

STATE OF WASHINGTON  
HEALTH PROFESSIONAL LOAN REPAYMENT PROGRAM  
Chapter 9, Laws of 1989

RULES AND REGULATIONS  
WAC 250-68

WAC 250-68-010	Purpose.
WAC 250-68-020	Authority to Administer.
WAC 250-68-030	Eligibility to Participate.
WAC 250-68-035	Ineligible Program.
WAC 250-68-040	Selection Criteria.
WAC 250-68-050	Award Amount.
WAC 250-68-060	Repayment Provisions.
WAC 250-68-070	Appeals.

The following general regulations govern the administration of loan repayments awarded to health professionals serving in shortage areas.

NEW SECTION

WAC 250-68-010 PURPOSE. The purpose of the health professional loan repayment program is to encourage health professionals (as defined by chapters 18.57 or 18.57A RCW, 18.71 or 18.71A RCW, 18.18 or 18.78 RCW, and 18.32 RCW) to serve in shortage areas by providing financial support in the form of loan repayment if the participant renders health care service in medically underserved areas or professional shortage areas within Washington state.

NEW SECTION

WAC 250-68-020 AUTHORITY TO ADMINISTER. The higher education coordinating board is charged with the administration of the health professional loan repayment program. These regulations are being adopted pursuant to the authority of section 716 through 723, chapter 9, Laws of 1989, first ex. sess. When a responsibility of the board is referenced in these regulations, the authority needed to discharge that responsibility lies with the executive director or his or her designee.

NEW SECTION

WAC 250-68-030 ELIGIBILITY TO PARTICIPATE. To be eligible to apply, an individual must:

(1) Be enrolled as a full-time student in the final year of an approved course of study or program which leads to a degree in allopathic or osteopathic medicine, dentistry, or other health professions and which is offered by an accredited school; be enrolled in an accredited graduate training program; or have a degree in one of the above named programs and have completed an approved graduate training program; have a current and valid license to practice such health profession in Washington state by the time of execution of contract; by in the final stage of training to be a licensed doctor of medicine, osteopathy, nursing (to include nurse practitioners and certified nurse midwives as defined by chapter 18.88 RCW), physician assistant, or dentistry.

(2) Submit an application on a form provided by the higher education coordinating board for participation in the health professional loan repayment program;

(3) Agree to serve for not less than three years;

(4) Agree to charge for professional services at the usual and customary rate prevailing in the area in which such services are provided;

(5) Agree not to discriminate against any person on the basis of his/her ability to pay for services or because payment for the health services provided to the individual will be made under part A or B of

Title XVIII of the federal Social Security Act or under a state plan for medical assistance approved under Title XIX of such act;

(6) Agree to accept an assignment under the terms specified in Title XVIII of the federal Social Security Act, section 18.42 (b)(3)(B)(ii);

(7) Agree to enter an agreement with the state medicaid agency to provide services to individuals entitled to medical assistance under the plan;

(8) Agree to repay to the program an amount equal to twice the total amount paid by the program on their behalf if the three year service obligation is not met;

(9) Not owe an obligation for health professional service to the federal government, state, or other entity unless that obligation will be completely satisfied prior to the beginning of service under this program.

NEW SECTION

WAC 250-68-035 INELIGIBLE PROGRAM. Participants in the nurses conditional scholarship program authorized by chapter 28B.104 RCW are ineligible to receive assistance under this health professional loan repayment program.

NEW SECTION

WAC 250-68-040 SELECTION CRITERIA. Applicants will be selected for participation in the health professional loan repayment program based upon the following criteria:

(1) The individual's training is in a health profession or specialty needed to fulfill an underserved area in Washington state;

(2) The individual's commitment to serve in a medically underserved area or community-based primary care site as determined by the statement of commitment on the application form;

(3) The availability of the individual for service, with highest consideration being given to individuals who will be available for service at the at the earliest dates;

(4) The length of the individual's proposed service obligation, with greatest consideration being given to persons who agree to serve for longer periods of time; and

(5) The individual's academic standing, prior professional experience in a medically underserved area or health manpower shortage area, board certification, residency achievements, peer recommendations, depth of past residency practice experience, and other criteria related to professional competence or conduct.

Among individuals determined to be eligible for the program, priority will be given those qualified applicants whose health profession or specialty is most needed, including family practice, osteopathic general practice, obstetrics, nurse midwives, nurse practitioners, baccalaureate nurses, and to applicants most committed to medically underserved areas and health manpower shortage areas.

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

NEW SECTION

WAC 250-68-050 AWARD AMOUNT. The amount of the loan repayment shall be limited to (a) an amount not exceeding fifteen thousand dollars per year for a minimum of three years and a maximum of five years or (b) the total amount of the loan, whichever is less. The board may establish awards of less than fifteen thousand dollars per year based upon reasonable levels of expenditures for each of the health professions covered by the program. In no case shall the award amount exceed the actual loan debt incurred.

As part of the award procedure, each participant must sign an agreement with the board which serves as the legal document verifying the participant's understanding of the obligation to serve for three years in a shortage area or repay to the program an amount equal to twice the total amount paid on their behalf in addition to the unsatisfied portion of the principal and interest.

NEW SECTION

WAC 250-68-060 REPAYMENT PROVISIONS. Participants shall receive payment from the program for the purpose of repaying educational loans secured while attending a program of health professional training which led to licensure as a health professional.

(1) Repayment shall be limited to loans covering reasonable educational and living expenses and shall include principal and interest.

(2) Repayment of loans shall begin no later than ninety days after the board has received notification the participant has officially accepted placement. Payments shall be made quarterly, or more frequently if deemed appropriate by the board, to the participant until the loan is repaid or the participant becomes ineligible due to discontinued service in a health professional shortage area or after the fifth year of service when eligibility discontinues, whichever comes first.

(3) Financial debts or service obligations which do not qualify for repayment include: Public Health and National Health Service Corps scholarship training program, National Health Service Corps scholarship program, Armed Forces (Army, Navy, or Air Force) health professional scholarship programs, and loans not obtained from a government entity or commercial lending institution, such as loans from friends and relatives, and loans obtained for educational or personal expenses while at school which exceed the "reasonable" level of cost of attendance.

(4) Participants will be required to submit appropriate documentation of service as required by the board verifying the terms of the agreement have been met for each payment period.

(5) Participants violating the non-discrimination provisions described in WAC 250-68-050 (6)(7)(8) shall be declared ineligible for receiving assistance.

(6) Participants who serve less than three years shall be required to repay to the program an amount equal to twice the total amount paid by the program on their behalf in addition to the unsatisfied portion of the principal and interest.

(7) On the request of the participant, the board may waive, in full or in part, the obligation for service or its rights to recover financial damages whenever the board determines that failure to do so was due to circumstances beyond the participant's control. Conditions that would be considered as a waiver from default provisions may include: participant becomes physically impaired to the degree that he/she can no longer function in his/her assigned duties; participant becomes mentally impaired to the degree that he/she can no longer function in his/her assigned duties; or death.

(8) Participants shall agree to execute a release to allow the board access to loan records and to acquire information from lenders necessary to verify eligibility and to determine payments. Loans may not be renegotiated with lenders to accelerate repayment.

(9) The board shall not be held responsible for any outstanding payments on principal and interest to any lenders once a participant's eligibility expires.

#### NEW SECTION

WAC 250-68-070 APPEALS. Participants who have been accepted in the health professional loan repayment program may request in writing a review of any adverse decision affecting them by requesting such review within 20 days of adverse decision, addressed to the executive director of the higher education coordinating board. The review shall be handled by brief adjudication hearing procedures as outlined in the administrative act chapter 34.05 RCW.

### **WSR 89-16-073**

#### **PERMANENT RULES**

#### **DEPARTMENT OF AGRICULTURE**

[Order 2014—Filed July 31, 1989, 2:10 p.m.]

I, C. Alan Pettibone, director of the Washington State Department of Agriculture, do promulgate and adopt at Olympia, Washington, the annexed rules relating to chapter 16-230 WAC, restrictions on the use of pesticides in Benton County and portions of Walla Walla and Franklin counties.

This action is taken pursuant to Notice Nos. WSR 89-03-065, 89-04-056, 89-07-051 and 89-11-093 filed with the code reviser on January 18, 1989, February 1, 1989, March 15, 1989 and May 24, 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 chapters 17.21 and 15.58 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 July 31, 1989.

By C. Alan Pettibone  
Director

#### NEW SECTION

WAC 16-230-800 APPLICATION OF PESTICIDES IN BENTON COUNTY AND PORTIONS OF FRANKLIN AND WALLA WALLA COUNTIES—AREA UNDER ORDER. The area under order shall include:

(1) All lands lying within the boundaries of Benton County; and

(2) Portions of Franklin and Walla Walla Counties as follows: All lands lying within a boundary line beginning at the intersection of the Esquatzel Diversion Channel drain and the Columbia River thence east along the Esquatzel Channel to its intersection with Road 68; thence southeasterly approximately one mile along Road 68 to its intersection with Fraser Drive near the northeast corner of Section 24, T10N, R28E; thence south approximately one mile along Fraser Drive to its intersection with Selph Landing Road; thence east seven miles along Selph Landing Road to its intersection with Highway 395 near the northeast corner of Section 30, T10N, R30E; thence south two miles along Highway 395 to the southeast corner of Section 31, T10N, R30E; thence east three miles along section lines to the northeast corner of Section 3, T9N, R30E; thence south one mile along the section line to the southeast corner of Section 3, T9N, R30E; thence east seven miles along section lines and a portion of the Pasco-Kahlotus Road to its intersection with the Ice Harbor Dam Road at the northeast corner of Section 11, T9N, R31E; thence southerly approximately four miles along Ice Harbor Dam Road and Ice Harbor Drive to the west section line of Section 25, T9N, R31E; thence south approximately eleven miles along section lines to the Walla Walla River; thence west along the Walla Walla River to the Columbia River and the Walla Walla-Benton County line; thence northwesterly along the Walla Walla-Benton County line to the Benton-Franklin County line; thence northwesterly along the Benton-Franklin County line and the Columbia River to the point of beginning.

#### NEW SECTION

WAC 16-230-805 APPLICATION OF PESTICIDES IN BENTON COUNTY AND PORTIONS OF FRANKLIN AND WALLA WALLA COUNTIES—RECORDKEEPING. (1) No portion of this section shall relieve any commercial pesticide applicator, public operator, private-commercial applicator, demonstration and research applicator or private applicator



from recordkeeping requirements of WAC 16-228-190 and WAC 16-228-164.

(2) All persons who apply pesticides within the area under order in WAC 16-230-800 shall keep records for each application per day for all pesticides, except those labeled or used only for the following sites or functions:

- (a) Swimming pools and fountains
  - (b) Disinfectants
  - (c) Cooling tower or industrial system biocides
  - (d) Pets or livestock
  - (e) Lawns or home gardens
  - (f) Use within or around buildings or similar structures (does not include irrigation canals)
  - (g) Wood or lumber treatment
  - (h) Baits or repellants registered solely for vertebrate pest control
  - (i) Seed treatments
  - (j) Enclosed food processing systems
  - (k) Air conditioners, humidifiers, and heating systems
- (3) The following information shall be kept on a form prescribed by the department:

- (a) Applicator's name, address and name of the individual making the application;
- (b) Address or location of the land where the pesticide was applied, specifying township, range, and section: PROVIDED, That right-of-way application records may omit township, range and section.
- (c) Year, month, day, and time the pesticide was applied;
- (d) Trade name and/or common name of the pesticide applied, and the EPA registration number for that product;
- (e) Direction and estimated velocity of the wind and temperature at the time the pesticide was applied;
- (f) Amount and concentration (pounds or gallons per acre and percentage of active ingredient and/or concentration per one hundred gallons) of the pesticide used;
- (g) Specific crop or site to which the pesticide was applied.
- (h) Acreage or area treated per section: PROVIDED, That right-of-way application records may record acreage or area only.

(4) If an application of a restricted use pesticide as defined in WAC 16-230-810 is performed by a licensed commercial pesticide applicator within the area defined in WAC 16-230-800, the person in control of the treated land shall keep records which shall include the following information:

- (a) Address or location of the land where the pesticide was applied, specifying township, range, and section: PROVIDED, That right-of-way application records may omit township, range and section;
- (b) Year, month, and day the pesticide was applied;
- (c) Name of the commercial applicator.
- (d) Trade name and/or common name of the pesticide applied.

(5) All records required by this section shall be completed and available to the department the same day the pesticide was applied.

(6) All records required by this section shall be kept for a period of seven years from the date of application. The department shall be furnished, upon request in

writing, with a copy of the records required in subsection (3) and (4) of this section, and any additional information required in WAC 16-228-190 and 16-228-164.

#### NEW SECTION

WAC 16-230-810 APPLICATION OF PESTICIDES IN BENTON COUNTY AND PORTIONS OF FRANKLIN AND WALLA WALLA COUNTIES—RESTRICTED USE PESTICIDES. For the purposes of WAC 16-230-800 through WAC 16-230-865, the following pesticides are declared to be restricted use pesticides:

- (1) Restricted use herbicides:
  - (a) Sulfonylurea herbicides (such as Glean, Telar, Finesse, Escort)
  - (b) Desiccants and defoliants (such as Paraquat, Diquat, Endothall)
  - (c) Glyphosate (such as Roundup, Landmaster)
  - (d) Phenoxy type herbicides (such as 2,4-D, MCPA)
  - (e) dicamba (such as Banvel)
  - (f) Bromoxynil (such as Brominal, Buctril, ME4 Brominal)
- (2) Restricted use insecticides:
  - (a) All category I insecticides with the signal words Danger/Poison on the label, except granular and pellet formulations;
  - (b) Additionally, all insecticides, except granular and pellet formulations, are declared to be restricted use in Area 1 as described in WAC 16-230-835.

#### NEW SECTION

WAC 16-230-815 APPLICATION OF PESTICIDES IN BENTON COUNTY AND PORTIONS OF FRANKLIN AND WALLA WALLA COUNTIES—PARAQUAT AND DIQUAT. Aerial application of paraquat and diquat is prohibited in the entire area under order listed in WAC 16-230-800.

#### NEW SECTION

WAC 16-230-820 APPLICATION OF PESTICIDES IN BENTON COUNTY AND PORTIONS OF FRANKLIN AND WALLA WALLA COUNTIES—SULFONYLUREA HERBICIDES. Application of sulfonylurea herbicides (such as Glean, Telar, Finesse, Escort) to fallow land or to land during the time between harvest and emergence above the furrows of the subsequent cereal grain crop is prohibited.

#### NEW SECTION

WAC 16-230-825 APPLICATION OF PESTICIDES IN BENTON COUNTY AND PORTIONS OF FRANKLIN AND WALLA WALLA COUNTIES—PERMITS. The following conditions will apply to all permits issued under the authority of WAC 16-230-800 through 16-230-865.

- (1) Application for a permit may be made to the Washington State Department of Agriculture, Compliance Branch, 2015 S. 1st Street, Yakima, Washington 98903. Applications may also be taken in person or by phone.

(2) The department may make on-site monitoring of the application a condition of any permit. A representative of the department may condition, deny, or revoke a permit at any time, if the representative determines that the situation at the application site creates an unreasonable risk of drift. In determining whether the situation at the application site creates an unreasonable risk of drift, the representative may consider all relevant factors such as temperature, air inversions, time of day, burning restrictions, wind direction, wind velocity, topography, and type and condition of application equipment.

(3) No permit shall be issued to apply any pesticide unless that permit is consistent with existing department laws and rules.

(4) Application records prescribed in WAC 16-230-805 shall be submitted to the Washington State Department of Agriculture, Compliance Branch, 2015 So. 1st Street, Yakima, Washington 98903, within three days after the aerial application under permit is performed.

#### NEW SECTION

WAC 16-230-830 APPLICATION OF PESTICIDES IN BENTON COUNTY AND PORTIONS OF FRANKLIN AND WALLA WALLA COUNTIES—EMERGENCY CLAUSE. In the event of an emergency, as declared by the director, the department may issue permits for the use of restricted use pesticides in variation of any restrictions contained in the area under order as defined in WAC 16-230-800. An emergency under this section may be declared if the director determines that the risk and amount of economic harm to any agriculture crop substantially outweighs the risk and amount of damage likely to occur if a variance permit is issued.

#### NEW SECTION

WAC 16-230-835 APPLICATION OF PESTICIDES IN BENTON COUNTY AND PORTIONS OF FRANKLIN AND WALLA WALLA COUNTIES—AREA 1. (1) Area 1 description (Northeast Horse Heaven Hills). An area including all lands lying within a boundary line beginning at the southwest corner of Section 24, T8N, R26E; thence north approximately 7 miles along section lines to the intersection with the Kennewick Irrigation District (K.I.D.) main canal; thence easterly along the K.I.D. main canal to the Amon pumping station located in Section 7, T8N, R29E; thence southeasterly along the K.I.D. Division Four Canal to the Columbia River in Section 8, T7N, R31E; thence south approximately one and one-half miles along the Columbia River to the south section line of Section 17, T7N, R31E; thence west approximately seventeen miles along section lines to the southwest corner of Section 15, T7N, R28E; thence north one mile along the section line to the northwest corner of Section 15, T7N, R28E; thence west four miles along section lines to the intersection with Badger Canyon Road at the southwest corner of Section 12, T7N, R27E; thence north two miles along Badger Canyon Road and section lines to the intersection with Sellards Road at the southeast corner of Section 35, T8N, R27E; thence west one mile

along Sellards Road and the section line to the southwest corner of Section 35, T8N, R27E; thence north one mile along the section line to the northwest corner of Section 35, T8N, R27E; thence west three miles along section lines to the southwest corner of Section 29, T8N, R27E; thence north one mile along the section line to the intersection with Cemetery Road at the northwest corner of Section 29, T8N, R27E; thence west two miles along Cemetery Road and section lines to the point of beginning.

(2) Area 1 restrictions. Application by air of restricted use pesticides as defined in WAC 16-230-810 is prohibited: PROVIDED, That the department may issue written permits for application of insecticides not containing the signal words Danger/Poison on the label.

#### NEW SECTION

WAC 16-230-840 APPLICATION OF PESTICIDES IN BENTON COUNTY AND PORTIONS OF FRANKLIN AND WALLA WALLA COUNTIES—AREA 2. (1) Area 2 description. Tri-Cities, Benton City area. An area including all lands lying within a boundary line beginning at the northwest corner of Section 25, T10N, R26E; thence south approximately five miles along section lines to the intersection with the Kennewick Irrigation District (K.I.D.) main canal; thence easterly along the K.I.D. main canal to the Amon pumping station located in Section 7, T8N, R29E; thence southeasterly along the K.I.D. Division Four Canal to the Columbia River in Section 8, T7N, R31E; thence south approximately one-half mile along the Columbia River to the south section line of Section 8, T7N, R31E; thence east approximately three miles across the Columbia River to the intersection with U.S. Highway 12 at the south section line of Section 10, T7N, R31E; thence northwesterly along Highway 12 to its intersection with Interstate 182; thence westerly along Interstate 182 to the west shoreline of the Columbia River; thence northerly approximately six and one-half miles along the Columbia River to the United States Department of Energy Hanford Site south boundary line; thence west approximately one mile and south approximately two and one-half miles along the south boundary line to the southeast corner of Section 27, T10N, R28E; thence west seven miles along section lines to the southwest corner of Section 27, T10N, R27E; thence north one mile along the section line to the northwest corner of Section 27, T10N, R27E; thence west four miles along section lines to the point of beginning.

(2) Area 2 restrictions. Application by air of restricted use pesticides as defined in WAC 16-230-810 is prohibited.

#### NEW SECTION

WAC 16-230-845 APPLICATION OF PESTICIDES IN BENTON COUNTY AND PORTIONS OF FRANKLIN AND WALLA WALLA COUNTIES—AREA 3. (1) Area 3 description.

(a) Eastern Yakima Valley. An area including all lands lying within a boundary line beginning at the

northwest corner of Section 25, T10N, R26E; thence west four miles along section lines to the northwest corner of Section 29, T10N, R26E; thence south one mile along the section line to the southwest corner of Section 29, T10N, R26E; thence west eleven miles along section lines to the southeast corner of Section 29, T10N, R24E; thence north one mile along the section line to the intersection with Anderson Road at the northeast corner of Section 29, T10N, R24E; thence west two miles along Anderson Road and section lines to the Benton-Yakima County line at the northwest corner of Section 30, T10N, R24E; thence south approximately thirteen miles along the Benton-Yakima County line to the northwest corner of Section 31, T8N, R24E; thence east approximately two miles along section lines to the southeast corner of Section 29, T8N, R24E; thence north one mile along the section line to the northeast corner of Section 29, T8N, R24E; thence east four miles along section lines to the southeast corner of Section 24, T8N, R24E; thence north one mile along the section line to the northeast corner of Section 24, T8N, R24E; thence east two miles along section lines to the southeast corner of Section 16, T8N, R25E; thence north one mile along Burt James Road and the section line to the intersection with County Well Road at the northeast corner of Section 16, T8N, R25E; thence east two miles along County Well Road and section lines to the southeast corner of Section 10, T8N, R25E; thence north one mile along the section line to the northeast corner of Section 10, T8N, R25E; thence east three miles along section lines to the intersection with Gould Road at the southeast corner of Section 6, T8N, R26E; thence north one mile along Gould Road and the section line to the northeast corner of Section 6, T8N, R26E; thence east four miles along section lines to the southeast corner of Section 35, T9N, R26E; thence north eight miles along section lines to the point of beginning.

(b) Cold Creek Area. An area including all lands lying within a boundary line beginning at the intersection of the Benton-Yakima County line and the Columbia River in Section 7, T13N, R24E; thence south approximately six and one-half miles along the Benton-Yakima County line to the southwest corner of Section 7, T12N, R24E; thence east five miles along section lines to the southeast corner of Section 11, T12N, R24E; thence north approximately seven miles along section lines to the Columbia River; thence west approximately five miles along the Columbia River to the point of beginning.

(2) Area 3 restrictions. Application by air of restricted use herbicides as defined in WAC 16-230-810 is prohibited.

#### NEW SECTION

WAC 16-230-850 APPLICATION OF PESTICIDES IN BENTON COUNTY AND PORTIONS OF FRANKLIN AND WALLA WALLA COUNTIES—AREA 4. (1) Area 4 description.

(a) Tri-Cities northwest buffer zone. An area including all lands lying within a boundary line beginning at the northwest corner of Section 25, T10N, R26E; thence

north two miles along section lines to the northwest corner of Section 13, T10N, R26E; thence east one mile along the section line to the northeast corner of Section 13, T10N, R26E; thence north approximately one-half mile along the section line to the United States Department of Energy Hanford Site south boundary line; thence easterly approximately ten miles and south approximately two and one-half miles along the south boundary line to the south section line of Section 27, T10N, R28E; thence west approximately six and three-fourths miles along section lines to the southwest corner of Section 27, T10N, R27E; thence north one mile along the section line to the northwest corner of Section 27, T10N, R27E; thence west four miles along section lines to the point of beginning.

(b) Tri-Cities northeast buffer zone. An area including all lands lying within a boundary line beginning at the intersection of the Esquatzel Diversion Channel drain and the Columbia River; thence east along the Esquatzel Channel to its intersection with Road 68; thence southeasterly approximately one mile along Road 68 to its intersection with Fraser Drive near the northeast corner of Section 24, T10N, R28E; thence south approximately four miles along section lines and portions of Fraser Drive and Dent Road to the southwest corner of Section 6, T9N, R29E; thence east approximately eight and one-half miles along section lines and a portion of Foster Wells Road to its intersection with the Bonneville Power Administration power line in Section 4, T9N, R30E; thence southeasterly approximately seven miles along the power line to its intersection with SR 124 in Section 32, T9N, R31E; thence easterly approximately two and one-half miles along SR 124 to the east section line of Section 34, T9N, R31E near the intersection of SR 124 and the Union Pacific Railroad; thence south approximately three miles along section lines to the southeast corner of Section 15, T8N, R31E; thence west approximately one-fourth mile along the section line to the Union Pacific Railroad; thence southerly approximately four and one-half miles along the railroad to its intersection with U.S. Highway 12 near the Boise Cascade paper mill; thence northwesterly along Highway 12 to its intersection with Interstate 182; thence westerly along I-182 to the west shoreline of the Columbia River; thence northerly approximately six and one-half miles along the Columbia River to the U.S. Department of Energy Hanford Site south boundary line in Section 14, T10N, R28E; thence east approximately one-half mile across the Columbia River to its east shoreline; thence northerly approximately one-half mile to the point of beginning.

(c) Horse Heaven Hills east buffer zone. An area including all lands lying within a boundary line beginning at the southwest corner of Section 24, T8N, R26E; thence south three miles along section lines and Tyacke Road to the southwest corner of Section 1, T7N, R26E; thence east three miles along section lines to the northeast corner of Section 8, T7N, R27E; thence south one

mile along the section line and Travis Road to the intersection with Reese Road at the southeast corner of Section 8, T7N, R27E; thence east one mile along the section line and Reese Road to the northeast corner of Section 16, T7N, R27E; thence south two miles along section lines to the intersection with Tyrell Road at the northwest corner of Section 27, T7N, R27E; thence east one mile along the section line and Tyrell Road to the northeast corner of Section 27, T7N, R27E; thence south one mile along the section line to the southeast corner of Section 27, T7N, R27E; thence east approximately twenty-two miles along section lines to the Columbia River; thence northerly approximately two miles along the Columbia River to the south section line of Section 17, T7N, R31E; thence west approximately seventeen miles along section lines to the southwest corner of Section 15, T7N, R28E; thence north one mile along the section line to the northwest corner of Section 15, T7N, R28E; thence west four miles along section lines to the intersection with Badger Canyon Road at the southwest corner of Section 12, T7N, R27E; thence north two miles along Badger Canyon Road and section lines to the intersection with Sellards Road at the southeast corner of Section 35, T8N, R27E; thence west one mile along Sellards Road and the section line to the southwest corner of Section 35, T8N, R27E; thence north one mile along the section line to the northwest corner of Section 35, T8N, R27E; thence west three miles along section lines to the southwest corner of Section 29, T8N, R27E; thence north one mile along the section line to the intersection with Cemetery Road at the northwest corner of Section 29, T8N, R27E; thence west two miles along Cemetery Road and section lines to the point of beginning.

(2) Area 4 restrictions. Application by air of restricted use pesticides as defined in WAC 16-230-810 may be made by written permit only.

#### NEW SECTION

WAC 16-230-855 APPLICATION OF PESTICIDES IN BENTON COUNTY AND PORTIONS OF FRANKLIN AND WALLA WALLA COUNTIES—AREA 5. (1) Area 5 description.

(a) Cold Creek buffer zone. An area including all lands lying within a boundary line beginning at the southwest corner of Section 7, T12N, R24E; thence east five miles along section lines to the southeast corner of Section 11, T12N, R24E; thence north approximately seven miles along section lines to the Columbia River; thence easterly approximately two miles along the Columbia River to the east section line of Section 6, T13N, R25E, near the Vernita Bridge; thence south approximately eight and one-half miles along section lines to the southeast corner of Section 18, T12N, R25E; thence west seven miles along section lines to the Benton-Yakima County line at the southwest corner of Section 18, T12N, R24E; thence north one mile along the county line to the point of beginning.

(b) Roza buffer zone. An area including all lands lying within a boundary line beginning at the northwest corner of Section 25, T10N, R26E; thence west four

miles along section lines to the northwest corner of Section 29, T10N, R26E; thence south one mile along the section line to the southwest corner of Section 29, T10N, R26E; thence west eleven miles along section lines to the southeast corner of Section 29, T10N, R24E; thence north one mile along the section line to the intersection with Anderson Road at the northeast corner of Section 29, T10N, R24E; thence west two miles along Anderson Road and section lines to the Benton-Yakima County line at the northwest corner of Section 30, T10N, R24E; thence north two miles along the county line to the northwest corner of Section 18, T10N, R24E; thence east four miles along section lines to the northeast corner of Section 15, T10N, R24E; thence south one mile along the section line to the southeast corner of Section 15, T10, R24E; thence east seven miles along section lines to the southwest corner of Section 13, T10N, R25E; thence north one mile along the section line to the northwest corner of Section 13, T10N, R25E; thence east six miles along section lines to the northwest corner of Section 13, T10N, R26E; thence south two miles along section lines to the point of beginning.

(c) West Horse Heaven buffer zone. An area including all lands lying within a boundary line beginning at the northwest corner of Section 31, T8N, R24E; thence east approximately two miles along section lines to the southeast corner of Section 29, T8N, R24E; thence north one mile along the section line to the northeast corner of Section 29, T8N, R24E; thence east four miles along section lines to the southeast corner of Section 24, T8N, R24E; thence north one mile along the section line to the northeast corner of Section 24, T8N, R24E; thence east two miles along section lines to the southeast corner of Section 16, T8N, R25E; thence north one mile along Burt James Road and the section line to the intersection with County Well Road at the northeast corner of Section 16, T8N, R25E; thence east two miles along County Well Road and section lines to the southeast corner of Section 10, T8N, R25E; thence north one mile along the section line to the northeast corner of Section 10, T8N, R25E; thence east three miles along section lines to the intersection with Gould Road at the southeast corner of Section 6, T8N, R26E; thence north one mile along Gould Road and the section line to the northeast corner of Section 6, T8N, R26E; thence east four miles along section lines to the southeast corner of Section 35, T9N, R26E; thence south seven miles along section lines and a portion of Tyacke Road to the southwest corner of Section 1, T7N, R26E; thence west approximately seventeen miles along section lines to the Benton-Yakima County line at the southwest corner of Section 6, T7N, R24E; thence north two miles along the county line to the point of beginning.

(2) Area 5 restrictions. Application by air of restricted use herbicides as defined by WAC 16-230-810 may be made by written permit only.

#### NEW SECTION

WAC 16-230-860 APPLICATION OF PESTICIDES IN BENTON COUNTY AND PORTIONS

OF FRANKLIN AND WALLA WALLA COUNTIES—AREA 6. (1) Area 6 description. All remaining lands in the area under order.

(2) Area 6 restrictions. Records shall be kept as required in WAC 16-230-805.

#### NEW SECTION

WAC 16-230-865 OTHER RULES. Provisions of WAC 16-230-800 through WAC 16-230-860 shall take precedence over all existing, less restrictive rules of the department affecting the application of pesticides in Benton, Franklin or Walla Walla Counties. No provision of WAC 16-230-800 through WAC 16-230-860 shall be construed as relieving any requirement of existing rules except those in direct conflict.

#### **WSR 89-16-074**

#### **PERMANENT RULES**

#### **DEPARTMENT OF LICENSING**

[Order TL/RG 49—Filed July 31, 1989, 2:50 p.m.]

I, Mary Faulk, director of the Department of Licensing, do promulgate and adopt at Olympia, Washington, the annexed rules relating to odometer disclosure requirements, new sections WAC 308-56A-610, 308-56A-620, 308-56A-630, 308-56A-640, 308-56A-650, 308-56A-660, 308-56A-670, 308-56A-680 and 308-56A-690.

This action is taken pursuant to Notice No. WSR 89-11-019 filed with the code reviser on May 10, 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 46.12.030 and is intended to administratively implement that statute.

This rule is promulgated under the general rule-making authority of the director of the Department of Licensing as authorized in RCW 46.01.110.

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 July 26, 1989.

By Mary Faulk  
Director

#### NEW SECTION

WAC 308-56A-610 ODOMETER DISCLOSURE STATEMENT - GENERAL PROCEDURES/REQUIREMENTS, WHEN TRANSFERRING OWNERSHIP OF A VEHICLE. An odometer disclosure statement must be completed by the transferor of each vehicle and accompany the application for certificate of title. The transferor cannot authorize or give power of attorney to the purchaser or the dealer to complete the odometer disclosure. The odometer disclosure statement must contain the following information: (1) The miles

shown on the odometer at the time of transfer of ownership;

(2) Date disclosure statement is completed;

(3) One of the following statements:

(a) The mileage reflected is actual to the best of the transferor's knowledge; or

(b) The odometer reading exceeds the mechanical limits of the odometer to the best of the transferor's knowledge; or

(c) The odometer reading is not the actual mileage. If the odometer reading is under 100,000 miles, the only options that can be certified are "actual to the best of the transferors knowledge" or "not the actual mileage". If the odometer reading exceeds 100,000 miles, the options "actual to the best of the transferors knowledge" or "not the actual mileage" cannot be used unless the odometer has six digit capability.

(4) A complete description of the vehicle is required on the odometer disclosure statement to include:

(a) Model Year

(b) Make

(c) Series and Body Type

(d) Vehicle Identification Number

(e) License Plate Number and State (if available)

(5) The name and address of the transferor must be printed on the disclosure. The transferor must also sign his/her name on the disclosure.

(a) Only one registered owner is required to complete the odometer disclosure statement.

(b) When the registered owner is a business, both the business name and a company representative's name must be reflected on the odometer disclosure statement.

(6) The name and address of the transferee must be printed on the disclosure. The transferee must also sign his/her name on the odometer disclosure statement to acknowledge the transferor's information. If the transferee represents a company, both the company name and the agent name must be reflected on the odometer disclosure statement.

(7) Such notice is required by the Federal Truth in Mileage Act of 1986; and

(8) Failure to complete such odometer disclosure statement or providing false information may result in fines and/or imprisonment.

#### NEW SECTION

WAC 308-56A-620 DEFINITIONS. (1) Transferor. Transferee means any person to whom a motor vehicle is transferred, by purchase, gift, or any means other than by creation of a security interest, and any person who, as agent, signs and odometer disclosure statement for the transferee.

(2) Transferor. Transferor means any person who transfers his ownership in a motor vehicle by sale, gift, or any means other than by creation of a security interest and any person who, as agent, signs an odometer disclosure statement for the transferor.

(3) Involuntary Divestiture. A change in vehicle ownership without owner involvement.

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

NEW SECTION

WAC 308-56A-630 ODOMETER DISCLOSURE STATEMENT - EXEMPTIONS. An odometer disclosure statement is not required on a transfer of: (1) A vehicle having a declared gross vehicle weight of more than 16,000 pounds;

- (2) A vehicle that is not self-propelled;
- (3) A vehicle that is ten years old or older;
- (4) A vehicle sold directly by a manufacturer to a federal agency when in conformity with contract specifications, or;
- (5) A new vehicle prior to its first retail sale.

NEW SECTION

WAC 308-56A-640 ODOMETER DISCLOSURE STATEMENT - DEALER TRANSACTIONS. Dealers are required to obtain odometer disclosure statements from the selling owner of the vehicle. A second odometer disclosure statement must be completed by the dealer as transferor at the time of sale whether at wholesale or retail.

Dealers are required to maintain records of, and complete odometer disclosure statements on, dealer to dealer reassignments. However, only the prior owner's disclosure must accompany the application for title. Records are to be kept by the dealer for five years.

NEW SECTION

WAC 308-56A-650 ODOMETER DISCLOSURE STATEMENT - LEASED VEHICLES. Anytime a lessee is reflected on the certificate of ownership, the lessor of a leased vehicle must notify the lessee in writing that the lessee is required to provide a written odometer disclosure statement regarding the mileage to the lessor at the termination of the lease. The lessee notice may be given by the lessor at any time after execution of the lease contract and prior to the final transfer of ownership. The odometer disclosure statement must contain the following information: (1) The printed name of the person making the disclosure;

- (2) The current odometer reading;
- (3) The date of the statement;
- (4) The lessee's name and current address;
- (5) The lessor's name and current address;
- (6) A complete description of the vehicle is required on the odometer disclosure to include:
  - (a) Model Year
  - (b) Make
  - (c) Series and Body Type
  - (d) Vehicle Identification Number
  - (e) License Plate Number and State (if available)
- (7) The date that the lessor notified the lessee of disclosure requirements;
- (8) The date that the completed disclosure statement was received by the lessor;
- (9) The signature of the lessor;
- (10) The signature of the lessee;
- (11) One of the following statements:
  - (a) The mileage reflected is actual to the best of the lessee's knowledge; or

(b) The odometer reading exceeds the mechanical limits of the odometer to the best of the lessee's knowledge; or

(c) The odometer reading is not the actual mileage.

(12) The notice must include the following:

(a) Such notice is required by the Federal Truth in Mileage Act of 1986; and

(b) Failure to complete such notice or providing false information may result in fines and/or imprisonment.

Lessor shall retain each odometer disclosure statement for five years following the date they terminate a lease or transfer ownership of the leased vehicle.

NEW SECTION

WAC 308-56A-660 ODOMETER DISCLOSURE STATEMENT - INVOLUNTARY DIVESTITURE. Where involuntary divestiture occurs an odometer disclosure statement is required.

NEW SECTION

WAC 308-56A-670 ODOMETER DISCLOSURE STATEMENT - DEALER AUCTION COMPANIES. When the vehicle is sold by a dealer auction company to a non-dealer, the dealer auction company must complete the odometer disclosure statement as the transferor.

Dealer auction companies must retain the following odometer records for each vehicle sold: (1) Name of the most recent owner, other than the auction company

(2) Name of the buyer

(3) Vehicle identification number

(4) Odometer reading of the vehicle for the date on which the auction company took possession of the vehicle.

NEW SECTION

WAC 308-56A-680 ODOMETER DISCLOSURE STATEMENT - OUT OF STATE VEHICLES. Any vehicle previously titled in another state must include an odometer disclosure statement when application is made for a Washington certificate of title or registration.

NEW SECTION

WAC 308-56A-690 ODOMETER DISCLOSURE STATEMENT - FORMS. All odometer disclosure statement forms must be approved by the Department of Licensing to ensure they are in compliance with the Federal Truth in Mileage Act of 1986.

**WSR 89-16-075**  
**EMERGENCY RULES**  
**DEPARTMENT OF LICENSING**

[Filed July 31, 1989, 2:55 p.m.]

Date of Adoption: July 26, 1989.

Purpose: Permanent rules have been filed pursuant to RCW 34.05.350(2). Former emergency rules expire July

31, 1989. These proposed emergency rules are substantially similar to the prior emergency rules and are necessary to conform to requirements of 49 C.F.R. Part 580.

Statutory Authority for Adoption: RCW 46.12.030, 46.01.110 and 34.05.350.

Other Authority: 49 C.F.R. Part 580.

Pursuant to RCW 34.05.350 the agency for good cause finds that state and federal law or federal rules or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

#### NEW SECTION

**WAC 308-56A-610 ODOMETER DISCLOSURE STATEMENT - GENERAL PROCEDURES/REQUIREMENTS, WHEN TRANSFERRING OWNERSHIP OF A VEHICLE.** An odometer disclosure statement must be completed by the transferor of each vehicle and accompany the application for certificate of title. The transferor cannot authorize or give power of attorney to the purchaser or the dealer to complete the odometer disclosure. The odometer disclosure statement must contain the following information: (1) The miles shown on the odometer at the time of transfer of ownership;

(2) Date disclosure statement is completed;

(3) One of the following statements:

(a) The mileage reflected is actual to the best of the transferor's knowledge; or

(b) The odometer reading exceeds the mechanical limits of the odometer to the best of the transferor's knowledge; or

(c) The odometer reading is not the actual mileage. If the odometer reading is under 100,000 miles, the only options that can be certified are "actual to the best of the transferors knowledge" or "not the actual mileage". If the odometer reading exceeds 100,000 miles, the options "actual to the best of the transferors knowledge" or "not the actual mileage" cannot be used unless the odometer has six digit capability.

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(e) License Plate Number and State (if available)

(5) The name and address of the transferor must be printed on the disclosure. The transferor must also sign his/her name on the disclosure.

(a) Only one registered owner is required to complete the odometer disclosure statement.

(b) When the registered owner is a business, both the business name and a company representative's name must be reflected on the odometer disclosure statement.

(6) The name and address of the transferee must be printed on the disclosure. The transferee must also sign his/her name on the odometer disclosure statement to acknowledge the transferor's information. If the transferee represents a company, both the company name and the agent name must be reflected on the odometer disclosure statement.

(7) Such notice is required by the Federal Truth in Mileage Act of 1986; and

(8) Failure to complete such odometer disclosure statement or providing false information may result in fines and/or imprisonment.

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(2) *Transferor.* Transferor means any person who transfers his ownership in a motor vehicle by sale, gift, or any means other than by creation of a security interest and any person who, as agent, signs an odometer disclosure statement for the transferor.

(3) *Involuntary Divestiture.* A change in vehicle ownership without owner involvement.

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

#### NEW SECTION

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(2) A vehicle that is not self-propelled;

(3) A vehicle that is ten years old or older;

(4) A vehicle sold directly by a manufacturer to a federal agency when in conformity with contract specifications, or;

(5) A new vehicle prior to its first retail sale.

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Dealers are required to maintain records of, and complete odometer disclosure statements on, dealer to dealer reassignments. However, only the prior owner's disclosure must accompany the application for title. Records are to be kept by the dealer for five years.

#### NEW SECTION

**WAC 308-56A-650 ODOMETER DISCLOSURE STATEMENT - LEASED VEHICLES.** Anytime a lessee is reflected on the certificate of ownership, the lessor of a leased vehicle must notify the lessee in writing that the lessee is required to provide a written odometer disclosure statement regarding the mileage to the lessor at the termination of the lease. The lessee notice may be given by the lessor at any time after execution of the



lease contract and prior to the final transfer of ownership. The odometer disclosure statement must contain the following information: (1) The printed name of the person making the disclosure;

- (2) The current odometer reading;
- (3) The date of the statement;
- (4) The lessee's name and current address;
- (5) The lessor's name and current address;
- (6) A complete description of the vehicle is required on the odometer disclosure to include:

- (a) Model Year
- (b) Make
- (c) Series and Body Type
- (d) Vehicle Identification Number
- (e) License Plate Number and State (if available)
- (7) The date that the lessor notified the lessee of disclosure requirements;

(8) The date that the completed disclosure statement was received by the lessor;

- (9) The signature of the lessor;
- (10) The signature of the lessee;
- (11) One of the following statements:

(a) The mileage reflected is actual to the best of the lessee's knowledge; or

(b) The odometer reading exceeds the mechanical limits of the odometer to the best of the lessee's knowledge; or

(c) The odometer reading is not the actual mileage.

(12) The notice must include the following:

(a) Such notice is required by the Federal Truth in Mileage Act of 1986; and

(b) Failure to complete such notice or providing false information may result in fines and/or imprisonment.

Lessor shall retain each odometer disclosure statement for five years following the date they terminate a lease or transfer ownership of the leased vehicle.

#### NEW SECTION

**WAC 308-56A-660 ODOMETER DISCLOSURE STATEMENT - INVOLUNTARY DIVESTITURE.** Where involuntary divestiture occurs an odometer disclosure statement is required.

#### NEW SECTION

**WAC 308-56A-670 ODOMETER DISCLOSURE STATEMENT - DEALER AUCTION COMPANIES.** When the vehicle is sold by a dealer auction company to a non-dealer, the dealer auction company must complete the odometer disclosure statement as the transferor.

Dealer auction companies must retain the following odometer records for each vehicle sold: (1) Name of the most recent owner, other than the auction company

(2) Name of the buyer

(3) Vehicle identification number

(4) Odometer reading of the vehicle for the date on which the auction company took possession of the vehicle.

#### NEW SECTION

**WAC 308-56A-680 ODOMETER DISCLOSURE STATEMENT - OUT OF STATE VEHICLES.** Any

vehicle previously titled in another state must include an odometer disclosure statement when application is made for a Washington certificate of title or registration.

#### NEW SECTION

**WAC 308-56A-690 ODOMETER DISCLOSURE STATEMENT - FORMS.** All odometer disclosure statement forms must be approved by the Department of Licensing to ensure they are in compliance with the Federal Truth in Mileage Act of 1986.

**WSR 89-16-076**

**EMERGENCY RULES**

**STATE BOARD OF EDUCATION**

[Filed July 31, 1989, 3:37 p.m.]

Date of Adoption: July 20, 1989.

Purpose: To comply with new APA requirements.

Citation of Existing Rules Affected by this Order: Readopting chapters 180-08 and 180-75 WAC.

Statutory Authority for Adoption: Readoption under RCW 34.05.220(A) [34.05.220 (1)(a)] and 34.05.250.

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

Reasons for this Finding: Readoption necessary to maintain current practices of agency and prevent disruption of services. Deviation from APA procedures required by federal law.

Effective Date of Rule: Immediately.

July 25, 1989  
Monica Schmidt  
Secretary

READOPTED SECTION (Readopting Order 8-83, filed 10/17/83)

**WAC 180-08-003 AUTHORITY.** The authority for this chapter is RCW 34.04.020 which authorizes the state board of education to adopt rules governing the formal and informal procedures prescribed or authorized by chapter 34.04 RCW.

READOPTED SECTION (Readopting Order 8-83, filed 10/17/83)

**WAC 180-08-005 ADMINISTRATIVE PRACTICES REGARDING HEARINGS AND RULE PROCEEDINGS.** The state board of education is governed by the state Administrative Procedure Act, chapter 34.04 RCW, the Washington State Register Act, chapter 34.08 RCW, and the state office of Administrative Hearings Act, chapter 34.12 RCW. These acts govern the conduct of "rule" making proceedings and the conduct of "contested case" hearings as these terms are defined in RCW 34.04.010 (2) and (3). Appearances in

representative capacities before the state board of education; the procedures and conditions governing petitions for declaratory rulings or the adoption, amendment, or repeal of a rule; and, the standards, procedures and conditions governing the conduct of contested case hearings and proceedings by or before the state board of education shall be as set forth in rules of the state code reviser and the office of administrative hearings as now or hereafter amended. The rules of the code reviser are currently set forth in chapters 1-08 and 1-12 WAC. The rules of the office of administrative hearings are currently set forth in chapter 10-08 WAC.

All other regulatory actions and hearings conducted by the state board of education may be conducted informally at the discretion of the state board of education.

**READOPTED SECTION** (Readopting Order 6-86, filed 6/10/86)

**WAC 180-75-003 AUTHORITY.** The authority for this chapter is RCW 28A.70.005 which authorizes the state board of education to establish, publish, and enforce rules and regulations determining eligibility for and certification of personnel employed in the common schools of this state. (Note: RCW 28A.02.201 (3)(a) requires most private school classroom teachers to hold appropriate Washington state certification with few exceptions.)

**READOPTED SECTION** (Readopting Order 11-87, filed 6/1/87)

**WAC 180-75-005 PURPOSE.** The purpose of this chapter is to incorporate into one chapter the general certification provisions to ensure uniform application and interpretation of the various certification rules within the confines of current statutory law. It is not the intent or purpose of this chapter to govern or limit the procedures and standards which are otherwise applicable to the nonrenewal or discharge of certificated employees by school districts and educational service districts. Proceedings under this chapter and local discharge/nonrenewal proceedings are separate proceedings.

**READOPTED SECTION** (Readopting Order 25-88, filed 12/14/88)

**WAC 180-75-017 DENIAL OF RECOMMENDATION FOR CERTIFICATION OR ENDORSEMENT BY APPROVED PROFESSIONAL PREPARATION TRAINING INSTITUTIONS.** Any person whose application for certification or for an endorsement is denied for recommendation to the superintendent of public instruction by an institution of higher education within the state with an approved professional preparation program, after exhausting any appeal procedures established by such institution, may apply directly to the superintendent of public instruction for such certificate or endorsement.

**READOPTED SECTION** (Readopting Order 2-87, filed 4/3/87)

**WAC 180-75-018 WRITTEN NOTICE OF DENIAL, LAPSING, OR REVOCATION BY SUPERINTENDENT OF PUBLIC INSTRUCTION.** Whenever the superintendent of public instruction takes action to deny an application or to lapse or revoke a certificate, the superintendent of public instruction, in accordance with the provisions of this chapter, shall report such decision to the applicant or affected certificate holder by written notice stating the reason(s) for such action and containing notice of applicable administrative appeal procedures provided in this chapter. If the notice is to lapse or revoke a certificate and the superintendent of public instruction has knowledge that such certificate holder is employed within the common school system or by an approved private school, the superintendent of public instruction shall provide such employer with a copy of the written notice.

**READOPTED SECTION** (Readopting Order 2-87, filed 4/3/87)

**WAC 180-75-019 INVESTIGATORY FILES—ESTABLISHMENT, SECURITY, DISCLOSURE, RETENTION, AND DESTRUCTION.** The following policies shall apply to investigatory files established by the superintendent of public instruction:

(1) **Establishment.** Upon receipt of any negative material relating to good moral character, personal fitness, and professional conduct as defined in WAC 180-75-037 and 180-75-081 or which forms the basis for initiation of a certificate revocation investigation pursuant to WAC 180-75-035, that section within the office of the superintendent of public instruction having responsibility for certification shall establish an investigatory file which shall contain all information related to the good moral character, personal fitness, and professional conduct in question.

(2) **Security.** The investigatory file shall be maintained separately from an applicant's or a certificate holder's noninvestigatory certification file and shall be kept in a secured storage area with access limited to the chief administrator responsible for certification and the assigned investigator and/or designated staff assistants of such investigator.

(3) **Disclosure.** The information in the investigatory file shall be exempt from public disclosure and copying pursuant to RCW 42.17.310 (1)(d). In response to a public records request concerning material in an investigatory file made by someone other than the certificate holder or applicant, the assigned investigator in the office of the superintendent of public instruction shall notify the requestor that the existence of or material in an investigatory file, pursuant to RCW 42.17.310 (1)(d), is exempt from public disclosure.

(4) **Retention and destruction.** Investigatory files shall be retained and destroyed pursuant to the following policies:

(a) If an applicant or certificate holder receives written notice, pursuant to WAC 180-75-018, of denial for

failure to possess good moral character or personal fitness or of cause for revocation, the investigatory file related thereto shall not be destroyed until such affected party reaches the age of seventy-five or until such time as the chief administrator for certification determines, with a high degree of certainty, that the information within such file would not be relevant to a subsequent application for or reinstatement of a certificate or a subsequent revocation action. An affected party may request the chief administrator of certification, once in each calendar year, to make such a determination and either to destroy his or her investigatory file or to advise the affected party of the reason or reasons for the decision to retain such file.

(b) In all other cases, investigatory files shall be destroyed no later than one year after the date of establishment unless the chief administrator for certification, prior to such date, determines that the information within such file is or might be relevant either for investigatory and/or adjudication purposes in a current or subsequent revocation investigation or action and, in which case, the investigatory file shall be destroyed ten years after the file has been closed, which for the purpose of this section means the last date upon which the file was reviewed for an investigatory purpose. An affected party may request the chief administrator of certification, once in each calendar year, to make a determination as to current or subsequent relevancy of the information within his or her file and either to destroy his or her investigatory file or to advise the affected party of the reason or reasons for the decision to retain such file.

**READOPTED SECTION** (Readopting Order 6-86, filed 6/10/86)

**WAC 180-75-020 APPEAL—GENERAL.** Any person who applies directly to the superintendent of public instruction for a certificate, particular endorsement, certificate renewal, or certificate reinstatement whose application is denied or any person who is notified that his or her certificate has lapsed or that his or her certificate will be revoked in thirty calendar days unless the decision is appealed shall be advised that he or she is entitled to appeal that decision to the superintendent of public instruction if he or she follows the procedures established in WAC 180-75-025 through 180-75-030: **PROVIDED,** That the appeal procedure may not be used to seek reinstatement of a certificate if that certificate has been revoked in the preceding twelve months by the superintendent of public instruction.

The appeal procedure to the superintendent of public instruction consists of two levels, one informal and one formal. The use of the informal level is a condition precedent to use of the formal level. In addition, the provisions of WAC 180-75-033 provide an additional appeal to the state board of education.

**READOPTED SECTION** (Readopting Order 2-87, filed 4/3/87)

**WAC 180-75-025 APPEAL PROCEDURE—INFORMAL SPI REVIEW.** Any person who appeals the

decision to deny his or her application, the lapsing of his or her certificate pursuant to chapter 180-85 WAC or the proposed order to revoke his or her certificate must file a written notice with the superintendent of public instruction within thirty calendar days following the date of mailing from the section of the superintendent of public instruction's office responsible for certification of the decision to deny the application, the lapsing of the certificate, or the proposed order to revoke his or her certificate.

The written notice must set forth the reasons why the appellant believes his or her application should have been granted or why his or her certificate should not be lapsed or revoked, whichever is applicable.

Following timely notice of appeal, the superintendent of public instruction shall appoint a review officer who shall be someone other than the person or persons who denied the application, approved the lapsing, or the proposed revocation initially and who is not a subordinate of such person.

The review officer shall:

(1) Review the application, notice of lapsing, or proposed revocation, whichever is applicable, and appeal notice and may request further written information including but not limited to an explanation from the person or persons who initially reviewed the application or decided to lapse the certificate or to issue the proposed order to revoke the certificate, whichever is applicable, of the reason(s) why the application was denied or the certificate was lapsed or should be revoked.

(2) If he or she deems it advisable, schedule an informal meeting of the appellant, the person or persons who denied the application, lapsed the certificate, or proposed to revoke the certificate initially, and any other interested parties designated by the reviewing officer to receive oral information concerning the application, lapsing, or revocation. Any such meeting must be held within thirty days of the date of receipt by the superintendent of public instruction of the timely-filed appeal notice.

(3) Send by certified mail a written decision—i.e., findings of fact and conclusions of law—on the appeal within forty-five days from the date of receipt of the timely-filed appeal notice by the superintendent of public instruction. The review officer may uphold, reverse, or modify the decision to deny the application, the lapsing of the certificate, or the proposed order to revoke the certificate.

(4) The timelines stated herein may be extended by the review officer for cause.

(5) Provided, that in the case of an action for revocation of a certificate, the review officer, if so requested by an appellant, shall delay any review under this section until all quasi-judicial administrative or judicial proceedings (i.e., criminal and civil actions), which the review officer and the appellant agree are factually related to the revocation proceedings, are completed, including appeals, if the appellant signs the agreement stated in WAC 180-75-026. In requesting such delay, the appellant shall disclose fully all pending quasi-judicial administrative proceedings in which the appellant is involved.

**READOPTED SECTION** (Readopting Order 2-87, filed 4/3/87)

**WAC 180-75-026 AGREEMENT NOT TO CONTINUE OR ACCEPT EDUCATIONAL EMPLOYMENT.** The agreement required for deferring revocation proceedings pursuant to WAC 180-75-025 shall read as follows:

"I, . . . . ., have received notice that the office of superintendent of public instruction believes sufficient cause exists for the revocation of the following certificate(s):

- (1) . . . . . Cert. No. . . . .
- (2) . . . . . Cert. No. . . . .

As a condition to a delay in the hearing date, I agree not to commence or continue employment in any Washington public or private school or agency in a position requiring such certificate until the office of superintendent of public instruction dismisses the case without a hearing or until a hearing has been held and the final decision is rendered by the superintendent of public instruction. I further agree to advise the review officer assigned to my revocation proceedings, pursuant to WAC 180-75-025, of all decisions rendered in any administrative or judicial tribunal and all appeals therefrom which the review officer and I have agreed are factually related to the action to revoke my certificate(s). I understand my failure to abide by this agreement is an act of unprofessional conduct and, therefore, may be sufficient cause for revocation of my certificate(s)."

**READOPTED SECTION** (Readopting Order 6-86, filed 6/10/86)

**WAC 180-75-027 WAIVER OF REQUIREMENT FOR TIMELY APPEAL.** The requirements in this chapter for timely notice of appeal shall be waived if justifiable cause is established by the appellant, including failure to receive such notice without fault of the appellant or a plausible reason by the appellant for failure to understand the nature of or the timelines within the received notice.

**READOPTED SECTION** (Readopting Order 6-86, filed 6/10/86)

**WAC 180-75-030 APPEAL PROCEDURE— FORMAL SPI REVIEW PROCESS.** (1) Any person who has filed an appeal in accordance with WAC 180-75-020 and desires to have the denial of his or her application, the lapsing of his or her certificate, or the proposed order to revoke his or her certificate reviewed further may do so. To instigate review under this section, a person must file a written notice with the superintendent of public instruction within thirty calendar days following the date of receipt of the review officer's written decision.

(2) For purposes of hearing an appeal under this section, the superintendent of public instruction shall conduct a formal administrative hearing in conformance with the Administrative Procedure Act, chapter 34.04

RCW. The superintendent of public instruction, in carrying out this duty, may contract with the office of administrative hearings pursuant to RCW 28A.03.500 to hear a particular appeal. Decisions in cases formally appealed pursuant to this section may be made by the administrative law judge selected by the chief administrative law judge if the superintendent of public instruction delegates this authority pursuant to RCW 28A.03.500.

(3) The decision of the superintendent of public instruction or the administrative law judge, whichever is applicable, shall be sent by certified mail to the appellant's last known address and if the decision is to revoke, the appellant shall be notified that such order took effect upon signing of the final order and that no stay of revocation shall exist pursuant to RCW 28A.70.170 until the filing of an appeal in a timely manner pursuant to WAC 180-75-033.

**READOPTED SECTION** (Readopting Order 6-86, filed 6/10/86)

**WAC 180-75-033 APPEAL PROCEDURE TO SBE.** Any person whose application has been denied for any reason or whose certificate has been lapsed or revoked by the superintendent of public instruction in accordance with the procedures of WAC 180-75-030 may appeal that decision to the state board of education by filing a notice of appeal with the superintendent of public instruction or the secretary of the state board of education within thirty calendar days of the date of mailing the final order by the superintendent of public instruction. Review by the state board of education shall be conducted as follows:

(1) Review shall be conducted by the state board of education at its next scheduled meeting following notice of appeal unless either the appellant or the superintendent of public instruction requests an extension of the review to the following next scheduled meeting.

(2) Review conducted by the state board of education shall be confined to the record, except that in cases of alleged irregularities in procedures before the superintendent of public instruction, not shown in the record, testimony thereon shall be taken before the state board of education.

(3) The record shall include written briefs submitted.

(4) Oral argument will be permitted if fifteen days advance notice is given to the secretary of the state board of education.

(5) The state board of education will be assisted in its deliberations and final order by an assistant attorney general who has not been involved in any prior proceeding related to the previous administrative order by the superintendent of public instruction.

(6) The state board of education may affirm the decision of the superintendent of public instruction, remand the matter for further proceedings, or reverse the decision.

(7) If the decision of the state board of education is to reverse the decision of the superintendent of public instruction or to remand the matter for further proceedings, the state board of education shall state its reasons in a written order.

(8) The final order of the state board of education shall be by written order, attested by the secretary of the state board of education, and sent to the appellant by certified mail within ten calendar days of the final decision by the state board of education.

**READOPTED SECTION** (Readopting Order 2-87, filed 4/3/87)

**WAC 180-75-034 CERTIFICATE REVOCATION—INITIATION OF PROCEEDINGS.** The initiation of revocation proceedings by the superintendent of public instruction shall commence as a result of the following:

(1) Whenever the superintendent of public instruction or the designated administrative officer of the superintendent of public instruction having responsibility for certification becomes aware from whatever source that a certificate holder has had a professional license revoked by a licensing agency or has been arrested for any felony offense included within WAC 180-75-081(1), the superintendent of public instruction or the designated administrative officer shall cause an investigation pursuant to WAC 180-75-035(1).

(2) In all other cases, the initiation of investigative proceedings pursuant to WAC 180-75-035(1) shall commence only upon receipt of a written complaint from a school district or educational service district superintendent or the chief administrative officer of an approved private school. Such written complaint shall state the grounds for revocation and summarize the factual basis upon which a determination has been made that an investigation by the superintendent of public instruction is warranted. The superintendent of public instruction shall provide the affected certificate holder with a copy of such written complaint.

**READOPTED SECTION** (Readopting Order 2-87, filed 4/3/87)

**WAC 180-75-035 CERTIFICATE REVOCATION AND SUBSEQUENT REINSTATEMENT.** The following shall apply to revocation and subsequent reinstatement:

(1) **Revocation.** Upon receipt of information of an arrest for any offense included within WAC 180-75-081(1) or a written complaint pursuant to WAC 180-75-034(2), that section within the office of the superintendent of public instruction having responsibility for certification shall investigate the complaint. If sufficient cause for revocation of the individual's certificate(s) is determined to exist, the section shall notify the holder by certified mail of its finding of sufficient cause in the form of a proposed order—i.e., findings of fact and conclusions of law—and shall further advise the holder of the appeal procedures specified in WAC 180-75-020, 180-75-030 and 180-75-033. The notice shall further specify that the superintendent of public instruction will sign the order after thirty calendar days from the date of mailing if the proposed order is not appealed.

(2) **Reinstatement.** In accordance with RCW 28A.70-.180 an individual may become eligible to reinstate a certificate after a period of one calendar year from the

date of revocation. The superintendent of public instruction or his or her designee shall consider the application of an individual whose certificate has been revoked and, based upon application and such other information as deemed appropriate, determine whether a certificate shall be reinstated.

**READOPTED SECTION** (Readopting Order 2-87, filed 4/3/87)

**WAC 180-75-037 CERTIFICATE REVOCATION—GROUNDS FOR REVOCATION.** The grounds for the revocation of professional education certificates are as follows:

(1) The lack of good moral character and/or personal fitness as defined in WAC 180-75-081.

(2) Unprofessional conduct, including the related acts of immorality, intemperance, and violation of written contract: **PROVIDED**, That until the state board of education adopts a code of professional conduct pursuant to WAC 180-75-199, the ground of unprofessional conduct shall be limited to civil acts expressly prohibited by law, including statutes, common law, and administrative rules of the state board of education: **PROVIDED FURTHER**, That unprofessional conduct shall not include matters related to employment with a particular public or private school employer, such as insubordination, violation of a collective bargaining act, or other employment related acts correctable by the employer or other civil remedies.

**READOPTED SECTION** (Readopting Order 2-87, filed 4/3/87)

**WAC 180-75-038 DUTY OF EDUCATIONAL SERVICE DISTRICT SUPERINTENDENT TO INVESTIGATE COMPLAINTS.** Each educational service district superintendent shall cause to be investigated all written and signed complaints from whatever source, that allege that a certificated education professional within his or her educational service district is not of good moral character or personal fitness as defined in WAC 180-75-081 or has committed an act of unprofessional conduct as defined in WAC 180-75-037. If the educational service district superintendent investigates and determines the facts are reliable and further investigation by the superintendent of public instruction pursuant to WAC 180-75-035 is warranted, the educational service district superintendent shall forward the written complaint and the results of his or her investigation to the superintendent of public instruction: **PROVIDED**, That if the educational service district superintendent, after consultation with the assistant attorney general assigned to his or her educational service district, determines that the substance of the complaint would not constitute grounds for revocation if true, then such educational service district superintendent need not investigate the complaint: **PROVIDED FURTHER**, That if the educational service district superintendent receives a written assurance from the superintendent of public instruction, a district superintendent, or a chief administrative officer of an approved private school that such official is investigating or will investigate the same or a

substantially similar complaint, the educational service district superintendent shall be deemed to have caused an investigation in compliance with this section.

**READOPTED SECTION** (Readopting Order 2-87, filed 4/3/87)

**WAC 180-75-039 DUTY OF ESD SUPERINTENDENT, DISTRICT SUPERINTENDENT AND PRIVATE SCHOOL ADMINISTRATOR TO FILE COMPLAINTS.** Whenever an educational service district superintendent, a district superintendent, or the chief administrative officer of an approved private school possesses sufficient reliable information to believe that a certificated employee within such district or approved private school is not of good moral character or personally fit or has committed an act of unprofessional conduct, such superintendent or chief administrative officer, within a reasonable period of time of making such determination, shall file a written complaint with the superintendent of public instruction: **PROVIDED**, That if an educational service district or school district is considering action to discharge an employee of such district, the educational service district or school district superintendent need not file such complaint until ten calendar days after making the final decision to serve or not serve formal notice of discharge.

**READOPTED SECTION** (Readopting Order 2-87, filed 4/3/87)

**WAC 180-75-040 NOTIFICATION OF DENIAL, SURRENDER, LAPSING, OR REVOCATION OF CERTIFICATES.** The superintendent of public instruction shall notify all other states whenever an applicant has been denied a certificate for failure to possess good moral character or personal fitness or whenever a certificate has been surrendered or revoked and shall provide the full name and certificate number, if applicable, to the agency responsible for certification in each state. The superintendent of public instruction shall notify appropriate public or private school officials within the state the name and certification number of all certificate holders' whose certificate(s) has been lapsed, surrendered, or revoked: **PROVIDED**, That such notification shall not be made prior to forty-five days after the final administrative order and shall not be made if a court order staying the denial, lapsing, or revocation is in effect.

**READOPTED SECTION** (Readopting Order 2-87, filed 4/3/87)

**WAC 180-75-042 EMERGENCY SUSPENSION OF CERTIFICATE.** Notwithstanding any other provision of this chapter, the superintendent of public instruction, pursuant to RCW 34.04.170(2), may emergency suspend a certificate if the superintendent of public instruction finds that the public health, safety, or welfare of students, colleagues, or the general public imperatively requires emergency action. In such cases, the holder of the certificate who is subjected to emergency suspension of his or her certificate shall have the right to commence an informal review of such action pursuant to

WAC 180-75-025 within forty-eight hours of filing a notice of appeal with the superintendent of public instruction or, if applicable, to sign an agreement pursuant to WAC 180-75-026. If such an agreement is signed or, if not, unless the review officer sustains the emergency action of the superintendent of public instruction within seven calendar days of the filing of the notice of appeal, the emergency suspension shall be void.

**READOPTED SECTION** (Readopting Order 2-87, filed 4/3/87)

**WAC 180-75-043 UNPROFESSIONAL CONDUCT FOR FAILURE TO FILE A COMPLAINT.** The intentional failure of an educational service district superintendent, a district superintendent, or a chief administrator of a private school to file a complaint pursuant to WAC 180-75-039 is an act of unprofessional conduct and may be sufficient cause for revocation of such person's professional education certificate.

**READOPTED SECTION** (Readopting Order 14-87, filed 12/21/87)

**WAC 180-75-044 UNPROFESSIONAL CONDUCT FOR MISREPRESENTATION OF FACTS.** The intentional misrepresentation of material facts in an application for certification, reinstatement thereof, endorsement thereon, or continuing education related thereto is an act of unprofessional conduct and may be sufficient cause for the revocation of such person's professional education certificate.

**READOPTED SECTION** (Readopting Order 14-87, filed 12/21/87)

**WAC 180-75-045 CERTIFICATE VALIDITY.** Any certificate issued pursuant to chapters 180-77 or 180-79 WAC or previous standards of the state board of education shall entitle the holder thereof to be employed by a public or nonpublic school for the performance of duties encompassed by the type of certificate as specified in WAC 180-75-055, if such certification is required by statute or rules of the state board of education, until such certificate expires, lapses, or is revoked.

**READOPTED SECTION** (Readopting Order 25-88, filed 12/14/88)

**WAC 180-75-047 UNIFORM EXPIRATION DATE.** All certificates issued for one or more stated years shall expire on August 31 of the stated year and shall be calculated as follows:

(1) Certificates issued prior to October 1 of a calendar year shall have the expiration date of the certificate calculated on the basis such certificate was issued on September 1 of the same calendar year regardless of the date of issuance.

(2) Certificates issued October 1 or later in the calendar year shall have the expiration date of the certificate calculated on the basis such certificate was issued on September 1 of the next calendar year regardless of the date of issuance.

(3) All such certificates issued prior to the effective date of this section and scheduled to expire prior to August 31 of a given year, regardless of such stated expiration date, shall be valid until August 31 of the stated year of expiration.

**READOPTED SECTION** (Readopting Order 25-88, filed 12/14/88)

**WAC 180-75-048 VALIDITY DATE.** The validity date of a certificate or permit shall be the actual date of issuance.

**READOPTED SECTION** (Readopting Order 8-80, filed 6/2/80)

**WAC 180-75-050 CERTIFICATE REQUIRED.** Persons serving as teachers in public or private schools or as principals or educational staff associates in public schools and in vocational positions as established by chapter 180-77 WAC shall hold certificates authorized by the state board of education for service in the respective roles.

**READOPTED SECTION** (Readopting Order 25-88, filed 12/14/88)

**WAC 180-75-055 TYPES OF CERTIFICATES.** Four types of certificates shall be issued:

(1) **Teacher.** The teacher certificate, including alien permits as provided in chapter 392-193 WAC, authorizes service as a classroom teacher.

(2) **Administrator.**

(a) The administrator certificate endorsed "principal" authorizes services as a building administrator or vice principal.

(b) The administrator certificates endorsed "superintendent" or "program administrator" will be issued to persons who meet state board of education certification standards for service in the roles of superintendent or program administrator.

(3) **Educational staff associate.** The educational staff associate certificate authorizes service in endorsed roles of communication disorders specialists, counselors, school nurses, occupational therapists, physical therapists, psychologists, social workers, and reading resource specialists: **PROVIDED**, That nothing within chapter 180-79 WAC authorizes professional practice by an educational staff associate which is otherwise prohibited or restricted by any other law, including licensure statutes and rules and regulations promulgated by the appropriate licensure board or agency.

(4) **Vocational.** The vocational certificate authorizes service in vocational instruction in accordance with the provisions of chapter 180-77 WAC.

**READOPTED SECTION** (Readopting Order 10-78, filed 9/1/78)

**WAC 180-75-060 CERTIFICATE REPLACEMENT.** The superintendent of public instruction shall issue a replacement certificate to any person who files an application, pays the appropriate certification fee, and

verifies by signature that the original certificate has been lost or destroyed or that a legal name change has occurred.

**READOPTED SECTION** (Readopting Order 25-88, filed 12/14/88)

**WAC 180-75-061 APPLICATION FOR CERTIFICATION.** An individual who applies for a Washington state certificate, unless seeking reinstatement pursuant to WAC 180-75-087 or renewal pursuant to WAC 180-75-088, must meet the standards in effect at the time of application. Effective August 31, 1993, unless the candidate is applying for a limited certificate pursuant to WAC 180-79-230, an initial certificate pursuant to the reciprocity provisions of WAC 180-79-245, or a vocational certificate pursuant to WAC 180-77-040 or 180-77-095 or unless the candidate holds a valid Washington state certificate, the candidate must have passed the applicable parts of the admission to practice examination within one calendar year of the date of application.

**READOPTED SECTION** (Readopting Order 2-87, filed 4/3/87)

**WAC 180-75-065 FEE FOR CERTIFICATION.** (1) In accordance with provisions of RCW 28A.70.110 and 28A.71.100, the fee for certificates which are valid for more than one year, issued by authority of the state of Washington and authorizing the holder to serve in the common schools of the state, shall be as follows:

(a) The continuing certificate is seventy dollars,

(b) The reinstatement, additional endorsement on the certificate, duplicate certificates, substitute certificates, and certificates issued for the purpose of showing a name change is fifteen dollars; and

(c) Any other certificate or credential or any renewal thereof shall be five dollars for each year of validity:

(d) **PROVIDED**, That the fee for all vocational certificates shall be one dollar.

(2) The fee for any other certificate/credential, or for any renewal thereof, issued by the authority of the state of Washington and authorizing the holder to serve in the common schools of the state, shall be five dollars.

(3) Officials authorized to collect certification fees are educational service district superintendents, local school district superintendents, deans and directors of education at colleges and universities, and designees of program units. The fee must accompany the application for a certificate and shall be transmitted by the receiving district, college or university, or program unit designee at least quarterly to the educational service district within which the application is filed for disposition in accordance with provisions of RCW 28A.70.110. The fee shall not be refunded unless the application is withdrawn before it is finally considered (i.e., the issuance of a certificate or a written communication denying such issuance) by the superintendent of public instruction or his or her designee. Fees not refunded shall apply as a credit to a reapplication for the same or one or more other certificates if such applicant reapplies within twenty-four



months of the date of denial. Moneys accrued from certification fees within the boundaries of an educational service district shall be divided in the following manner:

(a) Local school districts employing more than one hundred teachers and other professional staff and collecting certification fees may retain one dollar of each fee in order to hold a professional training institute. If such district does not hold an institute all such moneys shall be placed to the credit of the educational service district.

(b) No less than fifty percent of the funds accruing within the boundaries of an educational service district shall be used to support program activities related to state-wide precertification professional preparation and evaluation.

(c) The remaining funds shall be used to support professional inservice training programs and evaluations thereof.

**READOPTED SECTION** (Readopting Order 2-87, filed 4/3/87)

**WAC 180-75-070 USE OF FEE FOR CERTIFICATION.** (1) Certification fees will be used solely for precertification professional preparation, professional inservice training programs, teachers' institutes and/or workshops, and evaluations thereof in accordance with this chapter.

(2) Precertification professional preparation:

(a) A subcommittee of the state professional education advisory committee as established in WAC 180-78-015 shall assist the superintendent of public instruction in administration of precertification program funds by annually establishing priorities and procedures for distribution of funds available for precertification activities. The primary utilization shall be to support collaborative efforts essential to program development, program evaluation, and assessment of candidates' entry and exit competency.

(b) Funds set aside for precertification shall not supplant funds already available to any participating agency.

(c) A single educational service district shall be designated to administer the funds allocated for precertification programs. The designated educational service district shall be permitted to retain up to five percent of the precertification fees for costs related to administering these funds.

(d) Each quarter every educational service district shall forward the moneys designated for precertification programs to the educational service district designated to administer such programs.

(3) Professional inservice training programs and teachers' institutes and/or workshops:

(a) Each educational service district, or cooperative thereof as specified in subparagraph (d) of this subsection, shall establish an inservice committee composed of an educational service district representative; at least one district superintendent; one principal; one educational staff associate; one elementary, one junior high and one senior high teacher; one representative from the elementary or secondary level of private schools within the educational service district; and one representative selected

by the chief administrative officer responsible for professional education from a college/university having a state board of education approved teacher education program. Teacher representatives shall be selected by agreement among the presidents of the local education associations within the respective educational service district or cooperative thereof.

(b) The educational service district representative shall serve as chairperson of the inservice committee and provide liaison with the superintendent of public instruction and the state board of education.

(c) The inservice committee will be responsible for coordinating inservice/staff development model programs within the educational service district and shall submit to the superintendent of public instruction and the state board of education a plan for soliciting and selecting model programs which shall include procedures for conducting needs assessments, determining priorities and carrying out program evaluation.

(d) Cooperative agreements may be made among educational service districts to provide quality inservice education programs.

(e) Funds designated for inservice programs shall not supplant funds already available for such programs.

(4) Allowable expenditures. Funds may be used to support costs related to training, such as the payment of professional contractual services, per diem, travel costs, materials, printing, or released time. Nonallowable costs are college/university tuition and fees.

(5) Annual reporting. The superintendent of public instruction shall prepare and present to the state board of education an annual report concerning the use of certification fees for precertification and inservice activities.

**READOPTED SECTION** (Readopting Order 2-87, filed 4/3/87)

**WAC 180-75-080 CITIZENSHIP REQUIREMENTS—EXCEPTIONS.** Except as provided in chapter 392-193 WAC, no person who is not a citizen of the United States of America shall be certified to teach in the common schools of this state.

**READOPTED SECTION** (Readopting Order 2-87, filed 4/3/87)

**WAC 180-75-081 GOOD MORAL CHARACTER AND PERSONAL FITNESS—DEFINITION.** As used in this chapter, the terms "good moral character and personal fitness" means character and personal fitness necessary to serve as a certificated employee in schools in the state of Washington, including character to have contact with and to teach children and personal fitness necessary to perform supervision of children and includes the following:

(1) No conviction of any felony crime involving:

(a) Physical neglect of children;

(b) The physical injury of children, excepting motor vehicle violations; and

(c) The sexual abuse of children.

Provided, that the general classes of felony crimes referenced within (a) and (b) of this subsection shall be limited in application to felony crimes in the state of

Washington and equivalent federal and crimes in other states committed against children and which, in fact, caused bodily harm to such children greater than transient pain or minor temporary marks; provided further, that the general class of felony crime referenced within (c) of this subsection shall be limited in application to felony crimes in the state of Washington and equivalent federal and crimes in other states committed against children.

(2) No conviction of any crime within the last ten years, including motor vehicle violations, which would materially and substantially impair the individual's worthiness and ability to serve as a professional within the public and private schools of the state. In determining whether a particular conviction would materially and substantially impair the individual's worthiness and ability to practice, the following considerations shall be weighed:

(a) Age and maturity at the time the criminal act was committed;

(b) The degree of culpability required for conviction of the crime and any mitigating factors, including motive for commission of the crime;

(c) The classification of the criminal act and the seriousness of the actual and potential harm to persons or property;

(d) Criminal history and the likelihood that criminal conduct will be repeated;

(e) The permissibility of service as a professional educator within the terms of any parole or probation;

(f) Proximity or remoteness in time of the criminal conviction;

(g) Any evidence offered which would support good moral character and personal fitness; and

(h) If this section is applied to a person certified under the laws of the state of Washington in a revocation action, the effect on the education profession, including any chilling effect shall be weighed.

(3) No serious behavioral problems which endanger the educational welfare or personal safety of students, teachers, or other colleagues within the educational setting.

**READOPTED SECTION** (Readopting Order 2-87, filed 4/3/87)

**WAC 180-75-082 GOOD MORAL CHARACTER AND PERSONAL FITNESS—NECESSARY SUPPORTING EVIDENCE BY APPLICANTS.** All applicants for certification shall submit the following:

(1) An affidavit from the applicant indicating that he or she has not been convicted of any crime or a complete disclosure of all arrests and subsequent dispositions of such arrests. In the event of a conviction for any arrest, the applicant shall state reasons why such conviction does not reflect adversely on the requirement to possess good moral character and be personally fit.

(2) An affidavit from the applicant that he or she has no history of serious behavioral problems or a complete disclosure of the nature and status of all such problems, including the names and addresses of health practitioners who have treated the applicant within the past ten

years and an executed consent form permitting the superintendent of public instruction to contact and consult with such health practitioners and for such health practitioners to fully disclose medical information related to such behavioral problems.

(3) An affidavit from the dean of the college or school of education or one or more officials designated by such dean, or, if none, by the college or university president, where the applicant completed his or her approved preparation program, that indicates that a designated college or university official has contacted several faculty members who personally know or knew the applicant and has no knowledge that the applicant has been convicted of any crime and has no knowledge that the applicant has a history of any serious behavioral problems or a statement from such affiant of the reasons why it is not possible to make such an affidavit.

(4) Provided, that, if the affidavit described in subsection (3) of this section is impossible or impractical to obtain, the applicant shall submit to the superintendent of public instruction the following:

(a) A statement as to why it is impossible or impractical to secure the affidavit required by subsection (3) of this section;

(b) A complete employment history, including the names, addresses, and phone numbers of the immediate supervisor of such applicant when an employee; and

(c) The names, addresses, and phone numbers of three character references who are not related to the applicant.

(5) If the applicant holds or has held a professional certificate in any other state, such applicant shall prepare one of the following affidavits for each such state:

(a) An affidavit that such certificate has not been suspended, surrendered, or revoked. Such affidavit shall be forwarded to the licensing agency in such state with a request that such affidavit be verified and forwarded directly to the superintendent of public instruction.

(b) An affidavit which shall fully disclose the reasons for the suspension, surrender, or revocation of the certificate. Such affidavit shall be submitted directly to the superintendent of public instruction.

**READOPTED SECTION** (Readopting Order 2-87, filed 4/3/87)

**WAC 180-75-083 GOOD MORAL CHARACTER AND PERSONAL FITNESS—CONTINUING REQUIREMENT.** The good moral character and personal fitness requirement of applicants for certification under the laws of the state of Washington is a continuing requirement for holding a professional educational certificate under regulations of the state board of education.

**READOPTED SECTION** (Readopting Order 2-87, filed 4/3/87)

**WAC 180-75-084 GOOD MORAL CHARACTER, PERSONAL FITNESS, AND UNPROFESSIONAL CONDUCT—BURDEN AND STANDARD OF PROOF.** The following burden and standard of proof shall be applicable for denial and revocation of a

certificate for failure to meet the requirement to possess good moral character and personal fitness:

(1) If an application for certification or reinstatement has been denied by the superintendent of public instruction, the evidence submitted by the applicant must prove by clear and convincing evidence that he or she is of good moral character and personal fitness or the application will be denied.

(2) In a revocation proceeding, the superintendent of public instruction must prove by clear and convincing evidence that the certificate holder is not of good moral character or personal fitness or has committed an intentional act which constitutes unprofessional conduct.

**READOPTED SECTION** (Readopting Order 11-89, filed 5/31/89)

**WAC 180-75-085 GENERAL REQUIREMENTS—TEACHERS, ADMINISTRATORS, EDUCATIONAL STAFF ASSOCIATES.** The following requirements are to be met by candidates for certification as teachers, administrators, or educational staff associates:

(1) Age. No person who is less than eighteen years of age shall receive a certificate to serve in the public or nonpublic schools of Washington state.

(2) Character. Applicants for certificates in Washington state who are not holders of a valid Washington state teacher's, administrator's, educational staff associate's, or vocational certificate must give evidence of good moral character and personal fitness as specified in WAC 180-75-082 and must make arrangements with the Washington state patrol for a background check as required by RCW 28A.70.005: PROVIDED, That applicants for vocational teaching certificates who do not make such an arrangement with the state patrol shall have placed on such certificates by the superintendent of public instruction a provision which restricts the certificate holder to the teaching of vocational technical institute students who are sixteen years of age or older.

(3) Academic. A candidate for certification shall have successfully completed an approved professional preparation program within the state of Washington and hold appropriate degrees, licenses, and additional course work as prescribed in chapter 180-79 WAC or have qualified under WAC 180-79-245.

(4) Program completion. A candidate for an initial or continuing certificate shall provide verification that he or she has completed an approved professional preparation program.

Subsections (3) and (4) of this section shall not apply to vocational or limited certificates. Vocational certificates are issued under academic and experience requirements set forth in chapter 180-77 WAC. Limited certificates are issued pursuant to WAC 180-79-230.

**READOPTED SECTION** (Readopting Order 2-87, filed 4/3/87)

**WAC 180-75-086 VOLUNTARY SURRENDER OF CERTIFICATES.** A holder of a certificate who has not received notice of sufficient cause for revocation of

his or her certificate pursuant to WAC 180-75-035 may voluntarily surrender his or her certificate to the superintendent of public instruction if the certificate holder believes that he or she is or might be ineligible to hold a certificate for any reason which is or might constitute grounds for revocation of the certificate other than conviction of a felony crime stated within WAC 180-75-081(1).

A certificate holder voluntarily surrendering a certificate shall provide the superintendent of public instruction the following affidavit:

"I, . . . . ., have reason to believe that I am or might be ineligible to hold a certificate(s) for reasons which do or might constitute grounds for revocation of the certificate(s). Accordingly, I hereby voluntarily surrender the following certificate(s):

- 1. . . . . Cert. No. . . . .
- 2. . . . . Cert. No. . . . .

I have not been to the best of my knowledge convicted of any felony crime listed within WAC 180-75-081(1).

I agree, if I request reinstatement of the certificate(s) I have voluntarily surrendered, to provide the superintendent of public instruction with an affidavit describing in full the reasons for my voluntary surrender of the certificate(s) listed above. I further understand that the superintendent of public instruction will notify other states and public and private school officials within the state of Washington that I have voluntarily surrendered my certificate(s)."

Upon request for reinstatement of such certificate, the applicant must comply with WAC 180-75-087 and, in addition, must disclose in full the reasons for the voluntary surrender of the certificate. In the event, if the surrendered certificate would have expired or lapsed but for the surrendering of the certificate, the applicant must meet all requirements for reinstating an expired or lapsed certificate.

**READOPTED SECTION** (Readopting Order 25-88, filed 12/14/88)

**WAC 180-75-087 REINSTATEMENT OF CERTIFICATES.** Only a continuing certificate may be reinstated. A holder of a lapsed, surrendered, or revoked continuing professional certificate at the time of application for reinstatement of such certificate must submit the following:

(1) Character evidence as required by WAC 180-75-085(2) for candidates for certification.

(2) An affidavit that he or she has not intentionally and knowingly practiced with an expired, lapsed, surrendered, or revoked certificate in a professional position for which certification is required under the rules of the state board of education or the submission of a statement why such practice, if conducted, should not reflect on such applicant's good moral character or personal fitness at the time of application.

(3) In accordance with RCW 28A.70.180, a revoked certificate may not be reinstated within one calendar year from the date of revocation.

(4) **PROVIDED**, That no certificate may be reinstated if more than five calendar years has passed since the date of lapsing, surrender, or revocation; however, such applicants may apply pursuant to WAC 180-75-061 for a new certificate under standards in effect at the time of application.

(5) **PROVIDED FURTHER**, That notwithstanding any regulation to the contrary, any person whose Washington state initial or provisional certificate has expired for any reason may apply prior to August 31, 1990, and be issued an initial certificate under the rules in effect at the time of application upon submission of the following:

(a) The character evidence required in subsection (1) of this section.

(b) The affidavit or statement required in subsection (2) of this section.

(c) Evidence of completion of fifteen quarter hours (ten semester hours) of course work at an accredited college or university within the seven years prior to the application for reinstatement.

**READOPTED SECTION** (Readopting Order 25-88, filed 12/14/88)

**WAC 180-75-088 RENEWAL OF CERTIFICATE.** A holder of a certificate subject to expiration may renew such certificate subject to the rules in effect at the time of such renewal. If such certificate has expired, the candidate may apply for a new certificate pursuant to WAC 180-75-061.

**READOPTED SECTION** (Readopting Order 25-88, filed 12/14/88)

**WAC 180-75-090 TEMPORARY PERMITS.** Temporary permits may be issued by the superintendent of public instruction under the following conditions:

(1) Temporary permits may be issued under this section to those persons who have filed an application for a certificate, who, based on available documentation, including affidavits or other evidence that appears reliable which substantiates the existence of missing documentation, appear to have completed all requirements for certification; and who do not disclose any information which indicates that such applicant fails to meet the character requirement of WAC 180-75-085(2).

(2) An individual may apply for a permit directly to the superintendent of public instruction: **PROVIDED**, That in the case of an individual completing requirements for certification in a Washington state institution of higher education the request may also be made to that institution.

(3) A permit entitles the holder to serve as a teacher, educational staff associate or administrator consistent with the endorsement(s) on his/her permit.

(4) A permit is valid for one hundred twenty consecutive calendar days commencing with the date following the date of issuance unless prior to such date the superintendent of public instruction determines the applicant is ineligible to receive a valid certificate or endorsement. In such cases, the temporary permit shall expire on the date notice of cancellation is received by the applicant

and/or the employer. The temporary permit may be reissued only upon demonstration that the applicant has made a good faith effort to secure the missing documentation.

(5) Issuing authority. The superintendent of public instruction either directly or through a designated agent shall issue all permits and provide institutions of higher education with forms and instructions relevant to application for a permit.

**READOPTED SECTION** (Readopting Order 14-87, filed 12/21/87)

**WAC 180-75-091 AFFIDAVITS FROM APPLICANTS.** An individual's application for certification shall be signed under oath that the statements therein are true and correct. The application if not notarized by a notary public must conform with the formalities prescribed in RCW 9A.72.085. In addition, the application shall state that any knowingly false statement therein is punishable under perjury laws of the state of Washington.

**READOPTED SECTION** (Readopting Order 14-87, filed 12/21/87)

**WAC 180-75-092 OTHER AFFIDAVITS FROM APPLICANTS AND CERTIFICATE HOLDERS.** Whenever this chapter requires an applicant or certificate holder to file an affidavit, it shall be in the same form as required by WAC 180-75-091.

**READOPTED SECTION** (Readopting Order 8-80, filed 6/2/80)

**WAC 180-75-100 CERTIFICATION OF OUT-OF-STATE TRAINED EDUCATIONAL PERSONNEL—INTERSTATE EDUCATIONAL PERSONNEL CONTRACTS.** The superintendent of public instruction is authorized to enter into interstate educational personnel contracts with states party to the interstate agreement on qualifications of educational personnel in accordance with provisions of RCW 28A.93.010 and 28A.93.020 which authorize on an interstate basis Washington state certification of persons of other states having preparation and qualifications comparable even though not identical to Washington state board of education standards.

**READOPTED SECTION** (Readopting Order 2-87, filed 4/3/87)

**WAC 180-75-199 CODE OF PROFESSIONAL RESPONSIBILITY FOR CERTIFICATED EDUCATIONAL PROFESSIONALS.** The state board of education acknowledges that RCW 28A.70.160 permits the revocation of certificates for unprofessional conduct and certain related acts—i.e., immorality, intemperance, and violation of written contract—some of which are included within the concept of unprofessional conduct. Therefore, the state board of education directs the superintendent of public instruction to appoint and provide necessary staff assistance to an advisory committee, described below, which shall have the responsibility to

draft a code of professional conduct for certified educational professions and to present such code, including minority recommendations, to the state board of education in the form of proposed regulations no later than January, 1989. In addition to the responsibility for a code of professional responsibility, the advisory committee shall examine the desirability of establishing sanctions other than revocation, such as suspension and letters of reprimand, and the desirability of providing for professional and lay involvement in the administration of such code. Prior to making appointments to the advisory committee created by this section, the superintendent of public instruction shall consult with one or more officers within recognized professional and other educational organizations regarding possible appointments to the advisory committee. Such advisory committee shall consist of the following:

- (1) Four classroom teachers, one of which shall be a private school teacher.
- (2) Two educational staff associates.
- (3) Three principals.
- (4) One program director.
- (5) One superintendent.
- (6) One school board member.
- (7) One parent.

**WSR 89-16-077**

**EMERGENCY RULES**

**DEPARTMENT OF FISHERIES**

[Order 89-72—Filed July 31, 1989, 4:30 p.m.]

Date of Adoption: July 31, 1989.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-57-425.

Statutory Authority for Adoption: RCW 75.08.080.

Pursuant to RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: Harvestable numbers of pink salmon are available. Coho conservation is necessary to comply with Pacific Fisheries Management Council and state, tribal management agreements. Upper Skagit spawning chinook salmon are in need of protection.

Effective Date of Rule: Immediately.

July 31, 1989  
Joseph R. Blum  
Director

**NEW SECTION**

**WAC 220-57-42500S SKAGIT RIVER.** Notwithstanding the provisions of WAC 220-57-425, effective 12:01 a.m. August 1, 1989, it is unlawful to take fish for or possess salmon taken for personal use except:

- (1) From Skagit River mouth upstream to mouth of Gilligan Creek.  
Open: August 1, 1989, until further notice.  
Bag Limit: six salmon per day not more than two may be chum or adult chinook salmon and all coho salmon must be released immediately and returned to the water. Adult chinook salmon are defined as over 24 inches in length.  
Gear: Barbless hooks required.
- (2) Between the mouth of Gilligan and the mouth of Cascade River.  
Open: August 1, 1989 until further notice.  
Bag Limit: six salmon per day all coho and chinook salmon must be released and returned to the water immediately, and only two may be chum.  
Gear: Barbless hooks required.

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

**WSR 89-16-078**

**EMERGENCY RULES**

**DEPARTMENT OF FISHERIES**

[Order 89-73—Filed July 31, 1989, 4:32 p.m.]

Date of Adoption: July 31, 1989.

Purpose: Amend commercial fishing regulations.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-24-02000G; and amending WAC 220-24-020.

Statutory Authority for Adoption: RCW 75.08.080.

Pursuant to RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: Harvestable numbers of salmon are available. The Pacific Fisheries Management Council has set seasons to harvest. This regulation will put the state in compliance with federal regulations.

Effective Date of Rule: Immediately.

July 31, 1989  
Joseph R. Blum  
Director

**NEW SECTION**

**WAC 220-24-02000H 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. August 7, 1989, to 11:59 PM August 10, 1989 it is lawful to fish for and possess all salmon species taken from those waters as defined by the following coordinates: North of 48 00' 15" N. and west of

a line from 48 00'15" N., 125 19'15" W. to 48 03'40" N., 125 17'15" W. to 48 07'45" N., 125 11'15" W. to 48 05'00" N., 125 01'00" W. to 48 13'00" N., 124 57'30" W. to 48 16'30" N., 124 58'00" W. to 48 23'20" N., 125 49'30" W. to 48 26'15" N., 125 49'00" W. to 48 29'37.19" N., 124 43'33.19" W. This line generally follows the 100 fathom line except in the northernmost area.

(2) Salmon taken from the area opened in sub-section (1) must be landed north of Cape Falcon and reported via fish ticket or documented contact with the Washington Dept. of Fisheries prior to 11:59 PM August 12, 1989. Operators landing salmon outside the state of Washington or east of Neah Bay must notify the department prior to 5 PM August 11, 1989, at the Olympia office with an estimate of catch and location of landing.

(3) Lawful terminal gear is restricted to flashers with barbless, bare, blued hooks.

(4) Commercial salmon taken south of the Columbia River Red Buoy Line and north of Cape Falcon during the open fisheries August 21 and August 24 through October 31, 1989 may be landed in this state south of Leadbetter Point with a single daily landing limit per vessel of 40 coho and 4 chinook. Chinook must be delivered with the coho.

(5) Salmon taken from the area opened in sub-section (4) must be landed and reported via fish ticket or documented contact with the Washington Dept. of Fisheries by 11:59 p.m. August 22, 1989 and within 24 hours of the closure following the August 24, 1989 opening.

(6) Minimum size limits

for chinook are: 28 inches total length  
21.5 inches head-off

Minimum size limits

for coho are: 16 inches total length  
12 inches head-off

(7) 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.

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

### REPEALER

The following section of the Washington Administrative code is repealed:

WAC 220-24-02000G **LAWFUL ACTS—TROLL FISHERY.** (89-57)

### WSR 89-16-079

#### NOTICE OF PUBLIC MEETINGS DEPARTMENT OF COMMUNITY DEVELOPMENT (Fire Protection Policy Board)

[Memorandum—July 31, 1989]

The next regularly scheduled Fire Protection Policy Board meeting has been moved from September 28, 1989, to September 20, 1989. The meeting will be held

in the small auditorium at Seattle Tacoma International Airport, beginning at 9:00 a.m.

### WSR 89-16-080

#### PERMANENT RULES

#### DEPARTMENT OF REVENUE

[Order 89-10—Filed August 1, 1989, 11:21 a.m.]

I, Edward L. Faker, interim assistant director of the Department of Revenue, do promulgate and adopt at Olympia, Washington, the annexed rules relating to employees distinguished from persons engaging in business, amending WAC 458-20-105.

This action is taken pursuant to Notice No. WSR 89-13-043 filed with the code reviser on June 15, 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 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 August 1, 1989.

By Edward L. Faker  
Interim Assistant Director

#### 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 89-16-081**  
**EMERGENCY RULES**

**DEPARTMENT OF NATURAL RESOURCES**  
[Order 565—Filed August 1, 1989, 2:17 p.m.]

Date of Adoption: August 1, 1989.

Purpose: Establish regions of extra fire hazard which are closed to entry due to the condition of the forest slash.

Statutory Authority for Adoption: RCW 76.04.305.

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

Reasons for this Finding: Certain areas of the state are particularly exposed to fire danger due to the continuous acres of slash. In order to prevent a fire from starting whereby lives and property would be at risk, it is necessary to post these lands as closed to entry.

Effective Date of Rule: Midnight, August 2, 1989, Wednesday.

August 1, 1989  
Brian J. Boyle  
Commissioner of  
Public Lands

NEW SECTION

**WAC 332-26-041 CENTRAL REGION CLOSURES. THURSTON COUNTY** *Thurston County: Township 15, Range 1 West: S1/2 Section 16; NE1/4, Part E1/2 NE1/4, Part E1/2 E1/2 Section 17; Part N1/2 except SW1/4 NW3/4; Part S1/2 Except that part SW1/4 lying westerly of Tono Road Section 21; All except E1/2 E1/2 Section 22.*

*When, in the opinion of the Regional Manager, the fire hazard is sufficiently low on the lands herein described to permit public access thereto, he may suspend this notice by issuing a news release to the newspapers of general circulation in the area and to radio and television stations serving the area, specifying the date and time of the suspension, and by removing the posted notice of the hazardous area closure at the access points.*

*When, in the opinion of the Regional Manager, the fire hazard is no longer sufficiently low to permit public access to the above described lands, he will reinstate this hazardous area notice by giving the same notice to the public, specifying the date and time this notice again becomes effective, and replacing the posted notice of the hazardous area closure at the access points.*

*For the protection of the above described areas against fire, the following rule will be enforced:*

*Entry into this area is prohibited except as provided by law with reference to permanent residents and industrial operations.*

*Anyone violating any such rules and regulations or order closing any forest region shall be guilty of a misdemeanor.*

*Effective from midnight, Wednesday, August 2, 1989, to midnight, Tuesday, October 3, 1989.*

**WSR 89-16-082**

**NOTICE OF PUBLIC MEETINGS**  
**HIGHER EDUCATION PERSONNEL BOARD**  
[Memorandum—August 1, 1989]

**NOTICE OF MEETING LOCATION CHANGES**

	<u>Former Location</u>	<u>New Location</u>
October 5, 1989	Washington State University, Pullman	Lower Columbia College 1600 Maple Street Longview
December 7, 1989	Lower Columbia College 1600 Maple Street Longview	South Seattle Comm. College 6000 16th Avenue S.W. Seattle

**WSR 89-16-083**

**PERMANENT RULES**  
**DEPARTMENT OF GENERAL ADMINISTRATION**  
**(Division of Savings and Loan Associations)**  
[Order 89-2—Filed August 1, 1989, 3:36 p.m.]

I, Betty Reed, supervisor of the Division of Savings and Loan Associations, do promulgate and adopt at Olympia, Washington, the annexed rules relating to credit union common bond definition.

This action is taken pursuant to Notice No. WSR 89-11-094 filed with the code reviser on May 24, 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 31.12.045(1) and is intended to administratively implement that statute.

This rule is promulgated under the general rule-making authority of the supervisor of the Division of Savings and Loan as authorized in RCW 31.12.045 (1)(a) and 31.12.535.

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 August 1, 1989.

By Betty Reed  
Supervisor

**CHAPTER 419-70**  
**CREDIT UNION COMMON BOND DEFINITION**

- WAC 419-70-010 - Purpose
- WAC 419-70-020 - General Requirement
- WAC 419-70-030 - Common Bond of Occupation
- WAC 419-70-040 - Common Bond of Association
- WAC 419-70-050 - Common Bond of Community

NEW SECTION

**WAC 419-70-010 PURPOSE:** This chapter is adopted by the supervisor pursuant to RCW 31.12.045

(1)(a) for the purpose of defining "common bond" as it applies to the ability of certain groups to be included within the field of membership of a credit union.

#### NEW SECTION

WAC 419-70-020 GENERAL REQUIREMENT: RCW 31.12.045 limits credit union membership "to groups having a common bond of occupation or association, or to groups within a well-defined neighborhood, community, or rural district." Any group seeking inclusion within the field of membership of a credit union must share a common bond of occupation, association, or community.

#### NEW SECTION

WAC 419-70-030 COMMON BOND OF OCCUPATION: "Common bond of occupation" means a current, unifying factor or characteristic among a group of natural persons which links them together and distinguishes them from the general public and which is based on employment by or a similar relationship with the same enterprise. Employees of subsidiaries or affiliates of the enterprise, nonemployee officials of the enterprise, and persons under contract to work regularly for the enterprise may be included in the same common bond of occupation if they are separately identified in the credit union's bylaws.

#### NEW SECTION

WAC 419-70-040 COMMON BOND OF ASSOCIATION: "Common bond of association" means a current, unifying factor or characteristic among a group of natural persons which links them together and distinguishes them from the general public and which is based on membership in a bona fide association, fraternal organization, or religious organization. Such an association or organization must be primarily composed of natural persons, who participate within the group in organized activities developing common loyalties, common interests, and mutual benefits. Such an association or organization must have clearly defined membership eligibility requirements, must have officers elected by the membership, and must hold regular meetings at least once each year and otherwise provide activities promoting contact among its members. Matriculating students of an accredited college or university also have a common bond of association.

A group (a) the primary purpose of which is to provide products or services to members at a discount, (b) which has no meaningful qualifications for membership other than a generalized interest in or agreement on a particular topic, with no requirement of an ongoing commitment for personal participation in the group, (c) which is formed or continued primarily for a commercial purpose or (d) which is formed or continued primarily for the purpose of its members obtaining credit union services, does not qualify as a bona fide association or organization, for the purposes of this section.

#### NEW SECTION

WAC 419-70-050 COMMON BOND OF COMMUNITY: "Common bond of community" means a current unifying factor or characteristic among a group of natural persons, which links them together and distinguishes them from the general public and which is based on residence or employment with a well-defined geographic area that is recognized by those who live or work there as a neighborhood, community, or rural district. The boundaries of the proposed group must be clearly identifiable and must set it apart from the surrounding area.

**WSR 89-16-084**

**PROPOSED RULES**

**DEPARTMENT OF GENERAL ADMINISTRATION  
(Division of Savings and Loan Associations)**

[Filed August 1, 1989, 3:38 p.m.]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Department of General Administration, Division of Savings and Loan Associations, intends to adopt, amend, or repeal rules concerning credit union field of membership expansion.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on September 15, 1989.

The authority under which these rules are proposed is RCW 31.12.535.

This notice is connected to and continues the matter in Notice No. WSR 89-11-095 filed with the code reviser's office on May 24, 1989.

Dated: August 1, 1989

By: Betty Reed  
Supervisor

**WSR 89-16-085**

**EMERGENCY RULES**

**DEPARTMENT OF LABOR AND INDUSTRIES**

[Order 89-14—Filed August 1, 1989, 4:49 p.m.]

Date of Adoption: August 1, 1989.

Purpose: Implement amendments to RCW 49.46.130, contained in chapter 104, Laws of 1989.

Statutory Authority for Adoption: RCW 43.22.270 and 49.46.130.

Pursuant to RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: The truck and bus driver exemption from RCW 49.46.130, contained in chapter 104, Laws of 1989, takes effect July 23, 1989.

Effective Date of Rule: Immediately.

August 1, 1989  
Joseph A. Dear  
Director

NEW SECTION

WAC 296-128-011 SPECIAL RECORDKEEPING REQUIREMENTS. (1) In addition to the records required by WAC 296-128-010, employers who employ individuals as truck or bus drivers subject to the provisions of the Federal Motor Carrier Act shall maintain records indicating the base rate of pay, the overtime rate of pay, the hours worked by each employee for each type of work, and the formulas and projected work hours used to determine a uniform rate of pay pursuant to WAC 296-128-012. The records shall indicate the period of time for which the base rate of pay and the overtime rate of pay are in effect.

For the purposes of this section and WAC 296-128-012, "base rate of pay" means the amount of compensation paid per unit of work in a workweek of forty hours or less. The base rate of pay may be based on work units such as mileage, performance of specified duties, a specified percentage of the gross proceeds charged for specified work, or other basis for compensation agreed upon by the employer and employee. "Overtime rate of pay" means the amount of compensation paid for hours worked within the state of Washington in excess of forty hours per week and shall be at least one and one-half times the base rate of pay.

(2) The records required by this section shall be made available by the employer at the request of the department. Any current or past employee may obtain copies of the formula, the base rate of pay, the overtime rate of pay, and that employee's records. Job applicants seeking employment by the employer as truck or bus drivers subject to the provisions of the Federal Motor Carrier Act, may obtain copies of the formula, the base rate of pay, and the overtime rate of pay.

NEW SECTION

WAC 296-128-012 OVERTIME FOR TRUCK AND BUS DRIVERS. (1)(a) The compensation system under which a truck or bus driver subject to the provisions of the Federal Motor Carrier Act is paid shall include overtime pay at least reasonably equivalent to that required by RCW 49.46.130 for working within the state of Washington in excess of forty hours a week. To meet this requirement, an employer may, with notice to the employee, establish a uniform rate of pay for all work performed by a truck or bus driver subject to the provisions of the Federal Motor Carrier Act. The uniform rate of pay shall be determined using the following formula or an alternative formula developed by an employer that, at a minimum, compensates hours worked within the state of Washington in excess of forty hours per week at an overtime rate of pay and distributes the projected overtime pay over the average number of hours projected to be worked:

- 1. Define work unit first. E.g., miles, loading, unloading, other.
- 2. 

Average number of work units	=	Average number of work units accomplished per week
.....		.....
per hour		Average number of hours projected to be worked per week
- 3. Weekly Base Rate=  $\frac{\text{Number of units per hour} \times 40 \text{ hours} \times \text{base rate of pay}}{\text{Average number of hours projected to be worked per week}}$

- 4.  $\text{Weekly Overtime rate} = \frac{\text{Number of units per hour} \times \text{number of hours over 40}}{\text{overtime rate of pay}}$
- 5.  $\text{Total weekly pay} = \text{Weekly base rate plus weekly overtime rate}$
- 6.  $\text{Uniform rate of pay} = \frac{\text{Total weekly pay}}{\text{Total work units}}$

Example: A truck driver is paid on a mileage basis for a two hundred thirty mile trip performed about ten times a week. The base rate of pay is twenty cents a mile. The overtime rate of pay is thirty cents a mile. The average length of the trip is four and one-half hours.

- 1.  $\frac{2300 \text{ mi.}}{45 \text{ hours}} = 51.1 \frac{\text{miles}}{\text{hour}}$   
wk.                              wk.
- 2. (a)  $51.1 \text{ miles/hour times } 40 \text{ hours times } .20/\text{mile} = \$408.80$   
(b)  $51.1 \text{ miles/hour times } 5 \text{ hours} = 255.5 \text{ miles}$   
(c)  $255.5 \text{ miles times } .30/\text{mile} = \$76.65$   
(d)  $\$408.80 \text{ plus } \$76.65 = \$485.45 \text{ divided by } 2300 \text{ miles} = 21.1 \text{ cents mile}$

(b) In using a formula to determine a uniform rate of pay, the average number of hours projected to be worked and the average number of work units accomplished per week shall be determined by dividing the actual number of hours worked and work units accomplished by persons performing the same type of work over at least a twenty-six week time period divided by that number of weeks.

(c) The department shall evaluate the uniform rate of pay determined by an employer using an alternative formula over not less than a twenty-six week time period in order to determine whether the uniform rate of pay established by the alternative formula results in the driver receiving compensation reasonably equivalent to one and one-half times the base rate of pay for actual hours worked within the state of Washington in excess of forty hours per week.

(2) Where an employee receives a different base rate of pay depending on the type of work performed, the rate that is paid or used in the formula for hours worked within the state of Washington in excess of forty hours per week shall be at least the overtime rate of pay for the type of work in which most hours were worked.

**WSR 89-16-086**  
**PROPOSED RULES**  
**DEPARTMENT OF TRANSPORTATION**  
[Filed August 2, 1989, 9:07 a.m.]

Original Notice.

Title of Rule: Chapter 468-16 WAC, Prequalification of contractors.

Purpose: The purpose of the rule is to assure that each highway construction contract will be awarded to a competent and responsible contractor and to effect guidance for the qualification process.

Statutory Authority for Adoption: RCW 47.01.101, 47.28.030 and 47.28.070.

Statute Being Implemented: RCW 47.28.070.

Summary: These rules establish procedures for determining the qualifications of contractors for performing

highway construction, establishing bidding capacities, and rating performance. Also provides procedures for qualification and suspension and denial thereof.

**Reasons Supporting Proposal:** To implement statutory provisions for administering the qualification process and to comply with the Administrative Procedure Act, chapter 34.05 RCW.

**Name of Agency Personnel Responsible for Drafting:** James Wilson, Transportation Building, 753-6152; **Implementation and Enforcement:** Del J. Vandehey, Transportation Building, 753-6058.

**Name of Proponent:** Department of Transportation, governmental.

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

**Explanation of Rule, its Purpose, and Anticipated Effects:** The proposed rule implements the guidelines specified in RCW 47.28.070. The proposed rule implements those statutory guidelines by providing a method to determine a contractor's qualifications to perform highway construction work. The proposed rule permits a contractor to enhance its prequalification capacity and increase its bidding capacity through higher standards of performance. The proposed rule also increases the opportunity for a better relationship between the department and construction firms. The proposed rule also provides for the denial, suspension or revocation of prequalification and specifies administrative procedures for such actions.

Proposal does not change existing rules.

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

**Hearing Location:** Boardroom 1D2, Transportation Building, Olympia, Washington 98504, on September 18, 1989, at 10:00 a.m.; and at Nendel's Inn, 1300 North First Street, Yakima, WA 98901, on September 20, 1989, at 10:00 a.m.

**Submit Written Comments to:** Bill Richeson, WAC Rules Coordinator, Transportation Building, Olympia, Washington 98504, by September 1, 1989.

**Date of Intended Adoption:** November 7, 1989.

August 1, 1989  
Ed W. Ferguson  
Deputy Secretary

Chapter 468-16 WAC  
PREQUALIFICATION OF CONTRACTORS

WAC	
468-16-010	General.
468-16-020	Purpose.
468-16-030	Definitions.
468-16-040	Criteria for a determination of an unsatisfactory record of performance.
468-16-050	Criteria for a determination of an unsatisfactory record of integrity.
468-16-060	Criteria for a determination of inability to comply with performance schedules.
468-16-070	Criteria for a determination of inadequate experience, organization, or technical qualifications.
468-16-080	Qualification procedures for projects under fifty thousand dollars.
468-16-090	Standard questionnaire.
468-16-100	Conditional qualification.
468-16-110	Joint ventures.
468-16-120	Work class ratings.
468-16-130	Prequalification work classes.

468-16-140	Maximum capacity rating.
468-16-150	Prime contractor performance reports.
468-16-160	Interim reports.
468-16-170	Refusal to issue proposal.
468-16-180	Suspension of qualification.
468-16-190	Revocation of qualification.
468-16-200	Hearings procedure.
468-16-210	Prime contractor performance report.

NEW SECTION

WAC 468-16-010 GENERAL. No contract for the construction, improvement or repair of any state highway, or of any other public highway to be awarded and administered by the department of transportation, may be awarded to any contractor who has not first been prequalified to perform the work. Bidding proposals will be issued to only prequalified contractors. Among the requirements for prequalification, but not limited to the following, are:

- (1) The necessary organization, management, size of firm, and construction experience to accomplish the project to be undertaken including the availability of appropriate and adequate equipment for the quantity and type of work.
- (2) A satisfactory performance record showing the additional ability to comply with requisite schedules taking into account all active contracts.
- (3) Adequate financial resources.
- (4) A showing of integrity, responsibility, and good judgment to include a history free of criminal convictions by the firm within the three years next preceding the date of application for prequalification.

NEW SECTION

WAC 468-16-020 PURPOSE. This chapter is promulgated to assure that contractors engaged in the improvement and construction of state highways possess the necessary qualifications as required by RCW 47.28.070. They are further intended to:

- (1) Establish a method for determining a contractor's qualifications for engagement in department work and for the retention of such capacity.
- (2) Provide a means for contractors to enhance their prequalification status and bidding capacity through higher standards of performance.
- (3) Increase the opportunity for a better relationship between the department and construction contracting firms.
- (4) Provide for the award, denial, suspension, or revocation of qualification; denial of proposal issuance; and for a hearing procedure, if required, for such actions.

NEW SECTION

WAC 468-16-030 DEFINITIONS. The definitions set forth in this section apply throughout this chapter and have the following meanings, unless the context clearly requires otherwise.

- (1) Affiliate - An associate, subordinate associate, or subsidiary firm which may involve the intermingling of funds, officers, or directors of one or more firms.
- (2) Bidding proposal - A form containing spaces for entering bid amounts and authentication issued by the department for the submission of a contractor's bid.
- (3) Capacity multiplier - The number 5.0 multiplied by a firm's net worth to calculate maximum bidding capacity.
- (4) Conditional qualification - A temporary qualification status given a contractor who has received "below average" or "inadequate" ratings or for other reasons which result in restrictions to a contractor's bidding.
- (5) Contractor - Any person, partnership, firm, corporation or joint venture who or which, in the pursuit of an independent business, undertakes, offers to undertake, or submits a bid to perform construction work for the department.
- (6) Prequalification - The process of reviewing a contractor's financial status, organizational structure, experience, equipment, integrity, and other qualities to determine responsibility and suitability for performing department work. This term is used interchangeably with qualification.
- (7) Department - The department of transportation.
- (8) Experience multiplier - A number established by ratio of performance inquiries rated satisfactory or above compared to the total inquiries received. The experience multiplier is used to determine work

class and maximum capacity ratings of new applicants for qualification who have had no work experience with the department.

(9) Endorser – The district construction engineer or immediate supervisor of the project engineer, or under specified conditions, the district administrator responsible for reviewing contractor's performance reports.

(10) Inadequate – Not satisfying requirements, unacceptable.

(11) Integrity – The quality of being of sound moral principle, uprightness, honesty, and sincerity.

(12) Joint venture – A partnership of two or more persons, sole proprietorships, companies, corporations, or combinations thereof, entering into an agreement for the pursuance of a business venture such as a construction project.

(13) Limited work class – A work classification given when a contractor lacks the total experience or equipment required to perform the entire range of work within a work class.

(14) Maximum capacity rating – The total value of uncompleted work a contractor is permitted to have under contract at any time.

(15) Performance inquiry – A request made to a contractor's previous employers for an evaluation of that contractor's performance that reports the quality of the contractor's performance.

(16) Performance rating – A numerical rating which is equal to the grand total of the evaluation elements of the prime contractor's performance report used to measure and quantify the quality of contractor performance.

(17) Performance score – The product of the performance rating when multiplied by a numerical factor.

(18) Prime contractor performance report – A report prepared to evaluate the performance of a prime contractor upon completion of, or at an interim period during a department project which is used for establishing qualification ratings and for adjusting a prime contractor's qualification status.

(19) Project estimate – A document establishing the estimated value of all items of work, the total estimated value of work within each class of work, and the estimated total value of the project as determined by the contracting agency or owner.

(20) Rater – The individual, normally the project engineer, responsible for evaluation of the quality and manner of performance of a contractor in the completion of a project.

(21) Revocation of qualification – The act by which a contractor's qualification is terminated.

(22) Secretary – The secretary of transportation who may delegate his/her functions under this chapter to the state construction engineer or such other individual as deemed appropriate.

(23) Standard questionnaire – The application form completed by a contractor to present information relating to the applicant's financial status, experience, organization, and equipment for the purpose of becoming qualified to perform department work.

(24) State construction engineer – The primary representative of the secretary of transportation responsible for the highway construction program and for the qualification of contractors employed thereon.

(25) Suspension of qualification – The termination of a contractor's qualification for a specified period of time or until such time as the conditions which caused the termination no longer exist.

(26) Unsatisfactory – Not satisfactory. Under these rules equates with below average.

(27) Work class – A designation of a specific area of work within the various classifications of work, e.g., grading, draining, fencing, etc.

(28) Work class rating – The maximum value within a class of work which a contractor may bid upon in a single project.

#### NEW SECTION

WAC 468-16-040 CRITERIA FOR A DETERMINATION OF AN UNSATISFACTORY RECORD OF PERFORMANCE. Though not inclusive, the following is a list of elements which may be considered as cause for a determination that an unsatisfactory record of performance exists:

- (1) Failure to complete project on time.
- (2) Substandard workmanship.
- (3) Nonadherence to the requirements of plans and specifications.
- (4) Nonadherence to orders of the engineer.
- (5) Disregard for the welfare or safety of traveling public.
- (6) Willful disregard for applicable laws, rules, and regulations.
- (7) Inadequate supervision of subcontractors.
- (8) Supervisors not sufficiently available on project site.
- (9) Inadequate coordination and planning with owner.
- (10) Inadequate procurement and delivery of supplies and materials.

- (11) Inadequate control and utilization of equipment.

#### NEW SECTION

WAC 468-16-050 CRITERIA FOR A DETERMINATION OF AN UNSATISFACTORY RECORD OF INTEGRITY. (1) Though not inclusive, the following shall be cause for a determination of an unsatisfactory record of integrity:

(a) Conviction of violating a federal or state antitrust law by bid-rigging, collusion, or restraint of competition between bidders; or conviction of violating any other bid related or contract related federal or state law.

(b) Willful concealment of any deficiency in the performance of a prior contract.

(c) Falsification of information or submission of deceptive or fraudulent statements in connection with prequalification, bidding, performance of a contract, or in legal proceedings.

(d) Debarment of the contractor by a federal or state agency for reasons indicating a lack of integrity.

(2) Only such data relating to subsection (1)(a) through (d) of this section having taken place within three years next preceding the date of the current questionnaire may be used.

#### NEW SECTION

WAC 468-16-060 CRITERIA FOR A DETERMINATION OF INABILITY TO COMPLY WITH PERFORMANCE SCHEDULES. Though not inclusive, the following shall be cause for a determination of an inability to comply with performance schedules:

(1) A majority of responses to inquiries of previous owners or employers reveal that projects have not been completed on time;

(2) A major portion of projects completed for the department reveal that they have not been completed on time;

(3) When two or more consecutive performance reports are rated inadequate in the areas of "progress"; or

(4) When the contractor is behind schedule on two or more current projects.

#### NEW SECTION

WAC 468-16-070 CRITERIA FOR A DETERMINATION OF INADEQUATE EXPERIENCE, ORGANIZATION, OR TECHNICAL QUALIFICATIONS. When data presented to establish qualification reveal:

(1) A lack of prior experience in the classes of work for which qualification is sought.

(2) That supervisory experience of key personnel over projects has been below average to an extensive degree.

(3) That permanent employment status of key supervisory personnel has not been of a duration of at least one year.

(4) That two or more performance reports or responses to inquiries rendered within a one-year period are below average in the areas of administration/management/supervision or quality of work.

(5) That previous experience in a work class presented for qualification was below the department's standards.

(6) That work claimed by the contractor was completed by others.

(7) That permanent, key supervisory personnel have terminated employment with the firm during the prequalification year.

(8) That permanent, key supervisory personnel cited in the application for qualification have not supervised contracts cited in the work history of the firm.

#### NEW SECTION

WAC 468-16-080 QUALIFICATION PROCEDURES FOR PROJECTS UNDER FIFTY THOUSAND DOLLARS. (1) Contractors may be qualified by district administrators for projects valued under fifty thousand dollars.

(2) Procedures for letting district level projects valued under fifty thousand dollars are published in Department Directives.

(3) A limited prequalification questionnaire and other requirements are prescribed in WAC 468-14-040.

#### NEW SECTION

WAC 468-16-090 STANDARD QUESTIONNAIRE. The standard questionnaire and financial statement shall be prepared and transmitted to the secretary, Attn: State construction engineer. The questionnaire shall include the following information:

(1) The contractor's name, address, phone number, and type of organization (corporation, partnership, sole proprietorship, etc.).

(2) A list of the classes of work for which the contractor seeks qualification.

(3) A statement of the ownership of the firm and, if a corporation, the name of the parent corporation, if any, and the names of any affiliated companies or subsidiaries.

(4) A certificate of authority from the office of the secretary of state to do business in Washington state if the applicant is a foreign corporation.

(5) A list of officials within the applicant firm who are also affiliated with other firms involved in construction work as a contractor, subcontractor, supplier, or consultant; including the name of the firm and their relationship with the affiliate firm.

(6) A complete summary of the highest valued contracts or subcontracts performed in whole or in part within the three years preceding application. The contract amount, contract number, date of completion, class of work, and the name, mailing address, and phone number of the project owner or agency representative must be provided for those projects listed. Only that work completed by the contractor's own organization under its own supervision will be considered for prequalification purposes. A minimum of five projects must be listed.

(7) Personnel requirements.

(a) A listing of the principal officers and key employees indicating their years of experience engaged in the classes of work for which prequalification is sought. For qualification in a class of work based on newly acquired personnel rather than the firm's past contract experience, the newly acquired personnel must be available for future employment for the full year for which qualification is sought. The loss of such personnel during the year of qualification, will result in revocation of qualification for the class of work granted pursuant to their acquisition. The department may require resumes of such personnel as deemed proper for making its determination. The firm's performance on department contracts must be currently rated average or better to be used for qualification purposes.

(b) A firm must have, within its own organization, qualified permanent, full time personnel having the skills and experience including, if applicable, technical or specialty licenses, for each work class for which prequalification is sought. The skills and experience must be substantiated by education and practical experience on completed construction projects.

(c) "Its own organization" shall be construed to include only the contractor's permanent, full time employed office and site supervisory personnel as shown on the current or amended prequalification questionnaire and workers employed and paid directly by the prime contractor. The term shall also include the equipment owned or rented by the prime contractor with or without equipment operators. Such term does not include employees or equipment of another contractor, subcontractor, assignee, or agent of the prime contractor even if they are placed on the prime contractor's payroll.

(8) A list of all major items of equipment used to perform those classes of work for which prequalification is sought. The description, quantity, condition, present location, and age of such equipment must be shown. The schedule must show whether the equipment is owned, leased, or rented.

(9) A financial statement.

(a) For a firm showing a net worth in excess of one hundred thousand dollars, the applicant must provide, with the questionnaire, a copy of its financial statement as audited or reviewed for its last fiscal year, prepared in accordance with the standards of the American Institute of Certified Public Accountants. The statement must be prepared by an independent certified public accountant registered and licensed under the laws of any state. Balance sheets, income statements, a statement of retained earnings, supporting schedules and notes, and the opinion of the independent auditor must accompany the financial statement.

(b) Financial statements must reflect at least the following minimums:

(i) A ratio of total current assets to total current liabilities of greater than 1.0.

(ii) A ratio of cash and accounts receivable to total current liabilities of greater than 1.0.

(iii) A ratio of net fixed assets to net worth of less than 2.3.

(iv) A ratio of total liabilities to net worth of less than 4.0.

(10) A wholly-owned subsidiary firm may file the latest consolidated financial statement of its parent corporation in lieu of a financial

statement prepared solely for the subsidiary. When a consolidated financial statement is submitted, the requirements of subsection (9) of this section must be fulfilled.

(11) The applicant shall list the following which have occurred within the previous three years:

(a) Any instances of having been denied qualification, a license or instances of having been deemed other than responsible by any governmental agency.

(b) Any convictions involving moral turpitude and all felony conviction of the firm, its directors, or principal officers.

(c) Any failures to complete a contract.

(d) Any adjudicated noncompliance with pertinent statutes.

(12) The standard questionnaire shall be processed as follows:

(a) The application for qualification shall be prepared on a standard questionnaire provided by the department and sworn to before a notary public or other person authorized to take oaths.

(b) As a general rule, a standard questionnaire, will be examined and a written notice provided the applicant stating whether the applicant has been prequalified or qualification has been denied within thirty days of its receipt. The applicant will be advised of errors or omissions in the questionnaire. A request will be made for additional information as necessary to complete evaluation of the applicant. If the information is not provided within twenty calendar days of the request, the application will be processed, if possible, with the information available or it will be returned to the applicant without further action.

(c) When qualification is denied, the applicant shall be advised in writing of the reasons for the denial and of the right to a hearing upon written request.

(d) Applicants not satisfied with the qualification awarded may request, in writing, a review of their questionnaire and qualification ratings. The request must be filed within thirty calendar days of the date of the notice of qualification and must specifically state the basis for the request.

(e) The secretary or designee shall advise the applicant of his or her decision on the reconsideration within thirty calendar days of receipt of the request.

(13) Criteria for initial qualification, renewal, and submission of supplemental data:

(a) Qualification may be established in any calendar quarter and must be renewed annually. Information submitted in the questionnaire will be used for the contractor's initial prequalification, work class ratings, and maximum capacity ratings. Qualification will be valid for the remainder of the applicant's fiscal year plus one calendar quarter as established by the year-end financial statement. Prequalification will be renewed annually thereafter or at other times as appropriate.

(b) A standard questionnaire from a contractor not previously qualified under this chapter must have been received by the department no less than fifteen calendar days prior to the scheduled bid opening to receive consideration for issuance of a bidding proposal for that bid opening.

(c) The department may, during the period for which the contractor has been prequalified, require the submission of a new standard questionnaire. If the questionnaire is not provided within thirty calendar days of the date of request, the notice of qualification held by the contractor will be declared invalid and the contractor will not be permitted to bid with the department until the contractor is again prequalified.

(d) A supplemental questionnaire shall be submitted when a significant change in the structure of the firm occurs, e.g., incorporation, officers, ownership, etc., or when required by the department.

(e) If prequalification has lapsed for more than six months, the applicant will again be required to submit a fully executed standard questionnaire and financial statement.

(f) The applicant shall authorize the department to request and receive such additional information deemed necessary for the completion of the qualification process.

(g) Inquiries will be made and investigations, if necessary, will be conducted to verify the applicant's statements and to determine eligibility for qualification.

(h) The department may require a personal interview with a principal or principals of the contracting firm when considering its qualifications.

(i) Qualified contractors in good standing shall be notified of impending expiration of their qualification and will be provided the necessary questionnaire forms for renewal at least forty-five days before the expiration date.

(14) Financial information supplied by, or on behalf of, a contractor for the purpose of qualification shall not be made available for public

inspection and copying pursuant to RCW 42.17.310 (1)(m). The foregoing restriction shall not prohibit the department's providing such information in evidence or in pretrial discovery in any court action or administrative hearing involving the department and a contractor. Insofar as permitted by public disclosure statutes, qualification ratings shall be treated as confidential information.

(15) Qualified contractors will be provided with notices which list projects currently being advertised. Distribution of these notices will cease when a contractor exhibits no interest in department work for a period of three months.

#### NEW SECTION

**WAC 468-16-100 CONDITIONAL QUALIFICATION.** (1) A contractor may be qualified conditionally when performance has become inadequate in any of the four rated areas on an interim report for a current project. A firm may also be conditionally qualified when it has been given an inadequate performance score on a final performance report. A conditionally qualified contractor may receive, at the discretion of the secretary, a bidding proposal for only one project at a time.

(2) Should the contractor be the low successful bidder and be awarded a contract subsequent to being placed in conditional status, the issuance of further bidding proposals will be considered only when an interim report is submitted in accordance with WAC 468-16-160 or when a final performance report is submitted in accordance with WAC 468-16-150(12).

(3) Return to fully qualified status of a conditionally qualified contractor will be effected by:

(a) A performance rating of average or above on a current completed contract;

(b) An interim rating of average or above average on any concurrent contracts; or

(c) An average or above average rating on the first interim report for a project awarded subsequent to conditional qualification.

(4) Should the rating continue to be less than average, the contractor's prequalification will be suspended in accordance with WAC 468-16-180.

#### NEW SECTION

**WAC 468-16-110 JOINT VENTURES.** (1) Joint ventures are prequalified under two categories as follows:

(a) Individual project joint venture - An association of two or more firms formed for the specific purpose of submitting a bid on a specific project.

(i) All firms must be individually prequalified.

(ii) The firms must file an "individual project statement of joint venture."

(b) Continuing joint venture - An association of two or more firms formed for the purpose of submitting bids for projects to be advertised over a period of time.

(i) All firms must be individually prequalified.

(ii) The firms must file a "statement of continuing joint venture."

(iii) Continuing joint ventures must maintain an average or higher performance rating in order to remain qualified.

(iv) A rating of less than average will cause the joint venture's qualification to be suspended or revoked as deemed appropriate by the secretary.

(2) A standard questionnaire and financial statement for each member, if not on file, and a standard questionnaire and financial statement designating the assets and liabilities of the venture shall be submitted for the joint venture with copy of the joint venture agreement. The agreement shall specify the name under which the joint venture will operate and the names of those individuals authorized to sign proposals, contracts, and other documents on behalf of the joint venture. It shall contain provisions which will unequivocally bind the parties, jointly and severally, to any contract entered into thereunder.

#### NEW SECTION

**WAC 468-16-120 WORK CLASS RATINGS.** (1) Qualification shall be granted a contractor in one or more classes of work in which the firm has shown the capability to satisfactorily perform with its own forces under its own immediate supervision.

(2) The department's project estimate shall be the only estimate used to determine the value of the various classes of work within a project for determining a contractor's eligibility to bid that specific

project. The contractor will be required to perform a specified percentage of the total work as provided for in the current issue of the Standard Specifications. The department's estimate shall be used to determine the value of any such work.

(3) Contractors will be given work class ratings on the basis of their financial status, performance record, previous experience, organization, and condition and suitability of equipment. Higher performance ratings result in higher work class ratings.

(4) Data provided by project owners, other than the department, to inquiries made concerning applicants seeking qualification, shall be used to determine initial work class ratings and maximum capacity ratings. The applicant's experience multiplier shall be used to calculate the applicant's initial work class rating. Initial work class ratings for new applicants and those of firms which have not renewed their qualification within two years, will be based on performance data provided by agencies having previously employed the applicant. Such other data as the department may have on file may also be used. Work submitted by the new applicant and verified by the department will be given an initial work class rating equal to 2.5 times the highest value of the work the contractor has completed within that work class multiplied by the experience multiplier for that work. Work reported as marginal or below average will not be accepted for qualification purposes, but shall be included with other reported performance ratings in determining the experience multiplier within the respective work class.

(5) Work class ratings for those contractors renewing prequalification who are not active in departmental work will be computed annually for a period not to exceed three years in the same manner as for new applicants. Work class ratings granted within three successive renewal periods shall remain the same as for an inactive contractor if the contractor continues to submit the required questionnaire annually and the questionnaire does not reveal a significant reduction in organizational resources. When a significant reduction of resources occurs, the inactive contractors work class ratings may be modified or reduced to an amount within the contractor's current capacity. Work class ratings shall be recomputed annually, effective with the date of renewal of qualification. Work class ratings for contractors active in department work shall be established annually by multiplying the highest value of the work class within a satisfactorily completed project by the average annual performance scores received for department projects comprised to a major degree by that work class, provided that the currently established work class multiplied by the performance score shall become the work class rating for the ensuing qualification year. Work class ratings will not change if the contractor has not performed in that work class during the rating year. A previously awarded work class rating will be adjusted by application of the performance score. A work class performed satisfactorily by an active contractor for another agency and not performed during the preceding qualification year for the department, shall have a performance score of 1.0. A work class performed less than satisfactorily for another agency will not be accepted for qualification purposes.

Work within any work class that has been satisfactorily performed by an active contractor for another agency or as a subcontractor for the department shall have a performance score of 1.0.

#### NEW SECTION

**WAC 468-16-130 PREQUALIFICATION WORK CLASSES.** A contractor seeking prequalification under this chapter will be classified for one or more of the following listed work classes in accordance with the adequacy of the firm's equipment and plant facilities and its proven ability to perform the work class sought.

Class 1	CLEARING, GRUBBING, GRADING & DRAINING Removal of tree stumps, shrubs, modification of the ground surface by cuts and fills, excavating of earth materials, and the placement of drainage structures.
Class 2	PRODUCTION AND PLACING OF CRUSHED MATERIALS Production and placing crushed surfacing materials and gravel.
Class 3	BITUMINOUS SURFACE TREATMENT Placing of crushed materials with asphaltic application.
Class 4	ASPHALT CONCRETE PAVING Production and placing Asphalt Concrete Plant Mix Pavement.



Class 5	<b>CEMENT CONCRETE PAVING</b> Production and placing cement concrete pavement.	Class 30	NOT USED
Class 6	<b>BRIDGES AND STRUCTURES</b> Construction of bridges, walls and other major structures of timber, steel, and concrete.	Class 31	<b>WATER DISTRIBUTION AND IRRIGATION</b> Irrigation systems and heavy duty water distribution.
Class 7	<b>BUILDINGS</b> Construction of buildings and related structures within the right of way and major reconstruction and remodeling of such buildings.	Class 32	<b>LANDSCAPING</b> Landscape irrigation, planting, sodding, seeding, fertilizing, mulching, herbicide application, insecticide application, weed control, mowing, liming, soil binder, topsoil.
Class 8	<b>PAINTING</b> Painting bridges, buildings, and related structures.	Class 33	NOT USED
Class 9	<b>TRAFFIC SIGNALS</b> Installation of traffic signal and control systems.	Class 34	<b>EROSION CONTROL</b> Seeding, fertilizing, mulching, slope protection, topsoil application, hydro-seeding, soil stabilization, soil sampling.
Class 10	<b>STRUCTURAL TILE CLEANING</b> Tunnel tile cleaning.	Class 35	<b>PRECAST MEDIAN BARRIER</b> A concrete barrier that is cast and cured in other than its final position used to divide the median of two adjacent highways or temporarily placed to divert traffic in construction zones.
Class 11	<b>GUARDRAIL</b> Construction of a rail secured to uprights and erected along the exposed sides and ends of platforms or as a barrier between, or beside lanes of a highway.	Class 36	<b>PERMANENT TIE BACK ANCHOR</b> Installation of permanent rock and soil anchors, soldier piles and timber lagging. Soldier pile tie back anchor wall construction.
Class 12	<b>PAVEMENT MARKING (EXCLUDING PAINTING)</b> Thermoplastic markings, stripes, bars, symbols, etc. Traffic buttons, lane markers, guide posts.	Class 37	<b>IMPACT ATTENUATORS</b> Installation of approved protective systems filled with sand, water, or foam which prevent errant vehicles from impacting roadside hazards.
Class 13	<b>DEMOLITION</b> Removal of timber, steel, and concrete structures and obstructions.	Class 38	<b>PAINT STRIPING</b> Painted bars, letters, symbols, and striping.
Class 14	<b>DRILLING AND BLASTING</b> Controlled blasting of rock, dirt, and obstructions by means of explosives.	Class 39	<b>WIRE MESH SLOPE PROTECTION</b> The installation of a zinc coated steel wire mesh anchored by wire rope and reinforced concrete posts or anchor rods. Used for dampening the effects of rolling rocks onto the highway.
Class 15	<b>SEWERS AND WATER MAINS</b> Draining, pipe jacking, water systems, pumping stations, storm drainage systems, sewer rehabilitation, sewage pumping station, pressurized lines.	Class 40	<b>GABION AND GABION CONSTRUCTION</b> Construction of walls made with containers of galvanized steel hexagonal wire mesh and filled with stone.
Class 16	<b>ILLUMINATION &amp; GENERAL ELECTRICAL</b> Highway illumination, navigational lighting, wiring, junction boxes, conduit installation.	Class 41	NOT USED
Class 17	<b>CEMENT CONCRETE CURB AND GUTTER</b> Sidewalks, spillways, driveways, monument cases and covers, right of way markers, traffic curbs, and gutters.	Class 42	NOT USED
Class 18	<b>ASPHALT CONCRETE CURB AND GUTTER</b> Sidewalks, spillways, driveways, monument cases and covers, right of way markers, traffic curbs, and gutters.	Class 43	<b>MECHANICAL</b> Plumbing work and the installation of heating or air conditioning units.
Class 19	<b>RIPRAP AND ROCK WALLS</b> Mortar rubble masonry walls, rock retaining walls, and the placing of large broken stone on earth surfaces for protection against the action of water.	Class 44	NOT USED
Class 20	<b>CONCRETE STRUCTURES EXCEPT BRIDGES</b> Cast-in-place median barrier, prestressing, post-tensioned structures, footings, prefabricated panels and walls, retaining walls, and ramps, foundations, rock bolts, and concrete slope protection.	Class 45	NOT USED
Class 21	<b>TUNNELS AND SHAFT EXCAVATION</b> Tunnel excavation, rock tunneling, and soft bore tunneling.	Class 46	<b>CONCRETE RESTORATION</b> Pavement subseal, cement concrete repair, epoxy coatings, epoxy repair, masonry repair, masonry cleaning, special coatings, epoxy injection, gunite, shotcrete grouting, pavement jacking, gunite repair, and pressure grouting.
Class 22	<b>PILED DRIVING</b> Driving concrete, steel, and timber piles.	Class 47	<b>CONCRETE SAWING, CORING, AND GROOVING</b> Concrete sawing, concrete planing and grooving, bump grinding, joint repair, concrete coring.
Class 23	<b>CONCRETE SURFACE TREATMENT</b> Exposed aggregate, fractured-fin and rope textured finished waterproofing concrete surfaces (clear or pigmented sealer).	Class 48	<b>DREDGING</b> Excavating underwater materials.
Class 24	<b>FENCING</b> Wire and metal fencing, glare screens.	Class 49	<b>MARINE WORK</b> Underwater surveillance, testing, repair, subaquatic construction.
Class 25	<b>BRIDGE DECK REPAIR</b> Bridge expansion joint repair and modification, bridge deck resurfacing and repair.	Class 50	NOT USED
Class 26	<b>DECK SEAL</b> Waterproof membrane.	Class 51	NOT USED
Class 27	<b>SIGNING</b> Sign structures and signs.	Class 52	NOT USED
Class 28	<b>ELECTRONICS</b> Surveillance and control systems design and installation, electronics training and maintenance.	Class 53	NOT USED
Class 29	<b>SLURRY DIAPHRAGM AND CUT-OFF WALLS</b> Slurry excavation and the construction of structural concrete walls and slurry cut-off walls.	Class 54	<b>RAILROAD CONSTRUCTION</b> Construction of railroad subgrade, placing of ballast, ties, and track and other items related to railroad work.
		Class 55	<b>STEEL FABRICATION</b> Welding of steel members, heat straightening steel.
		Class 56	<b>STREET CLEANING</b> Street sweeping with self-propelled sweeping equipment.
		Class 57	<b>MATERIALS TRANSPORTING</b> Truck hauling.
		Class 58	<b>SAND BLASTING</b> Steam cleaning, sand blasting.

NEW SECTION

WAC 468-16-140 MAXIMUM CAPACITY RATING. (1) Ratings given by owners for work performed by a new applicant shall be used to determine the maximum capacity ratings (MCR). The new applicant's experience multiplier or the active contractor's average annual performance score for all work classes performed during the prior year shall be used as a multiplier to calculate the maximum capacity rating. Higher experience multipliers and performance scores increase the maximum capacity rating. The following are examples of methods of computing maximum capacity rating (MCR):

(a) Initial applications - Multiplying the experience multiplier (EM) times a capacity multiplier of 5.0 times the applicant's net worth (NW). (ER x 5.0 x NW = MCR).

(b) Renewal of qualification - Multiplying the department's average annual performance score (PS) times the capacity multiplier of 5.0 times the applicant's net worth (NW). (PS x 5.0 x NW = MCR). For those renewal applicants with no prior department work, calculations are made as for initial applicants.

(2) For the purpose of prequalification and establishing the maximum capacity rating, the following additional resources may be added to net worth if supported with documentation as specified:

(a) An operating line of credit - Documentation from an acceptable financial institution stating the amount of credit authorized, its expiration date, and the amount currently available. The document must be authenticated by an official authorized to execute lines of credit on behalf of the institution. Should the operating line of credit be revoked, it shall be deducted before computing a new annual maximum capacity rating.

(b) A parent firm pledge of net worth - A sworn statement from the parent firm that guarantees the performance of the subsidiary for any contracts awarded it. The maximum capacity rating will be adjusted annually in the same manner as for work class ratings in WAC 468-16-120. The document shall include a parent firm pledge in an amount such that when multiplied by the capacity multiplier will not be less than the value of uncompleted contracts of the subsidiary.

(c) A personal pledge of net worth - A sworn statement pledging a specific amount of personal assets. The statement must be accompanied by a balance sheet reflecting current assets, liabilities and net worth, and documentation of assets by copies of real estate tax assessments, bank and stock certificates, property deeds, or other proof that will verify the ownership and value of the assets.

(3) The additional resources listed above will not be accepted in lieu of a minimum net worth of fifty thousand dollars.

(4) When the contract total of a bid received is added to the value of uncompleted work and that total exceeds the bidder's maximum capacity rating, the bid may be rejected.

NEW SECTION

WAC 468-16-150 PRIME CONTRACTOR PERFORMANCE REPORTS. (1) Performance reports described in this section will be completed for prime contractors only. Each prime contractor's performance report will be classified as to the primary work class being rated. This shall be stated in Section I of the report by listing the major types of work performed by the contractor e.g., clearing, grading, surfacing, etc., as stated on the bidding proposal.

(2) Performance will be rated under the following areas: Administration, management, and supervision; quality of work; progress of work; and equipment.

(3) The following adjectival ratings are defined and established for performance reports:

(a) Superior - Preeminent performance, generally at a higher level than that of others.

(b) Above average - Performance within the spectrum ranging from average to the lower range of superior.

(c) Average - Performance that is equated with satisfactory and is considered sufficient to meet the demand, need, or requirement.

(d) Below average - Performance generally considered marginal or acceptable standards.

(e) Inadequate - Performance failing completely to meet the prescribed standards. It is in the lowest range of below average performance.

(4) The report shall contain a numerical section which quantifies the adjectival ratings into a total performance rating which is multiplied by .001 to obtain a performance score falling within one of the following ranges:

Superior	1.500 - 2.000
Above Average	1.001 - 1.499
Average	1.000
Below Average	0.500 - 0.999
Inadequate	0.000 - 0.499

(5) The performance score (PS) is computed by multiplying the performance rating (PR) obtained from the prime contractor's performance report by a factor (F) of .001 e.g. 1.685 (PR) x .001 (F) = 1.685 (PS).

(6) The annual performance score is the average of the scores, classified by work class, obtained from all performance reports submitted for department projects completed during the one-year period next preceding the date of expiration of the contractor's qualification.

(7) The annual performance score shall be used to compute the bidder's work class rating and maximum capacity rating.

(8) The report shall contain a narrative section which verbally provides the details substantiating the numerical rating. The narrative section shall be based upon documentation prepared during the life of the project, such as the project engineer's diary, the inspector's daily report and other pertinent documents. This documentation shall constitute the major portion of the administrative record to be used for any hearings or litigation that may arise from the rating process.

(9) The performance report will be prepared by the project engineer who will include numerical ratings substantiated by a narrative report which describes the contractor's typical performance.

(10) The report will be endorsed by the district construction engineer who will provide a copy to the contractor and discuss all below average and inadequate ratings with the contractor's representative.

(11) The district administrator will review all contractor performance reports after they have been endorsed. The district administrator will enter comments thereon only when the contractor's performance has been rated below average, inadequate, or superior.

(12) Performance reports will be completed and submitted to the secretary, Attn: State construction engineer, not later than thirty calendar days following completion of the project.

(13) The contractor may appeal the rating to the district administrator in writing within ten calendar days of the date of the report. The appeal must set forth the basis upon which it has been made.

(14) As a general rule, the district administrator shall review the appeal and provide a written response to the contractor within ten calendar days of receipt of an appeal. A copy of the appeal and the response thereto will be forwarded to the secretary.

(15) Upon receipt of a copy of the district administrator's response, the secretary, if the performance report rated the contractor's performance as inadequate or below average, shall appoint a committee of three individuals who are not connected with the project to review the response and the performance report. The review shall consider the objectivity, accuracy, and completeness of the report, the appeal, and the response. The board shall use the project engineer's diary, the inspector's journal, and other written documentation as a basis for their determination and written recommendations which shall be submitted to the secretary within fifteen calendar days of their appointment.

(16) The committee's report will be used as advisory information if further appeal is made to the secretary and will be used for such other purposes deemed proper by the secretary.

(17) Further appeal may be made by the contractor in writing to the secretary within ten calendar days of the date of receipt of the district administrator's response forwarded by certified mail. The secretary will consider the appeal and respond to it within thirty calendar days of its receipt. The contractor or its representative may present information in person to the secretary. The secretary shall notify the respondent of the decision upon completion of the review. This shall be the final administrative act of the department provided, however, that if an action is brought within ten calendar days challenging the secretary's decision, that decision shall be subject to the scope of judicial review provided in such cases under Washington case law.

NEW SECTION

WAC 468-16-160 INTERIM REPORTS. (1) Interim performance reports will be completed for contracts of long duration, particularly those in excess of one year and submitted to the state construction engineer. They will be completed annually on the anniversary of the start date of the contract. An interim report will also be completed whenever the contractor's work has become less than average and the firm has been advised in writing of such performance. The report will

be used by the secretary as a basis for determining whether a contractor will be placed in conditional status.

(2) An interim report shall cover a period of not less than sixty working days. The report shall contain narrative comments relating to at least the following:

- (a) Whether the contract is on schedule.
- (b) Quality of the work.
- (c) Details of any delays.
- (d) Whether any money has been withheld by the state.
- (e) Whether any claims, liens, or stop notices are filed against the project.
- (f) Supervisory ability and cooperative attitude of contractor's officers and supervisory personnel.
- (g) Any additional and appropriate details as required in a final report.

(3) In the case of a conditionally qualified firm, an interim report shall be submitted at sixty working day intervals for all projects being undertaken by that firm subsequent to its being placed in conditional status.

(4) The project engineer shall submit an interim report should it become evident that he/she will no longer be involved in the project, providing that project has been in progress for twenty-five percent of the working days assigned the project.

#### NEW SECTION

**WAC 468-16-170 REFUSAL TO ISSUE PROPOSAL.** Refusal to issue a proposal may continue in effect until the cause for the refusal has been eliminated. One or more of the following conditions may be considered sufficient for refusal to issue a proposal:

- (1) The value of outstanding work plus the contract total of the work proposed to be bid exceeds the contractor's maximum capacity rating.
- (2) Failure to maintain satisfactory progress or quality of workmanship on projects in progress for a period of more than two months, excluding authorized periods of suspension of work following notification thereof.
- (3) Being placed in conditional status.
- (4) Making false, fraudulent, or deceptive statements on the standard questionnaire, related documents, or documents prepared in the course of prosecuting the work.
- (5) Debarment or suspension from participation in federal projects.
- (6) Expiration of qualification.
- (7) Failure to update the latest questionnaire to fairly represent the contractor's current organization and financial status.
- (8) Noncompliance with equal employment opportunity (EEO), or minority and women's business enterprise (MWBE), or disadvantaged business enterprise (DBE) regulations.
- (9) The existence of any conditions described in WAC 468-16-040 through 468-16-070 inclusive.

#### NEW SECTION

**WAC 468-16-180 SUSPENSION OF QUALIFICATION.** (1) A suspension may be ordered for cause or for a period pending the completion of investigation and any ensuing legal action for revocation of qualification.

(2) The secretary may, upon determination from reports, other documents, or through investigation that cause exists to suspend the qualification of a contractor, impose suspension upon the contractor.

(3) The secretary may find the following acts or deficiencies causes for suspension of qualification:

- (a) Incompetency found detrimental to timely project completion or to the safety of the public or employees.
- (b) Contemptuous or abusive acts or attitude toward the owner or owner representatives.
- (c) Inadequate performance on one or more projects.
- (d) Infractions of rules, regulations, specifications, and instructions which may adversely affect public health, welfare, and safety.
- (e) Uncompleted work which might prevent the prompt completion of other work.
- (f) Failure to submit documents required by the contract within prescribed time limits.
- (g) Failure to refund overpayments.
- (h) Failure to comply with equal employment opportunity or women's, minority and disadvantaged business enterprise requirements.
- (i) Debarment or suspension from participation in federal projects.
- (j) Pending completion of debarment proceedings in federal projects.

(4) Maximum periods of suspension for acts or deficiencies enumerated in subsection (3)(a) through (j) of this section are as follows:

- (a) For subsection (3)(a), (b), and (f) of this section - Two months.
- (b) For subsection (3)(c), (d), (e), (g), and (h) of this section - Three months.
- (c) For subsection (3)(i) of this section - For duration of debarment or suspension by the federal or other state agency.
- (d) For subsection (3)(j) of this section - Until a determination is made by the federal or other state agency.
- (5) The secretary may reduce the period of suspension upon the contractor's supported request for reasons including, but not limited to:
  - (a) Newly discovered evidence;
  - (b) Elimination of causes for which the suspension was imposed.

#### NEW SECTION

**WAC 468-16-190 REVOCATION OF QUALIFICATION.** (1) The secretary, upon determination from reports, other documents, or investigation that cause exists to revoke the qualification of a contractor, may revoke the contractor's qualifications for a maximum period of two years.

(2) The secretary may revoke the qualification of a contractor upon a plea by the firm of nolo contendere, conviction, judgment, or admission for any of the following causes:

- (a) Conviction of embezzlement, theft, forgery, bribery, or perjury.
- (b) Intentional falsification with intent to defraud or unauthorized destruction of project related records.
- (c) Fraud, collusion, or any criminal offense in connection with obtaining a state or federal contract.
- (d) Violation, resulting in a conviction, of federal or state antitrust laws.
- (e) Violation of laws governing hours of child labor, minimum wages, and prevailing wages.
- (3) Revocation of qualification may also be under taken for the following reasons:
  - (a) Default on a contract within three years prior to the date of application for qualification.
  - (b) Willful failure to perform in accordance with the contract plans and specifications.
  - (c) Bankruptcy or insolvency.
  - (d) Breach of contract.
  - (e) Grossly inadequate performance.
  - (f) Having been suspended two or more times within a two-year period.
- (4) A contractor shall be required to reapply for qualification upon again reaching eligibility status when qualification has been revoked.
- (5) Revocation of qualification shall be final after ten calendar days following the effective date unless a hearing has been requested.
- (6) The secretary may reverse the decision to revoke qualifications upon the contractor's supported request for reasons including, but not limited to:
  - (a) Newly discovered evidence;
  - (b) Reversal of the conviction or judgment upon which the revocation was based; and
  - (c) Elimination of causes for which the revocation was imposed.

#### NEW SECTION

**WAC 468-16-200 HEARINGS PROCEDURE.** (1) A contracting firm which has been notified by the secretary that the department is contemplating suspending or revoking its qualification may request in writing to the secretary within fifteen calendar days of the secretary's notification, that a hearing be conducted. Unless the department is otherwise prohibited from contracting with the contractor, the suspension or revocation shall not become effective until the final decision of the secretary has been rendered. The hearing shall be conducted in accordance with the procedure set forth in this section.

(2) The secretary shall designate a hearing official to conduct any hearing held under this chapter. The hearing official shall furnish written notice of a hearing to the contractor and any named affiliates at least ten calendar days before the effective date of suspension or revocation of qualifications. The notice shall state:

- (a) That suspension or revocation of qualification is being considered.
- (b) The effective date of the proposed action.
- (c) The facts giving cause for the proposed action.
- (d) The cause or causes relied upon for proposing the action, i.e., fraud, statutory violations, etc.

(e) If suspension is proposed, the duration of the suspension.

(f) That the contractor may, within twenty calendar days of receipt of the notice, submit to the hearing official in writing, information and argument in opposition to or clarification of the proposed action.

(g) That, except when the action is based on a conviction, judgment, or admission, fact-finding shall be conducted if the hearing official determines that the contractor's submission raises a genuine dispute over material facts upon which the suspension or revocation is based or whether the causes relied upon for proposing suspension or revocation exist.

(h) The time, place, and date of the hearing.

(i) The name and mailing address of the hearing official.

(j) That contracts shall not be awarded to the contractor subsequent to the dispatch of the notice of hearing pending the final decision of the secretary.

(3) The hearing official may extend the date of any hearing upon request of the contractor, but the hearing shall not be extended beyond forty-five calendar days from the date of the notice. The hearing official shall schedule and conduct the hearing within thirty calendar days of the date of the notice, except when an extension is granted as provided in this subsection.

(4) In the course of the hearing, the hearing official shall:

(a) Regulate the course and scheduling of the hearings;

(b) Rule on offers of proof, receive relevant evidence, and accept the proof and evidence as part of the record;

(c) Take action necessary to insure an orderly hearing; and

(d) At the conclusion of the hearing, issue written findings of fact and recommended administrative action to the secretary. The hearing officer shall deliver the entire record to the secretary.

(5) The contractor shall have the opportunity to be present and appear with counsel, submit evidence, present witnesses, and cross-examine all witnesses. A transcribed or taped record shall be made of the hearing unless the secretary and the contractor waive the transcript or taping requirement. The transcript or tape shall be available to the contractor and all named affiliates upon request at cost.

In actions where it has been established by conviction, judgment or admission, or where it has been established by findings made in accordance with this chapter, that the named contractor has engaged in conduct described in WAC 468-16-050 and the sole issue before the hearing official is the appropriateness of revocation of qualification or the length of suspension of qualification to be recommended to the secretary, prior judicial or administrative decision or findings shall not be subject to collateral attack.

The secretary, after receiving the record, findings of fact, and recommendations of the hearing official shall determine the administrative action to be taken. The secretary shall notify the contractor of his determination in writing.

Upon denial, suspension or revocation of prequalification, the respondent may appeal therefrom to the superior court of Thurston County pursuant to RCW 47.28.070. If the appeal is not made within that time, the department's action is conclusive.

**NEW SECTION**

WAC 468-16-210 PRIME CONTRACTOR PERFORMANCE REPORT.

**PRIME CONTRACTOR PERFORMANCE REPORT**

SECTION I CONTRACTOR DATA			SECTION II PROJECT DATA			
REPORT TYPE <input type="checkbox"/> INTERIM <input type="checkbox"/> FINAL	DATE	CONTRACTOR NO. (HQ Use Only)	DISTRICT	CONTRACT NO. FA NO.	COUNTY	SR
COMPANY NAME			PROJECT TITLE			
PRINCIPAL		SUPERINTENDENT		SCHEDULED COMPLETION		DATE OF ACTUAL COMPLETION
FOREMEN			CONTRACT AWARD AMOUNT		CONTRACT COMPLETION AMOUNT	
PROJECT DESCRIPTION						
SPECIFIC WORK PERFORMED BY CONTRACTOR						

**SECTION III NUMERICAL RATING**

A ADMINISTRATION/MANAGEMENT/SUPERVISION	* INADEQ.	* BELOW AVG	AVG	ABOVE AVG	* SUPERIOR	RATING
1 Anticipation of problems, making adjustments and altering actions	0	30	60	90	120	
2 Effectiveness of on-site supervision	0	27	55	83	110	
3 Effectiveness of coordination and communication with subcontractors and suppliers	0	23	45	67	90	
4 Attention to public safety and traffic control	0	20	40	60	80	
5 Compliance with laws, ordinances and regulations	0	18	35	52	70	
6 Maintenance of employee safety standards	0	17	35	52	70	
7 Availability of responsible representatives for instructions and decision making	0	13	25	38	50	
8 Adequacy and timeliness of progress schedules	0	10	20	30	40	
9 Coordination and Cooperation with Department personnel on project matters	0	10	20	30	40	
10 Compliance with EEO and affirmative action requirements	0	8	15	23	30	
11 Compliance with Minority/Disadvantaged/ and Women's Business requirements	0	7	15	23	30	
12 Public relations with the general public, other agencies and adjacent contractors	0	7	15	23	30	
13 Accurate and timely contract changes, payment documents, reports and other documents	0	5	10	15	20	
14 Effective home office support	0	5	10	15	20	
<b>TOTAL</b>	0	200	400	600	800	
<b>Q QUALITY OF WORK</b>						
1 Adherence to plans and specifications	0	50	100	150	200	
2 Workers oriented to producing quality work	0	40	80	120	160	
3 High standards of workmanship by contractor	0	40	80	120	160	
4 Diligence in completing final (punch-list) work	0	20	40	60	80	
<b>TOTAL</b>	0	150	300	450	600	
<b>P PROGRESS OF WORK</b>						
1 Effective utilization of personnel	0	30	60	90	120	
2 Effective operation and utilization of equipment	0	30	60	90	120	
3 Effective delivery of materials and supplies	0	20	40	60	80	
4 Effective scheduling and pursuance of work	0	15	30	45	60	
5 Completion of project as scheduled	0	5	10	15	20	
<b>TOTAL</b>	0	100	200	300	400	
<b>E EQUIPMENT</b>						
1 Condition	0	25	50	75	100	
2 Maintenance	0	25	50	75	100	
<b>TOTAL</b>	0	50	100	150	200	
<b>GRAND TOTAL (A+Q+P+E) (Performance Score)</b>	0	500	1000	1500	2000	

\* Explain any inadequate, below average or superior ratings in narrative section.

PERFORMANCE RATING



## INSTRUCTIONS

### Section I CONTRACTOR DATA

This section denotes the type report being submitted and provides data relating to the contracting firm, its status, principals and supervisors. Interim reports must be submitted annually on the anniversary of the project start date for all projects exceeding a duration of one year.

### Section II PROJECT DATA

This section provides basic project data to assist those reviewing or otherwise using the report to place this evaluation in proper perspective with regard to project size, complexity and completion time. Under (*Specific Work Performed by Contractor*) list such work using the general headings used in the proposal (*e.g. preparation, grading, structure, asphalt concrete paving etc.*)

### Section III NUMERICAL RATING

This section contains the four weighted rating areas of (A) Administration/Management and Supervision, (Q) Quality of Work, (P) Progress of Work and (E) Equipment. Each area contains statements which are weighted as to their importance within the rating area. The rater must consider the contractor's merits in relation to each statement by checking the adjectival rating that best describes the contractor's performance for each statement and by assigning an appropriate numerical score in the RATING column. The rater must enter the chosen score for each statement under the heading RATING, total each area and enter the grand total of all scores. The rater must be as objective as possible. There is only one value for the rating of Average, therefore a continuum exists between those contractors slightly below average through slightly above average. Average is equated with satisfactory (Satisfactory is defined as the performance sufficient to meet the demand, need or requirement). Those statements warranting an inadequate, below average or superior rating require justification in the narrative section of the report. If more space is needed, use the reverse side of the sheet or additional sheets.

### Section IV NARRATIVE RATING

This section is divided into three parts.

- A General Elements - Make any general statements pertinent to reporting the contractors work activity, e.g. innovativeness in performing the work and any other noteworthy contractor activities.
- B Unsatisfactory Elements - List any actions or activities which substantiate a numerical rating for each statement falling within the range of inadequate or below average. Each comment must be correlated to identify the rating area and statement number. Each comment must be related to substantiating data reported during the life of the project in the Inspector's Daily Report, Project Engineer's Diary, correspondence or other pertinent records. This data must be available as a part of the administrative record for hearings or litigation.
- C Superior Elements - Make supportive comments for superior ratings. Although the detail of substantiation by recorded data is not required as for inadequate or below average ratings, such data also should be available.

Comments made in response to A, B, and C above should make reference to documented activities that describe the typical performance of the contractor.

If additional space is needed for the narrative report, use the reverse side of the narrative report form.

### Section V REVIEW AND AUTHENTICATION

This section provides for the recording of the review and authentication of the report by the rater, endorser and reviewer. Its purpose is to verify that the contractor has been given a copy of the report and that the contractor is aware of his right to comment on it. It also serves the purpose of verifying that the report has been reviewed for the purposes of assuring objectivity in its preparation and for the elimination of the influences of personalities. The report will be endorsed by the District Administrator when the overall rating is inadequate, below average or superior. The completed report is to be forwarded to the Secretary (ATTN: State Construction Engineer) to arrive not later than 30 calendar days after project completion.

**SECTION IV NARRATIVE RATING**

**A GENERAL ELEMENTS** Enter comments which generally describe the contractor's performance.

Lined area for general elements comments.

**B UNSATISFACTORY ELEMENTS** Enter comments here to substantiate unsatisfactory ratings. (See instructions)

Lined area for unsatisfactory elements comments.

**C SUPERIOR ELEMENTS** Enter comments here to substantiate excellent ratings. (See instructions)

Lined area for superior elements comments.

**SECTION V AUTHENTICATION AND REVIEW**

I certify that I have objectively prepared this report basing it upon data contained in available project records.

PROJECT ENGINEER

DATE

I have given a copy of this report to the rated contractor this date and I have advised the contractor that any appeal must be made within 10 calendar days.

I have reviewed this Contractor Performance Report for objectivity and accuracy and make the following comments and recommendations:

Lined area for comments and recommendations.

CONSTRUCTION ENGINEER

DATE

I have reviewed this Performance Report

DISTRICT ADMINISTRATOR

DATE



## WSR 89-16-087

## PROPOSED RULES

## DEPARTMENT OF LABOR AND INDUSTRIES

[Filed August 2, 1989, 9:12 a.m.]

## Original Notice.

Title of Rule: House-to-house sales.

Purpose: Implements chapter 216, Laws of 1989, regulating house-to-house sales.

Statutory Authority for Adoption: RCW 43.22.270.

Statute Being Implemented: Chapter 216, Laws of 1989.

Summary: Employers who employ minors in house-to-house sales are required to register with the Department of Labor and Industries. Minors under sixteen years of age are prohibited from engaging in house-to-house sales except where a variance is granted.

Reasons Supporting Proposal: The rules primarily establish procedures for issuing, renewing and revoking the registration certificate required of employers who employ minors in house-to-house sales or who advertise to employ persons under 21 years of age in house-to-house sales.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Mark M. McDermott, 925 Plum Street, Olympia, WA, 753-3487.

Name of Proponent: Department of Labor and Industries, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The rule requires employers who employ minors in house-to-house sales or who advertise to employ persons under twenty-one years of age in house-to-house sales to register with the Department of Labor and Industries. Registration procedures and measures to protect minors are outlined in the rule. The statute is necessary to provide the department clear authority to investigate and enforce violations of the state child labor law by employers who employ minors in house-to-house sales.

Proposal Changes the Following Existing Rules: Amending a section to reflect the current name of the departmental division administering and enforcing this chapter and its enabling legislation; and adopting a new section to require posting of the registration certificate.

Small Business Economic Impact Statement: The Washington Regulatory Fairness Act, chapter 19.58 RCW, requires that proposed rules be reviewed to determine if the cost of coming into compliance will create a disproportionately higher economic burden on small business in comparison with the cost of compliance for large business. With respect to WAC 296-125-015, 296-125-030 and 296-125-110 through 296-125-175, the findings of the agency are as follows: The legislature has given the department the responsibility to enforce the House-to-House Sales Act, chapter 216, Laws of 1989; the rules are primarily of a procedural nature to allow all affected parties to have better knowledge of statutory obligations; and minimal recordkeeping is required of all business employing minors in house-in-

house sales. No adverse economic burden on small business is expected.

Hearing Location: General Administration Building, Olympia, Washington, on October 4, 1989, at 9:00 a.m.

Submit Written Comments to: Mark M. McDermott, Assistant Director, 925 Plum Street, Olympia, WA 98504, by October 4, 1989.

Date of Intended Adoption: November 3, 1989.

August 2, 1989

Joseph A. Dear

Director

AMENDATORY SECTION (Amending Order 76-15, filed 5/17/76)

WAC 296-125-015 DEFINITIONS. For the purposes of this ~~(order)~~ chapter:

(1) A "minor" is a person of either sex who is under the age of 18 years.

(2) "Employ" means to engage, suffer or permit to work.

(3) "Employee" means any minor employed by an employer.

(4) "Employer" means any person, association, partnership, private or public corporation who employs or exercises control over the wages, hours or working conditions of a minor.

(5) "Division" means ~~(industrial relations)~~ employment standards, apprenticeship and crime victims division, Washington state ~~(of)~~ department of labor and industries.

AMENDATORY SECTION (Amending Order 77-32, filed 12/30/77)

WAC 296-125-030 PROHIBITED AND HAZARDOUS EMPLOYMENT. (1) The following employments are prohibited for all minors, unless specifically permitted in the text of the hazardous occupations orders in nonagricultural occupations of the child labor provisions of the Federal Fair Labor Standards Act, as now or hereafter amended.

(a) Occupations in or about plants or establishments manufacturing or storing explosives or articles containing explosive components.

(b) Occupations involving regular driving of motor vehicles. Occasional driving is permissible if: The minor has a valid state driver's license for the type of driving involved; driving is restricted to daylight hours, vehicle gross weight is under 6,000 pounds; the minor has completed a state-approved driver education course; and seat belts are provided in the vehicle and the minors have been instructed to use them.

(c) All mining operations.

(d) Logging occupations and occupations in the operation of any sawmill, lath mill, shingle mill, or cooperage-stock mill.

(e) Occupations involving operation of power-driven wood-working machines, power-driven metal-forming punching and shearing machines, power-driven bakery machines, power-driven paper products machines, circular saws, band-saws and guillotine shears, elevators and other power-driven hoisting apparatus.

(f) Occupations involving potential exposure to radioactive substances and to ionizing radiations.

(g) Occupations involving slaughtering, meat-packing or processing and rendering.

(h) Occupations involving wrecking, demolition and shipbreaking operations.

(i) All roofing operations.

(j) Occupations involving excavations.

(k) Occupations involving manufacturing of brick, tile and kindred products.

(2) The following types of work are prohibited for all minors:

(a) Work involving operation of or working in proximity to earth-moving machines, cranes, garbage compactors or other heavy equipment of similar nature.

(b) Work in establishments or work places being picketed during the course of a labor dispute.

(c) Work as a nurses' aide, unless the minor is a student in a bona fide nursing training program or has successfully completed such a program.

(d) Work as a maid or bell-hop in motels or hotels, unless the minor is accompanied by a responsible adult whenever the work requires the minor to enter assigned guest rooms.

(e) (~~Work as a canvasser or peddler from house to house.~~

(f)) Work in shooting galleries, penny arcades, sauna-massage parlors or body painting studios.

#### NEW SECTION

WAC 296-125-110 APPLICABILITY. Unless exempted by Washington state or federal law every employer who, after the effective date of these regulations, employs one or more minor workers in house to house sales or advertises to employ persons in house to house sales specifying in the advertisement a minimum age under twenty-one years, shall have a valid registration certificate to employ minors from the employment standards, apprenticeship and crime victims division, department of labor and industries.

#### NEW SECTION

WAC 296-125-115 DEFINITIONS. For the purposes of WAC 296-125-110 through 296-125-175:

(1) "Employ" means to engage, suffer, or permit to work, but does not include voluntary or donated services performed for no compensation, or without expectation or contemplation of compensation as the adequate consideration for the services performed, for an educational, charitable, religious, state or local government body or agency, or non-profit organization, or services performed by a newspaper vendor or carrier or a person in the employ of his or her parent or stepparent.

(2) "House to house sales" means a sale or other transaction in consumer goods, the demonstration of products or equipment, the obtaining of orders for consumer goods, or the obtaining of contracts for services, in which the employee personally solicits the sale or transaction at a place other than the place of business of the employer.

#### NEW SECTION

WAC 296-125-120 FILING OF REGISTRATION CERTIFICATE. Prior to the employment of one or more minors, each employer seeking to employ minors in house to house sales shall file with the division an application for a registration certificate. When validated by the signature of the division's supervisor of employment standards, such a registration certificate will authorize the employer to employ any number of minor workers in house to house sales in accordance with the conditions established.

#### NEW SECTION

WAC 296-125-125 APPLICATION FOR INITIAL AND RENEWED REGISTRATION. (1) To obtain a registration certificate, an employer must:

(a) Complete an application for a registration certificate on a form provided by the department.

(b) Supply the information required by WAC 296-125-145 if the employer seeks to transport minors out of the state.

(c) Applications for issuance or renewal of a registration certificate must be sent to:

Department of Labor  
& Industries  
ESAC Division  
Mailstop: HC-710  
Olympia, WA 98504

(2) The department shall send a renewal notice to the employer's last recorded address at least forty-five days before the employer's registration certificate expires. Except as provided in WAC 296-125-165, a registration certificate shall be renewed if the employer returns the renewal notice and provides all required information.

#### NEW SECTION

WAC 296-125-130 POSTING. At least one copy of the registration certificate must be posted in plain view of all employees within the confines of the work place specified in the registration certificate.

#### NEW SECTION

WAC 296-125-135 IDENTIFICATION CARDS. (1) Every employer shall provide an identification card to each minor employee employed in house to house sales in a form prescribed by the director.

(2) Every minor employee employed in house to house sales shall show the identification card to each customer or potential customer.

(3) An identification card shall be in the possession of each minor employee during all work hours.

#### NEW SECTION

WAC 296-125-140 HOUSE TO HOUSE EMPLOYMENT STANDARDS. In addition to the requirements of WAC 296-125-027,

(1) Minors may not be employed in house to house sales during school hours, nor before 7:00 a.m. nor after 9:00 p.m.

(2) During all work hours, minors employed in house to house sales must be supervised by a responsible adult who is at least twenty-one years of age, with each supervisor responsible for no more than five minor employees.

#### NEW SECTION

WAC 296-125-145 TRANSPORTING MINORS OUT-OF-STATE. Prior to transporting minor employees employed in house to house sales out of the state, every employer shall obtain written authorization from the minor's parents or legal guardian.

#### NEW SECTION

WAC 296-125-155 RECORDKEEPING. The employer shall be responsible for obtaining and keeping on file all information as required in WAC 296-125-050 and 296-125-145. The records shall be made available for inspection and copying at the request of the department.

#### NEW SECTION

WAC 296-125-160 REVOCATION OF REGISTRATION CERTIFICATE. The supervisor of employment standards may revoke any employer's registration certificate upon a showing that the conditions of its issuance are not being met, or that other conditions exist which are detrimental to the health, safety, or welfare of the minor.

#### NEW SECTION

WAC 296-125-165 DENIAL OF REGISTRATION CERTIFICATE. The department may refuse to issue or renew a registration certificate. If the department refuses to issue or renew a registration certificate for any reason, it shall serve on the employer a notice of denial. The notice of denial shall explain the grounds for denial of the certificate. The department may refuse to renew a registration certificate if the conditions of its initial issuance are not being met.

#### NEW SECTION

WAC 296-125-170 EMPLOYMENT OF MINORS UNDER THE AGE OF SIXTEEN. Minors under the age of sixteen are prohibited from employment in house to house sales unless a variance is granted, consistent with all other requirements of this chapter, in accordance with procedures outlined in WAC 296-126-130.

#### NEW SECTION

WAC 296-125-175 LENGTH OF REGISTRATION PERIOD. Registration certificates shall be issued for a one-year period.

**WSR 89-16-088**

**PROPOSED RULES**

**DEPARTMENT OF LABOR AND INDUSTRIES**

[Filed August 2, 1989, 9:14 a.m.]

Original Notice.

Title of Rule: Agricultural employment standards.

Purpose: Implements provisions of section 84, chapter 380, Laws of 1989, providing agricultural employees rights to pay statements and requiring employer recordkeeping.

Statutory Authority for Adoption: RCW 43.22.270 and chapter 49.46 RCW.

Statute Being Implemented: Chapter 380, Laws of 1989.

Summary: Agricultural employers are required to provide employees pay statements when wages are paid. Wages shall be paid at least monthly. Employment records shall be kept for three years and are open to inspection and copying by the department and the employee.

Reasons Supporting Proposal: Availability of pay statement, a minimum wage payment schedule and the ability to review employment records are essential to ensure adherence to the Minimum Wage Act.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Mark M. McDermott, 925 Plum Street, Olympia, WA 98504, 753-3487.

Name of Proponent: Department of Labor and Industries, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The rule sets forth requirements for pay statements that must accompany wage payments, requires that wage payment occur at least once a month, and allows for review of employment records by the department, and upon employee request for his own records, by the employee. The rule is expected to assist agricultural employees in understanding the system under which they are paid.

Proposal does not change existing rules.

Small Business Economic Impact Statement: The Washington Regulatory Fairness Act, chapter 19.58 RCW, requires that proposed rules which have an economic impact on more than 20 percent of all industries or more than 10 percent of the business in any one industry shall be reviewed to determine if the cost of coming into compliance with the proposed agency rules will create a disproportionately higher economic burden on small business in comparison with the cost of compliance for large business. The act defines a small business as an employer with fifty or fewer employees. With respect to WAC 296-131-001 through 296-131-017, the findings of the agency are as follows: The legislature has given the department the responsibility [to] adopt and enforce rules; the rules are primarily of a procedural nature to allow all affected parties to have better knowledge of statutory obligations; and the recordkeeping and pay statements requirements are expected to impact both small and large agricultural employers. The burden on small employers will not be disproportionately higher.

Hearing Location: General Administration Building, Olympia, Washington 98504, on September 6, 1989, at 9:00 a.m.; and at J. M. Perry Institute, 2011 West Washington Avenue, Yakima, WA, on September 6, 1989, at 3:30 p.m.

Submit Written Comments to: Mark McDermott, Assistant Director, ESAC, 925 Plum Street, Olympia, WA 98504, by September 6, 1989.

Date of Intended Adoption: October 6, 1989.

August 2, 1989  
Joseph A. Dear  
Director

#### NEW SECTION

WAC 296-131-001 APPLICABILITY. These standards, adopted pursuant to sections 83 through 86, chapter 380, Laws of 1989, shall apply to persons employed in agricultural labor as defined in RCW 50.04.150.

#### NEW SECTION

WAC 296-131-010 PAYMENT INTERVAL. All wages due shall be paid at no longer than monthly intervals to each employee on established regular pay days.

#### NEW SECTION

WAC 296-131-015 PAY STATEMENTS. A pay statement shall be provided to each employee at the time wages are paid showing the pay basis in hours or days worked, the rate or rates of pay, the number of piece work units earned if paid on a piece work basis, the gross pay, all deductions and the purpose of each deduction for the respective pay period.

#### NEW SECTION

WAC 296-131-017 EMPLOYMENT RECORDS. (1) Every employer shall keep for at least three years a record of the name, address, and occupation of each employee, dates of employment, rate or rates of pay, amount paid each pay period to each such employee and the hours or days worked.

(2) Every employer shall make the record described in subsection (1) of this section available to the director or the director's authorized representative at any time for inspection and copying and to the employee, upon request for that employee's work record, at any reasonable time.

### **WSR 89-16-089**

#### **PROPOSED RULES**

#### **DEPARTMENT OF LABOR AND INDUSTRIES**

[Filed August 2, 1989, 9:15 a.m.]

Original Notice.

Title of Rule: Minimum wage recordkeeping and payment procedures.

Purpose: To standardize various statutory requirements for records access and payment procedures.

Statutory Authority for Adoption: RCW 43.22.270.

Statute Being Implemented: RCW 49.12.020, 49.12.091 and 49.12.050.

Summary: Recordkeeping requirements under chapters 49.12 and 49.46 RCW are standardized at three years; monthly wage payment is established; and employee access to employment records is increased to improve enforcement of minimum wage laws.

Reasons Supporting Proposal: Confusion currently exists regarding different recordkeeping provisions under chapters 49.12 and 49.46 RCW. The proposed rules move toward uniform standards.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Mark M. McDermott, 925 Plum Street, Olympia, 753-3487.

Name of Proponent: Department of Labor and Industries, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The proposed rules amend or adopt provisions requiring employers to maintain employment records, make those records available for inspection and copying, and to pay employee wages at least monthly. With extension of the minimum wage laws to almost all state employees as a result of the passage of Initiative 518, the department considers it appropriate to establish uniform recordkeeping and pay interval requirements under both statutes requiring payment of a minimum wage. The proposed rules are expected to minimize confusion and simplify procedures for business, workers, and the department.

Proposal Changes the Following Existing Rules: WAC 296-126-023, delete language allowing for lag payrolls; WAC 296-126-050, reduce the length of time employers are required to retain employment records from five to three years; and WAC 296-128-025, expand access to employment records to all persons covered by the Minimum Wage Act.

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

Hearing Location: General Administration Building, Olympia, Washington, on September 6, 1989, at 9:00 a.m.; and at J. M. Perry Institute, 2011 West Washington Avenue, Yakima, WA, on September 6, 1989, at 3:30 p.m.

Submit Written Comments to: Mark M. McDermott, Assistant Director, ESAC, 925 Plum Street, Olympia, WA 98504, by September 6, 1989.

Date of Intended Adoption: October 6, 1989.

August 2, 1989

Joseph A. Dear  
Director

places of employment or at one or more established central record-keeping offices where such records are customarily maintained (~~and~~), All such records shall be open at any time to inspection and (transcription) copying by the director and his duly authorized representative, and to the employee, upon request for that employee's work record, at any reasonable time.

#### NEW SECTION

WAC 296-128-035 PAYMENT INTERVAL. All wages due shall be paid at no longer than monthly intervals to each employee on established regular pay days.

### WSR 89-16-090

#### PERMANENT RULES

#### DEPARTMENT OF REVENUE

[Order 89-11—Filed August 2, 1989, 1:18 p.m.]

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-solid waste collection business—Core deposits and credits, battery core charges, and tires, amending WAC 458-20-250.

This action is taken pursuant to Notice No. WSR 89-13-087 filed with the code reviser on June 21, 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 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 August 2, 1989.

By Edward L. Faker  
Interim Assistant Director

#### AMENDATORY SECTION (Amending Order 74-9, filed 3/13/74, effective 4/15/74)

WAC 296-126-023 PAYMENT INTERVAL. All wages due shall be paid at no longer than monthly intervals to each employee on established regular pay days (~~except that wages for no more than the last seven calendar days may be withheld from the pay period covered for inclusion in the next pay period for bookkeeping purposes~~).

#### AMENDATORY SECTION (Amending Order 74-9, filed 3/13/74, effective 4/15/74)

WAC 296-126-050 EMPLOYMENT RECORDS. (1) Every employer shall keep for at least (~~five~~) three years a record of the name, address, and occupation of each employee, dates of employment, rate or rates of pay, amount paid each pay period to each such employee and the hours or days worked.

(2) Every employer shall make the record described in subsection (1) available to the employee, upon request, at any reasonable time.

(3) Every employer shall, upon written request by the employee, furnish within ten working days of the request to each employee who is discharged a signed written statement, setting forth the reasons for such discharge and the effective date thereof.

#### AMENDATORY SECTION (Amending Regulation 294.7.001 (part), filed 12/30/60)

WAC 296-128-025 PLACE FOR KEEPING RECORDS AND AVAILABILITY FOR INSPECTION. Each employer shall keep the records required by this regulation safe and accessible at the place or

#### 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.

~~((+)) (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 ((F)) 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 ( $\$9.00 \times .036$ ), and, the solid waste collection tax is 8 cents ( $\$8.00 \times .01$ ), 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. A less than 2 can customer becomes a 2 can or more customer when, over a reasonable period of time, i.e., 6 months, charges for less than 2 can service plus extras equals or exceeds the customary charges for 2 can service.

(i) Example. Residential customer Z has less than 2 can service for which Z is charged \$9.00 per month and results in a refuse tax of 32 cents ( $\$9.00 \times .036$ ) and a solid waste tax of 8 cents ( $\$8.00 \times .01$ ) for a total tax of 40 cents. For 7 consecutive months Z has extra trash bags picked up each month. The monthly charge including extras is \$11.00 and the customary 2 can or more charge is \$12.00. The refuse tax for each month is 40 cents ( $\$11.00 \times .036$ ) and the solid waste tax is 8 cents ( $\$8.00 \times .01$ ) for a total tax of 48 cents. Z remains a less than 2 can customer during the period as the monthly charge, including the charge for extras, is less than the customary 2 can or more rate. 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 ( $\$9.00 \times .036$ ) and a solid waste tax of 9 cents ( $\$9.00 \times .01$ ) for a total tax of 41 cents. One month X has several trash bags picked up and the charge for this month is \$13.00. The refuse tax is 47 cents ( $\$13.00 \times .036$ ) and the solid waste tax is 12 cents ( $\$12.00 \times .01$ ) 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 ( $\$10.00 \times .036$ ) and the solid waste tax collected at the disposal site is 10 cents ( $\$10.00 \times .01$ ) for a total collection at the disposal site of 46 cents. The refuse tax collected by the city is 18 cents ( $\$5.00 \times .036$ ) 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 waste 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 apply to the refuse-solid waste portion of the utility bill adjusted as provided in this section. These taxes do 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 customer, 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 B&O tax. It is important to note that the base for B&O tax and retail sales tax may be different amounts. Thus, the gross receipts under the appropriate classification of B&O 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 B&O tax.

(e) Examples:

(i) A customer wishes to purchase from an auto parts store a new replacement battery and a reconditioned starter. He brings with him a battery core and a starter core. The purchase price of the new battery is \$60.00 less \$3.00 for the value of the core exchanged; and, the purchase price of the starter is \$50.00 less \$5.00 for the starter core. Retailing B&O tax is due upon the total value of cash plus core value, in this case \$110.00 (\$60.00 + 50.00). However, retail sales tax is due only on \$102 (\$57.00 + 45.00), which is the purchase price

less the core deposits. The customer pays \$102.00 plus sales tax for the battery and the starter.

(ii) A customer wishes to purchase a new replacement battery which sells for \$62.00. The customer has no returnable battery core to exchange. Thus, a battery core charge of \$5.00 or more must be added to the sales price for a total of \$67.00 or more. Both retail sales tax and B&O tax apply to the actual price paid by the customer.

(iii) In example (ii) above, the customer returns to the store within 30 days with a proof of purchase and a used battery of equivalent size. The seller must refund the \$5.00 or more battery core charge plus the sales tax paid the \$5.00 or more. B&O tax is due upon the value of the battery, \$62.00.

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

## WSR 89-16-091

### PERMANENT RULES

### DEPARTMENT OF REVENUE

[Order 89-12—Filed August 2, 1989, 1:20 p.m.]

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.

This action is taken pursuant to Notice No. WSR 89-13-086 filed with the code reviser on June 21, 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 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 August 2, 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. Therefore, 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 pre-existing 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 recurring 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 reprocessed 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.

(6) The general administrative and tax reporting provisions for the hazardous substance tax contained in Part 1 (8) through (14) of this section apply as well for the petroleum products tax of this part in precisely the same manner except the references to "hazardous substance(s)" or "substance(s)" should be replaced with the words, "petroleum products".

**WSR 89-16-092**  
**PROPOSED RULES**  
**DEPARTMENT OF PERSONNEL**  
**(Personnel Board)**

[Filed August 2, 1989, 2:33 p.m.]

**Original Notice.**

Title of Rule: WAC 356-26-140 Background inquiries—Department of Social and Health Services.

Purpose: This amendment provides for the completion of background inquiries on potential employees.

Statutory Authority for Adoption: RCW 41.06.150.

Statute Being Implemented: Chapters 43.43 and 72.23 RCW.

Summary: This change will add a provision for background inquiries for appointment to positions which are directly responsible for supervision, care or treatment of vulnerable adults or mentally ill persons.

Reasons Supporting Proposal: This amendment complies with amendments to chapters 43.43 and 72.23 RCW adopted by the 1989 legislature which goes into effect July 23, 1989.

Name of Agency Personnel Responsible for Drafting: Bonnie Parker, Department of Social and Health Services, OB-13, 753-5184; Implementation: Department of Social and Health Services; and Enforcement: Department of Personnel.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: This amendment is to comply with amendments to chapters 43.43 and 72.23 RCW.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Currently Department of Social and Health Services conducts background inquiries [inquiries] prior to an applicants appointment to a position which is directly responsible for the supervision, care or treatment of children or developmentally disabled persons. This amendment will also require appointments made to positions which are directly responsible for supervision, care or treatment of vulnerable adults or mentally ill persons to comply with the revisions to chapters 43.43 and 72.23 RCW.

Proposal does not change existing rules.

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

Hearing Location: Department of Personnel, Board Hearings Room, 521 South Capitol Way, Olympia, WA, on September 14, 1989, at 10:00 a.m.

Submit Written Comments to: Paul Peterson, Department of Personnel, FE-11, 521 South Capitol Way, P.O. Box 1789, Olympia, WA, by September 12, 1989.

Date of Intended Adoption: September 14, 1989.

July 23, 1989  
 Robert Boysen  
 Acting Director

AMENDATORY SECTION (Amending Order 271, filed 2/24/87)

WAC 356-26-140 BACKGROUND INQUIRIES—DEPARTMENT OF SOCIAL AND HEALTH SERVICES. (1) Within the department of social and health services, a background inquiry shall be completed prior to an applicant's appointment to a position which is directly responsible for the supervision, care, or treatment of children, ~~((or))~~ developmentally disabled persons, vulnerable adults or mentally ill persons, except as provided in subsection (4) of this section. For purposes of this section, applicants shall also include employees who are notified they are scheduled for reduction in force who wish to consider options to positions covered by this section. The inquiry shall include an examination of the applicant's conviction records and pending criminal charges. Inquiry findings shall be used solely for the purpose of determining the character, suitability, and competence of the applicant and may result in denial of employment only for positions covered by this section.

(2) The department of social and health services shall ensure that all applicants being considered for positions covered by this section are aware of the background inquiry requirement.

(3) Positions covered by this section are all positions which have either a direct or supervisory accountability for the supervision, care, or treatment of residents or clients who are ~~((either))~~ children, ~~((or))~~ developmentally disabled, vulnerable adults or mentally ill persons. Positions assigned duties that provide access to residents or clients who are either children or developmentally disabled, vulnerable adults or mentally ill persons, but which are not directly accountable for their supervision, care, or treatment are not covered by this section.

(4) A background inquiry shall be completed on the applicant prior to any permanent or nonpermanent appointment into a position covered by this section, except as waived by the secretary of the department of social and health services or designee. The inquiry shall be conducted only with the applicant's written authorization. Failure to provide written authorization shall disqualify the applicant for both appointment and referral to positions covered by this section. Employees who at the time of consideration for appointment have current probationary, trial service or permanent status in positions covered by this section are exempt from the background inquiry requirement.

(5) A background inquiry shall be completed on applicants prior to an intermittent appointment to a position covered by this section. Individuals on intermittent appointments in positions covered by this section may not exceed twelve continuous months in such an appointment unless they are cleared following a subsequent background inquiry.

(6) Inquiry findings to be considered in determining the applicant's character, suitability and competence to perform in the position shall be limited to:

(a) Conviction of a felony directly related to the position sought if the date of conviction is less than ten years ago. Such conviction will not be considered if it has been the subject of a pardon, annulment or other equivalent procedure based on a finding of innocence.

(b) Conviction of a felony directly related to the position sought, if the date of conviction is more than ten years ago but the date of prison release is less than seven years ago. Such conviction will not be considered if it has been the subject of a pardon, annulment or other equivalent procedure based on a finding of innocence.

(c) Pending felony charges directly related to the position.

For purposes of applying subsection (6)(a) through (c) of this section, the following offenses shall be considered directly related to all positions covered by this section: All crimes involving physical harm or threat of physical harm to persons; all sex related offenses; all public indecency/prostitution offenses; and all offenses identified as being against children or developmentally disabled persons, vulnerable adults, or mentally ill persons.

(d) Civil adjudication in a dependency action or financial exploitation in a protection proceeding when the applicant was a respondent.

~~((d))~~ (e) Any combination of two or more felony convictions for drug related or malicious harassment offenses if the date of conviction is less than seven years ago. Such conviction will not be considered if it has been the subject of a pardon, annulment or other equivalent procedure based on a finding of innocence.

~~((e))~~ (f) Conviction of or pending charges for a gross misdemeanor or misdemeanor involving either a minor or prostitution for which the date of conviction or jail release, whichever is more recent, is less than seven years ago.

(7) If the inquiry reveals information listed under subsection (6) of this section, no appointment decision shall be made prior to providing the applicant with an opportunity to present evidence to the appointing

authority that the inquiry findings should have no bearing on the applicant's character, suitability and competence to perform in the position. In reviewing the inquiry findings, the appointing authority shall take into consideration the recentness and seriousness of the crime, the number of previous offenses, the likelihood of rehabilitation, as well as the vulnerability of the clients to be cared for in determining the applicant's character, suitability, and competence to perform in the position.

(8) An applicant who has been notified of inquiry findings may appeal, pursuant to WAC 356-34-090, the appointing authority's decision not to appoint him or her only after having requested and completed the review provided in subsection (7) of this section.

(9) Background inquiry information is confidential and shall be used solely for the purpose of determining the character, suitability and competence of the applicant. Misuse of background inquiry information is a criminal offense and may result in prosecution and/or disciplinary action as provided under WAC 356-34-010.

**WSR 89-16-093**  
**PROPOSED RULES**  
**DEPARTMENT OF PERSONNEL**  
**(Personnel Board)**

[Filed August 2, 1989, 2:34 p.m.]

**Original Notice.**

**Title of Rule:** Amending WAC 356-42-055 Arbitration—Grievance—Procedure.

**Purpose:** This section identifies procedure for requesting arbitration of grievances by the State Personnel Board.

**Statutory Authority for Adoption:** RCW 41.06.040.

**Statute Being Implemented:** RCW 41.06.150.

**Summary:** The proposal will permit the Personnel Board to designate an individual to conduct arbitration hearings on its behalf. Upon request of either party the board will review the decision of that designee.

**Reasons Supporting Proposal:** The number of arbitration requests filed with the board continues to grow each year. As a result, the number of arbitrations awaiting hearing is increasing. It is becoming more difficult for the board, on its part-time schedule, to deal with the backlog in a timely way.

**Name of Agency Personnel Responsible for Drafting:** Marilyn Glenn, Department of Personnel, 521 South Capitol Way, 753-5699; **Implementation and Enforcement:** Department of Personnel.

**Name of Proponent:** Department of Personnel, governmental.

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

**Explanation of Rule, its Purpose, and Anticipated Effects:** This proposal will permit the State Personnel Board to designate an individual to conduct the factual hearing on an arbitration request who will then issue a recommended decision which is reviewable by the board. It is anticipated that this provision will provide a more timely process of hearing arbitrations and will reduce the current backlog of cases.

**Proposal Changes the Following Existing Rules:** Existing rule speaks only to the Personnel Board conducting arbitration and does not provide for the use of designees.

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

**Hearing Location:** Department of Personnel, 521 South Capitol Way, Olympia, WA, on September 14, 1989, at 10:00 a.m.

**Submit Written Comments to:** Marilyn Glenn, Department of Personnel, 521 South Capitol Way, FE-11, Olympia, WA, by September 12, 1989.

**Date of Intended Adoption:** September 14, 1989.

July 31, 1989

Robert Boysen  
Acting Director

**AMENDATORY SECTION** (Amending Order 307, filed 8/26/88)

**WAC 356-42-055 ARBITRATION—GRIEVANCE—PROCEDURE.** Whenever arbitration of a grievance is requested of the personnel board pursuant to an agreement as authorized by WAC 356-42-050(2), the procedure set forth below shall apply:

(1) The request for arbitration shall be in the form of a complaint. It shall be filed on a form supplied by the personnel board, or in a writing containing the same information as required on the form within thirty calendar days or less from the date the director of personnel or designee indicates in writing that the mediation is at impasse. The request shall state the following:

(a) The name, address and telephone number of the party filing the request, and the name, address and telephone number of any principal representative.

(b) The name, address and telephone number of the opposing party, and, if known, the opposing party's principal representative.

(c) Clear and concise statements of the facts upon which the grievance is based, including times, dates, places and participants in occurrences.

(d) A listing of the applicable sections of the collective bargaining agreement, rules, policies, etc., upon which the grievance is based and which are claimed to be violated. A copy of the collective bargaining agreement or of the pertinent sections of the agreement shall be attached to the request for arbitration.

(e) A statement of the relief sought.

(f) The signature and, if any, the title of the person filing the request for arbitration.

(2) By mutual agreement the parties to the grievance may extend the thirty-day time frame for requesting arbitration established in subsection (1) of this section. Agreements to extend the time frame shall be reported in writing by the parties to the director of personnel.

(3) A copy of the original grievance and the agency's last written response to the grievance shall be attached to the request for arbitration.

(4) The personnel board's hearings coordinator shall review the request for arbitration to determine compliance with subsection (1) of this section. If the personnel board's hearings coordinator determines the request to be incomplete, he or she shall notify the person filing the request of the portions of the request which need to be supplemented or changed to comply with subsection (1) of this section. When the personnel board's hearings coordinator is satisfied that the request substantially complies with subsection (1) of this section he or she shall mail, or otherwise cause to be served, the request on the opposing party(ies). Any refusal by the personnel board's hearings coordinator to serve the request for arbitration on the opposing party is reviewable by the personnel board upon motion of the requesting party.

(5) Within thirty calendar days of service of the request for arbitration, or within such longer period as the personnel board may allow, the party receiving the request shall answer the allegations of fact and contentions set forth in the request by admitting, denying, or setting forth doubt as to the truth or falsity of any particular alleged fact or contention. The answer shall be served on the grievant or, if represented, on the grievant's representative, at the same time it is filed with the personnel board. Failure to answer an allegation of fact within the time required, or admission of a fact in the answer, shall constitute a waiver by the answering party of the right to contest the fact in the arbitration proceeding, unless for good cause shown, the personnel board provides otherwise. At the discretion of the personnel board for good cause shown, the request or the answer may be amended at any time prior to the end of the arbitration hearing.

(6) After receipt of the answer, or if no answer is timely filed, the personnel board's hearings coordinator shall set the matter for arbitration by the board or its designee whose decision is reviewable by the

board. At least twenty days notice shall be given of the time and date of the arbitration unless both parties agree to a shorter time.

(7) Either party may request a review of a designee's decision within thirty (30) calendar days of service of that decision. The review will be limited to specific areas of the decision to which the party takes exception. The request must include written argument in support of the exceptions as well as a transcript of the proceedings held before the designee. The board will consider the exceptions and thereafter issue a decision which may affirm, reverse or otherwise modify the designee's decision. The board's decision shall be final and binding on the parties. If no exceptions are filed, the designee's decision will become final and binding forty days after it was served on the parties, unless the board calls a hearing to reconsider that decision.

((7)) (8) The grievant shall have the burden of proof and shall go forward with the evidence.

((8)) (9) Upon stipulation between the parties, the board may grant the grievant's request to waive the right to a hearing and thereafter require the parties to submit written evidence upon which the board may act without a hearing.

### WSR 89-16-094

#### NOTICE OF PUBLIC MEETINGS TRAFFIC SAFETY COMMISSION

[Memorandum—July 31, 1989]

#### CHANGE OF COMMISSION MEETING DATE

In order for us to be able to provide you with draft legislation for the Washington Traffic Safety Commission, it is necessary to postpone our August meeting until September 13, 1989. Please note this change. We will meet at the Offices of the Washington Traffic Safety Commission at 1:30 p.m. on September 13, 1989, in the conference room.

### WSR 89-16-095

#### PERMANENT RULES

#### CHIROPRACTIC DISCIPLINARY BOARD

[Order PM 852—Filed August 2, 1989, 3:08 p.m.]

Be it resolved by the Washington State Chiropractic Disciplinary Board, acting at Seattle, Washington, that it does adopt the annexed rules relating to the practice of chiropractic including WAC 113-12-195 Full disclosure of cost of services.

This action is taken pursuant to Notice No. WSR 89-12-083 filed with the code reviser on June 7, 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 18.26.110 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 July 13, 1989.

By Leslie B. White  
Vice-Chairperson

### AMENDATORY SECTION (Amending Order PM 693, filed 12/1/87)

WAC 113-12-195 FULL DISCLOSURE OF COST OF SERVICES. (1) This rule will apply to all representations made in public advertising regarding the provision of chiropractic services, including x-rays or chiropractic examinations, on a free basis or at a reduced cost. This rule will also apply to all billings or other written or oral communications regarding charges for chiropractic services whether made to patients, third party health care payors, or to any other person, firm, or governmental agency.

(2) When a chiropractic service is represented in public advertising as available without cost or at a reduced cost that service must be made available to everyone who wishes to take advantage of the offer on an equal basis. No charge may be made to any individual or third party health care payor for any services which have been provided on a free basis unless full disclosure is made.

(3) All billings to third party payors for patients who are also being treated for an unrelated condition must fully disclose the additional treatment being provided and the charges for that treatment.

(4) Billings to patients or to third party health care payors should accurately reflect the actual charge to the patient, including any discounts, reduced fees, or waiver of co-payment.

(5) Because of the potential element of fraud being present, advertising full or partial forgiveness of coinsurance is prohibited unless the insurance company is given accurate and complete information relating to the actual charge to the patient and that coinsurance has been fully or partially waived.

### WSR 89-16-096

#### PERMANENT RULES

#### DEPARTMENT OF LICENSING

[Order PM 858—Filed August 2, 1989, 3:11 p.m.]

I, John Swannack, assistant director of the state of Washington Department of Licensing, do promulgate and adopt at Olympia, Washington, the annexed rules relating to dental hygienists, adopting new section WAC 308-25-170 Standards of dental hygiene conduct or practice.

This action is taken pursuant to Notice No. WSR 89-13-048 filed with the code reviser on June 16, 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 18.29.076 and 18.130.050(12) which directs that the Department of Licensing has authority to implement the provisions of chapter 18.29 RCW.

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 July 31, 1989.

By John Swannack  
Assistant Director

### 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.

Title of Rule: The regulation of physician assistants including surgical assistants.

Purpose: To define major surgical procedures, a waiver process for certain surgical assistant applicants and to establish requirements for all applicants after January 1, 1990.

Statutory Authority for Adoption: RCW 18.71A.020.

Statute Being Implemented: RCW 18.71A.020.

Summary: Defines major surgical procedures, establishes alternative competency evaluation and sets application requirements for physician assistant applicants.

Reasons Supporting Proposal: To clarify the application process for surgical assistants and to provide an opportunity for certain applicants to demonstrate competence.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Sherman Cox, 1300 Quince Street, Olympia, WA, (206) 753-2205.

Name of Proponent: Washington State Medical Examining Board, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: WAC 308-52-165 Physician assistant qualifications effective January 1, 1990, establishes NCCPA examination eligibility as a requirement for all physician assistant applicants and is intended to restrict applicants to graduates of national approved training programs; WAC 308-52-680 Major surgical procedures, is defined to assist applicants understand the required experience to be eligible for registration; WAC 308-52-690 Surgical assistant program requirements waiver, would permit applicants who lack certain training requirements to demonstrate that they have sufficient competence to practice as a surgical assistant; and WAC 308-52-670 Surgical assistant qualifications effective January 1, 1990, would be repealed as it would not be necessary with the adoption of WAC 308-52-165.

Proposal does not change existing rules.

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

Hearing Location: Sea-Tac Hilton, 17620 Pacific Highway South, Seattle, WA, on September 22, 1989, at 9:30 a.m.

Submit Written Comments to: Patti Rathbun, Medical Unit, 1300 Quince Street, Olympia, WA 98504, by September 20, 1989.

Date of Intended Adoption: September 22, 1989.

August 2, 1989

John H. Keith, A.A.G.

Board Counsel

**WSR 89-16-097**  
**PROPOSED RULES**  
**DEPARTMENT OF LICENSING**  
**(Board of Medical Examiners)**

[Filed August 2, 1989, 3:13 p.m.]

Original Notice.

### NEW SECTION

**WAC 308-52-165 PHYSICIAN 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.

### NEW SECTION

**WAC 308-52-680 MAJOR SURGICAL PROCEDURES.** The board defines major surgical procedures as those procedures performed

in a hospital which the physician requires a first assistant and is documented in the operative report.

#### NEW SECTION

WAC 308-52-690 SURGICAL ASSISTANT PROGRAM REQUIREMENTS WAIVER. Applicants who submitted their application by December 31, 1989 and were determined as not meeting the requirements as set forth in WAC 308-52-640 may petition the board to reconsider their application with the submission of additional documentation to establish competency. The board will evaluate the additional documentation of competence on an individual case basis.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 308-52-670 SURGICAL ASSISTANT QUALIFICATIONS EFFECTIVE JANUARY 1, 1990.

**WSR 89-16-098**  
**PROPOSED RULES**  
**INSURANCE COMMISSIONER**  
[Filed August 2, 1989, 3:15 p.m.]

Original Notice.

Title of Rule: Prelicense education regulation.

Purpose: Exempting qualified program directors and instructors at Washington's publicly funded vocational-technical institutes from the insurance license requirement.

Other Identifying Information: Amending chapter 284-17 WAC, Licensing requirements and procedures.

Statutory Authority for Adoption: RCW 48.02.060.

Statute Being Implemented: RCW 48.17.150.

Summary: Placing personnel of Washington's vocational-technical institutes on an equal footing with Washington's community colleges personnel.

Reasons Supporting Proposal: Vocational-technical institutes are funded, operated, and controlled similarly to community colleges; and community colleges' personnel are currently exempt.

Name of Agency Personnel Responsible for Drafting: Roger Polzin, (206) 753-2403; Implementation and Enforcement: John E. Hanson, (206) 586-9152; located at the Office of the Insurance Commissioner, Insurance Building, Mailstop AQ-21, Olympia, Washington 98504.

Name of Proponent: Insurance Commissioner, Dick Marquardt, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: These amendments differentiate between public vocational-technical institutes and private vocational-technical schools; they equate the former with community colleges as to the degree of administrative oversight and qualifications of its administrators and instructors. Program directors and instructors of insurance education courses offered by community colleges are exempt from the general requirement that they hold Washington insurance licenses in order to qualify for approval to teach

certified insurance courses. Recognizing the comparability of their personnel, and avoiding a duplication of administrative oversight, public vocational-technical institutes are accepted on a par with community colleges.

Proposal Changes the Following Existing Rules: The proposed amendments extend the qualification exemption granted to community colleges to include public vocational-technical institutes that are similarly situated.

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

Hearing Location: Senate Hearing Room #2, John A. Cherberg Building, Olympia, Washington, on September 12, 1989, at 10:00 a.m.

Submit Written Comments to: Roger Polzin, Deputy Commissioner, by September 5, 1989.

Date of Intended Adoption: September 15, 1989.

August 2, 1989

Roger Polzin

Deputy Commissioner  
Management

#### LICENSING REQUIREMENTS AND PROCEDURES

#### AMENDATORY SECTION (Amending Order R 89-8, filed 6/29/89)

WAC 284-17-535 PROGRAM DIRECTOR QUALIFICATIONS AND RESPONSIBILITIES. (1) A program director's necessary qualifications are:

(a) At least five years of teaching experience and knowledge of insurance products, principles, and laws.

(i) Each independent provider's program director must possess and hold in good standing a Washington agent's or broker's license.

(ii) Each insurer provider's program director must possess such a license or comparable scholastic or professional credentials that the commissioner deems equivalent to such a license.

(iii) The requirements of (a)(i) and (ii) of this subsection shall not apply to program directors employed by approved providers governed by chapters 19.28B and 28B.50 RCW, community colleges within Washington state; or to program directors employed by vocational technical institutes governed by the Superintendent of Public Instruction and the State Board of Education.

(b) An employment history involving administrative educational experience.

(c) Trustworthiness. A program director is untrustworthy if he or she has violated any statute or regulation pertaining to insurance, or to any other regulated occupation; or has had an occupational license revoked in any state; or has been convicted of a crime evidencing lack of fitness to assume fiduciary duties.

(2) Information on the program director which must be submitted to the commissioner includes the full disclosure of any regulatory or legal action involving the program director's professional or occupational activities.

(3) A program director's responsibilities include:

(a) Conducting a competent background investigation to ascertain that each instructor is trustworthy and qualified under WAC 284-17-537 and under WAC 284-17-540 or 284-17-545 for the line of insurance he or she has been designated to instruct; except that:

(i) In the event of an emergency created by the unavoidable absence of an approved instructor, the program director may appoint an interim instructor who was not previously certified and approved, to complete the current course offering, however:

(ii) The program director must immediately notify the commissioner of the nature of the emergency, the name of the interim instructor, and the date upon which the current course offering will conclude.

(iii) At the conclusion of the current course offering the program director and provider shall suspend operation of the affected course until an approved instructor is available to conduct the classes.

(b) Supervising each approved course and reviewing all completed student evaluations of the course; and

(c) Insuring that instructors properly issue certificates of completion according to WAC 284-17-539 to the students at the completion of each course.

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

**WSR 89-16-099**  
**PROPOSED RULES**  
**INSURANCE COMMISSIONER**

[Filed August 2, 1989, 3:16 p.m.]

**AMENDATORY SECTION** (Amending Order R 89-8, filed 6/29/89)

WAC 284-17-540 REQUIREMENTS APPLICABLE TO INDEPENDENT PRELICENSE EDUCATION PROVIDERS. This section applies to all persons, other than insurers, offering life, disability, property, or casualty insurance courses to license applicants for purposes of satisfying the educational requirement prescribed by WAC 284-17-505 through 284-17-520.

(1) In addition to the general conditions for approval set out at WAC 284-17-530 through 284-17-539, and in addition to complying with the requirements of WAC 284-17-550, each non-insurer pre-license education provider shall:

(a) Describe any existing insurance education program:

(i) Class titles and curricula covered;

(ii) Number of students per course during previous year;

(iii) Name(s) and qualifications of instructor(s);

(iv) Name and qualifications of the person responsible for the previous program.

(b) Describe the changes necessary to bring any existing program into compliance with WAC 284-17-530 through 284-17-539, 284-17-550 and 284-17-551, and each applicable section of WAC 284-17-552 through 284-17-555.

(c) Reveal the provider's Department of Revenue registration number.

(2) To qualify a provider for the commissioner's approval, the provider's proposed program director must hold in good standing a valid Washington agent's or broker's license and present evidence of teaching experience, the combination to total a minimum of five consecutive years' qualifications.

(a) After November 1, 1994, the license(s) must have been held in good standing for at least five years.

(b) The requirements of this subsection shall not apply to program directors employed by community colleges governed by chapters 28B.19 and 28B.50 RCW, or to program directors employed by vocational technical institutes governed by the Superintendent of Public Instruction and the State Board of Education.

(3) To qualify a provider for the commissioner's approval, each of the provider's proposed instructors must hold in good standing a valid Washington agent's or broker's license for the line(s) of insurance he or she will be instructing, and present evidence of teaching experience or experience supervising student completion of self-paced instructional materials, the combination to total a minimum of three consecutive years' qualifications. After November 1, 1992, the license(s) must have been held in good standing for at least three years.

(4) An independent provider shall establish and maintain records and an appropriate accounting system for all tuition payments received by the provider.

(a) All tuition funds received must be deposited promptly into a bank account or depository separate from any other account or depository.

(b) The accounting system used must effectively isolate the separate account from any other operating or personal accounts, and must provide an audit trail so that details underlying the summary data may be identified.

(c) The provider shall make such records available for inspection by the commissioner during regular business hours upon demand during the three years immediately after the date of the transaction.

(5) Non-insurer course providers shall have an exact physical location or locations.

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

Original Notice.

Title of Rule: Continuing insurance education requirement.

Purpose: Specific criteria for approval of continuing insurance education.

Other Identifying Information: Amending chapter 284-17 WAC, Licensing requirements and procedures.

Statutory Authority for Adoption: RCW 48.02.060.

Statute Being Implemented: RCW 48.17.150.

Summary: Advising licensees of the prerequisites for license renewal, and assuring minimum standards for approved courses and providers of continuing insurance education.

Reasons Supporting Proposal: Lack of a clear standard allows wide-spread abuses to dilute the intent and effect of the requirement.

Name of Agency Personnel Responsible for Drafting: Roger Polzin, (206) 753-2403; Implementation: Erika Taylor, (206) 753-0361; and Enforcement: John E. Hanson, (206) 586-9152; located at the Office of the Insurance Commissioner, Insurance Building, Mailstop AQ-21, Olympia, Washington 98504.

Name of Proponent: Insurance Commissioner, Dick Marquardt, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: These amendments clarify the educational prerequisite to license renewal, and publicize the guidelines to insurance education providers for developing courses designed to increase the expertise and knowledge of insurance agents, brokers, and solicitors throughout Washington state.

Proposal Changes the Following Existing Rules: The proposed amendments define with particularity those licensees required to comply, and frame the conditions and characteristics of acceptable courses.

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

Hearing Location: Senate Hearing Room #2, John A. Cherberg Building, Olympia, Washington, on September 12, 1989, at 10:30 a.m.

Submit Written Comments to: Roger Polzin, Deputy Commissioner, by September 5, 1989.

Date of Intended Adoption: September 15, 1989.

August 2, 1989

Roger Polzin

Deputy Commissioner

Management

**AMENDATORY SECTION** (Amending Order R 80-3, filed 3/20/80)

WAC 284-17-200 PURPOSE. The purpose of this regulation is to implement the provisions of RCW 48.17.150, promoting licensee competence, by establishing the minimum continuing education requirements that must be met prior to the renewal of an insurance agent, solicitor or broker(s) license, and by specifying minimum criteria which must be met in order to qualify insurance courses for approval.



AMENDATORY SECTION (Amending Order R 82-2, filed 4/28/82)

WAC 284-17-210 DEFINITIONS. As used in this continuing education regulation, unless the context requires otherwise((:));

(1) "Provider" means "insurance education provider" as defined in section 2, chapter 323, Laws of 1989.

(2) "Approved course" includes courses, programs of instructions, correspondence courses and seminars.

~~((2))~~ "Hours" means the time assigned by the commissioner as recognition for the satisfactory completion of an approved course. For college level work entirely on approved subjects:

(a) Twelve hours will be assigned for each quarter "credit hour."

(b) Sixteen hours will be assigned for each semester "credit hour." The number of hours assigned for other programs will normally be based upon the number of classroom contact hours or their equivalent. However, based upon the evaluation of the course content, the number of hours assigned may be less than the total amount of time spent by the student in the course.)

(3) "Licensee" means each natural person licensed as a resident insurance agent, solicitor or broker to sell life, disability, property, or casualty insurance. ~~((A credit insurance licensee is not included.))~~ An individual holding a limited license to sell credit life and disability insurance, or travel insurance, or holding a license to sell only vehicle insurance or surety insurance, need not satisfy the continuing education requirement.

(4) "Credit hours" means the value assigned to a course by the commissioner, upon review and approval of course materials and content outline.

The number of credit hours assigned to a course will normally be based upon the number of classroom contact hours or their equivalent. However, based upon the evaluation of the course content, the number of credit hours assigned may be less than the total amount of time spent by the licensee in the course.

For college level work entirely on approved subjects:

(a) Twelve credit hours will be assigned for each quarter "credit hour."

(b) Sixteen credit hours will be assigned for each semester "credit hour."

(5) "Certificate of completion" means a document signed by the course instructor or other responsible officer ~~((which shall signify))~~ of the provider signifying satisfactory completion of the course and ~~((shall reflect))~~ reflecting credit hours ~~((of credit))~~ earned. Such certificate(s) shall be in standard form, completed in its entirety, and containing such identifying information as is prescribed by the insurance commissioner.

AMENDATORY SECTION (Amending Order R 81-5, filed 8/31/81)

WAC 284-17-220 CONTINUING EDUCATION REQUIREMENT. (1) ~~((The number of hours course work required to be presented annually as a prerequisite to license renewal or reissuance shall be 12 hours.))~~ Twelve credit hours of approved continuing education must be presented as a prerequisite to each license renewal or reinstatement.

(a) New licensees ~~((that))~~ who have been licensed for less than ~~((6))~~ six months at the time of renewal ~~((with))~~ are not ~~((be))~~ required to complete the continuing education((:)); however, anyone licensed ~~((6))~~ six months or more at time of renewal must have ~~((completed))~~ earned the entire ~~((+2))~~ twelve credit hours.

~~((The commissioner may accept licensed sales experience in another state, as comparable experience for the purpose of calculating the number of years licensed and for determining the number of continuing education hours required for each annual renewal or reissuance.))~~

(b) Each course ~~((to be))~~ credit applied toward satisfaction of the continuing education requirement must have been completed within the twenty-four month period immediately preceding the licensee's assigned license renewal date and ~~((hours applied cannot have been applied in a previous year toward satisfaction of))~~ the credit may not have been used previously to comply with the continuing education requirement.

(2) The course(s) participated in and for which credit is received shall be reported to the commissioner as part of the application for license renewal and shall be subject to verification by audit.

(3) ~~((If the home state of a nonresident agent is determined to have a continuing education program substantially comparable to that of Washington, satisfaction of the continuing education requirement of~~

~~the home state may be accepted as meeting Washington's requirement.))~~ Repeating an approved course for which the licensee has previously claimed credit will not satisfy the continuing education requirement.

(4) The licensee must retain the certificate of completion for three years from the date on the certificate and must present the original of such certificate upon request of or audit by the commissioner.

AMENDATORY SECTION (Amending Order R 80-3, filed 3/20/80)

WAC 284-17-230 ELIGIBLE COURSES—ADVANCE APPROVAL REQUIRED. (1) Courses eligible for approval ~~((for))~~ to satisfy the continuing education ~~((program shall be))~~ requirement are those courses ~~((related))~~ demonstrating a direct and specific application to insurance.

(a) General education courses and sales motivation courses shall not be eligible for approval.

(b) Courses shall present accurately all statutory and regulatory requirements then applicable or published by the code reviser at the time the course is offered.

(2) All courses must be approved prior to the beginning of study in order to be applied toward the satisfaction of the continuing education requirement~~((PROVIDED, That licensees who have attended and seek credit for completion of courses organized by, and conducted under the supervision of industry trade associations, national associations of agents or brokers or such other national organizations as are accepted by the commissioner, may, within 60 days of course completion, submit supporting course materials and a request for approval of course content and hours credit to the commissioner. The licensee seeking course and hours credit approval shall have the responsibility for providing:~~

(a) Sufficient supporting materials regarding course content and hours to permit the commissioner to make a determination, and

(b) A "certificate of completion" signed by the instructor or person in charge of the course signifying licensee attendance at, and completion of, the course).

(3) Approval of the course is valid for the provider that originally submitted the course to the commissioner, and is not transferable to any other entity.

(4) The commissioner shall assign an identifying certification number to each approved course. The certification number shall be listed on each certificate of completion issued by the provider.

(5) The provider shall issue a certificate of completion to each licensee who has satisfactorily completed the course, within fifteen days after completion or within fifteen days of the date the course was approved by the commissioner, whichever event is later.

AMENDATORY SECTION (Amending Order R 81-5, filed 8/31/81)

WAC 284-17-250 COURSES CONDUCTED BY ~~((AUTHORIZED))~~ SELF-CERTIFYING ORGANIZATIONS. (1) Insurance companies, insurance trade associations and state-wide associations of agents or brokers that have an existing formal, and demonstrable, training program may~~((;))~~ become self-certifying organizations. Upon request to and approval by the commissioner, ~~((be))~~ such self-certifying organizations are authorized to develop course content and conduct approved courses on the subjects that are the organization's focus, without the requirement for prior individual course review and approval by the commissioner.

(2) Local chapters of ~~((such an authorized))~~ each self-certifying state-wide association of agents or brokers may submit proposed courses to the state-wide organization and, upon a determination by the state-wide organization that the local chapter's course meets the standards of the organization and complies with this continuing education regulation, such local chapter's course shall be considered to be a course of the state-wide association of agents or brokers and shall be presumed to be approved by the commissioner.

(3) ~~((It is the intent of this section that only organizations with a formal, full-time training program be approved to develop and conduct courses without prior individual course approval. Courses of other organizations are to be reviewed and acted on by the commissioner on a prior and individual basis.~~

~~((4))~~ Requests for training program review, and authority to develop course content and to conduct courses without prior individual course approval, must include the following information:

(a) The name of the organization.

(b) A description of the existing training program of the organization including:

(i) The titles ~~((or))~~ and descriptions of courses taught during the previous year.

(ii) The number of ~~((students))~~ licensees taught, by course, during the previous year.

(iii) The name of the person in charge of the training program ~~((;))~~ and a description of her or his experience, including years of full-time training ~~((program))~~ experience and years with ~~((the))~~ past and present organizations.

(iv) Budget of the training program for the current year.

(c) A description of the manner in which courses will be developed to comply with the continuing education regulation and reviewed prior to course conduct.

(d) A statement by the responsible employee or officer of the organization agreeing to comply with regulations in developing courses and attributing credit hours to those courses.

(e) An agreement ~~((to offer))~~ to provide ~~((, and to provide when requested;))~~ a certificate of completion ~~((and)),~~ showing credit hours earned, to each successful student.

(f) An agreement to maintain records of ~~((student))~~ licensees' course completions for three years.

(g) Any catalogue, brochure, or other similar publication applying to the continuing education requirement.

~~((5))~~ (4) The ~~((granting))~~ grant of authority to an organization to develop course content and conduct courses without prior individual course approval shall be for ~~((an indefinite))~~ a period of time not to exceed one year. Approvals may be renewed each year, ~~((or until revoked))~~ by the commissioner, upon the request of any self-certifying organization that has complied with statutes and regulations governing insurance education. The actual conduct and performance of the training program shall be subject to review by the commissioner.

~~((6))~~ (5) Organizations that have been authorized to develop course content and conduct courses without prior individual course approval shall file, within ten calendar days of the date any course is first presented, a course outline for each course with the commissioner. The course outline shall include:

(a) A description of the subject matter to be taught.

(b) The method of teaching or presentation.

(c) The number of classroom contact hours.

(d) An explanation of the criteria to be applied in determining whether the course is satisfactorily completed.

(e) The number of continuing education credit hours ~~((credit))~~ assigned to each course.

(f) Other relevant information.

(6) The self-certifying organization shall apply to the commissioner for a certification number for the course; such number shall appear on each certificate of completion issued to each licensee who successfully completes the course.

(7) Assignment of continuing education credit hours to courses, by self-certifying organizations ~~((that have been authorized to develop course content and conduct courses without prior individual approval))~~, shall be subject to review and revision by the commissioner as necessary to ensure consistency in ~~((continuing education))~~ the number of credit hours assigned to comparable courses.

**AMENDATORY SECTION** (Amending Order R 80-3, filed 3/20/80)

WAC 284-17-260 COURSES INDIVIDUALLY APPROVED. Organizations or individuals not included in WAC 284-17-240 or 284-17-250 ~~((that desire to have courses approved))~~ wanting to offer approved continuing education courses may submit their request(s) for individual course approval to the commissioner.

(1) Such requests for course approval must be submitted on forms prescribed by the commissioner.

(2) The request for course approval shall include:

(a) A copy of the course material that is requested to be approved; PROVIDED, HOWEVER, That the commissioner may waive the submission of materials that have been approved within the previous twelve months.

(b) An explanation of the method of teaching or presentation.

(c) The number of classroom contract hours.

(d) An explanation of the criteria to be applied in determining whether the course is satisfactorily completed.

(e) The number of continuing education credit hours for which approval is requested; and an estimate of the number of times the proposed course is to be offered.

(f) An agreement ~~((to offer to provide, and))~~ to provide ~~((when requested;))~~ a certificate of completion ~~((and continuing education hours))~~ showing credits earned, to each successful ~~((student))~~ licensee; and to retain, for a minimum period of three years, records of all certificates issued.

(g) An agreement by the responsible official to comply with regulations in conducting courses.

~~((2))~~ (3) A specific determination of course approval and ~~((hours approval))~~ assignment of credit hours will be made by the commissioner in accordance with the terms of WAC 284-17-230. No course for which individual course approval is required may be represented as being approved prior to actual approval. Approval of an individual course is valid for a maximum period of twelve months from the original approval date.

**AMENDATORY SECTION** (Amending Order R 81-5, filed 8/31/81)

WAC 284-17-270 CREDIT FOR COURSES. (1) No course shall be established for less than one ~~((hour of))~~ continuing education credit. Courses conducted in conjunction with other ~~((meetings))~~ non-qualifying activities or subject matter must have a separate continuing education course component in order to qualify the courses for approval.

(2) The ~~((instructor))~~ provider of a course must maintain a positive attendance record, consisting of a sign in - sign out register, in order to qualify the course for continuing education credit. The provider must retain such registers, or any other evidence of satisfactory completion, for a period of three years from the date of completion.

(3) The instructor of ~~((a))~~ an approved course shall receive twice the number of credit hours ~~((credit))~~ for teaching a course as is ~~((allowed for a student taking))~~ earned by a licensee completing the course. Such instructor may not, however, claim continuing education credit for completing or teaching a course for which he or she has previously claimed credit.

**AMENDATORY SECTION** (Amending Order R 87-12, filed 12/18/87, effective 3/1/88)

WAC 284-17-275 COURSES NOT APPROVED. A course will not be approved if any requirement of this chapter is not met, or if the ~~((instructor or the sponsoring organization))~~ provider or any of its employees or contractors who are supervising or conducting, and certifying completion of an insurance course:

(1) Lacks education or experience in the subject matter of the proposed course; or

(2) Has a history of noncompliance with insurance statutes or regulations; or

(3) Has had an insurance license revoked, suspended, or refused.

**AMENDATORY SECTION** (Amending Order R 80-3, filed 3/20/80)

WAC 284-17-280 APPROVED COURSES OR SELF-CERTIFYING ORGANIZATIONS—LOSS OF APPROVAL. (1) The approval of a course, or of ~~((an))~~ a self-certifying organization ~~((to develop and conduct courses without prior individual course approval))~~, may be suspended or revoked ~~((by))~~ if the commissioner ~~((if he))~~ determines that:

(a) The ~~((course))~~ content ~~((has been))~~ of an individually approved course was significantly changed without notice to and approval from, the commissioner ~~((and the change affects the number of hours assigned to the course))~~.

(b) A certificate of ~~((participation and hours earned is or has been))~~ completion was issued to any individual who did not complete the course.

(c) A certificate ~~((s))~~ of ~~((participation and hours earned were))~~ completion was not ~~((offered, or were not given when requested))~~ issued to any individual ~~((s))~~ who ~~((have))~~ satisfactorily completed the course.

(d) The actual instruction of the course is determined by the commissioner to be inadequate.

(e) In the commissioner's discretion, the course or courses offered by a self-certifying organization fail to meet the objectives and requirements of the statutes and regulations requiring continuing education for insurance agents and brokers.

(f) The provider failed to comply with the commissioner's request for submissions of updated descriptions of any course offerings; or records, course materials, or audit information were not provided within fifteen days of the commissioner's request.

(g) The provider, or any of its employees or contractors involved in insurance education, has violated insurance laws including, but not limited to the regulations contained in this chapter.

(2) If the commissioner finds under this chapter, that disciplinary action against any provider is appropriate, the commissioner may exercise the discretion to suspend or revoke all approvals of that provider's concurrent offerings, and refuse to approve submissions of previously approved courses.

(3) Reinstatement of a suspended or revoked approval shall be at the discretion of the commissioner after receipt of satisfactory proof that the conditions responsible for the suspension have been corrected.

AMENDATORY SECTION (Amending Order R 80-3, filed 3/20/80)

WAC 284-17-290 WAIVER OF CONTINUING EDUCATION REQUIREMENT. (1) Any licensee(;) who believes that good cause exists, may request a waiver of the continuing education requirement. Requests shall be in writing, received prior to the expiration of the licensee's existing license and specify in substantive detail the reason or reasons why the licensee believes a waiver of the continuing education requirement for the current license renewal is merited.

(2) Any request for a waiver which is based upon the licensee's retirement shall be accompanied by a statement attesting that the licensee:

- (a) Is at least sixty-five years of age;
- (b) Is retired from active selling of insurance products; and
- (c) No longer represents any insurer.

(3) If the conditions upon which a waiver was granted change, the licensee shall notify the commissioner in writing within fifteen days, and may be required to satisfy the continuing education credit hours which would have been prerequisite to license renewal had the waiver not been granted. Violation of the conditions of this waiver may result in assessment of a fine, revocation of license, or both.

(4) Any request for a waiver which is based upon medical considerations shall be accompanied by a physician's statement of the applicant's illness or injury.

(5) No waiver shall be valid for a period in excess of one year from the applicant's regular license renewal date.

AMENDATORY SECTION (Amending Order R 82-2, filed 4/28/82)

WAC 284-17-310 WHEN CONTINUING EDUCATION REQUIREMENT MUST BE MET. (1) Each licensee, as defined in WAC 284-17-210(3), shall ((be required to)) present evidence of completing the continuing education requirement, prior to license renewal(;; beginning with those license renewals falling due on or after October 1, 1981) or reinstatement.

(2) Such evidence shall include specific information on the approved course or courses the licensee completed to satisfy the continuing education requirement.

(3) Each credit applied to satisfy the continuing education requirement must have been earned, by completing the relevant course, before the licensee applies for renewal or reinstatement.

AMENDATORY SECTION (Amending Order R 80-3, filed 3/20/80)

WAC 284-17-320 LICENSE RENEWAL REQUESTED—CONTINUING EDUCATION REQUIREMENT NOT SATISFIED. In the event that a ((licensed insurance agent or broker)) licensee who is required by this chapter to earn twelve credit hours, requests license renewal and fails to present evidence of completion of the continuing education requirement, the licensee shall be notified ((by mail)) in writing of the ((apparent)) deficiency and provided with ((reasonable opportunity)) fifteen calendar days from the renewal date or the date of notification, whichever is later, to show compliance. If the information necessary to renew the license is not received within the fifteen-day time period, the license shall lapse and become invalid. Application for renewal after that date, must be made according to the procedures of RCW 48.17.150 and 48.17.500.

## WSR 89-16-100

### PROPOSED RULES

#### COMMITTEE FOR DEFERRED COMPENSATION

[Filed August 2, 1989, 3:17 p.m.]

Original Notice.

Title of Rule: Deferred compensation plan, amending WAC 154-12-010 and 154-12-015.

Purpose: Housekeeping changes to conform verbiage only.

Statutory Authority for Adoption: Chapter 41.04 RCW.

Statute Being Implemented: RCW 41.04.260.

Summary: The rule provides that a state employee may elect to defer a portion of salary, thereby avoiding current federal income tax. The committee invests the moneys to be withdrawn by the employee after separation from service.

Reasons Supporting Proposal: To conform language used within text of Title 154 WAC.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Lee Dreisbach, Director and Mary Bush, Program Manager, Olympia, (206) 586-4980.

Name of Proponent: Committee for Deferred Compensation, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: To conform verbiage and general housekeeping changes.

Proposal does not change existing rules.

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

Hearing Location: Department of Transportation Materials Lab, 1655 South Second Avenue, Tumwater, WA 98502, on September 18, 1989, at 9:00 a.m.

Submit Written Comments to: Lee Dreisbach, Director, Committee for Deferred Compensation, 2600 Martin Way, Suite "D", Olympia, WA 98504, by September 15, 1989.

Date of Intended Adoption: September 18, 1989.

August 2, 1989

Mary Bush

Program Manager

AMENDATORY SECTION (Amending Order 89-03, filed 5/8/89)

WAC 154-12-010 ENROLLMENT. ((Enrollment in the plan.))

(1) An eligible employee may become a participant by executing a participation agreement. Compensation will be deferred for any calendar month only if a participation agreement providing for such deferral is executed by the participant and approved by the committee or its designee before the beginning of such month.

(2) In signing the participation agreement, the participant elects to participate in this plan and consents to the employer deferring the amount specified in the participation agreement from the participant's gross compensation for each pay period. The dollar amount deferred ("deferred compensation") must equal at least thirty dollars per month. Once a participant has specified an amount of deferral, such specification shall continue unless changed or revoked pursuant to WAC 154-12-050 or 154-12-070 of this plan. Participants must have at least one monthly deferral.

**AMENDATORY SECTION** (Amending Order 88-1, filed 5/25/88)

WAC 154-12-015 ACCEPTANCE OF INTERPLAN TRANSFERS. Pursuant to Section 1.457-(2)(k) of the final regulations promulgated under section 457 of the code:

(1) Transfers to the plan. If a participant was formerly a participant in an eligible state deferred compensation plan (within the meaning of section 457 of the code and the regulations thereunder), and if such a plan permits the direct transfer of the participant's interest therein to the plan, then the plan shall accept assets representing the value of such interest; provided, however, the ((~~administrator~~)) ~~committee~~ may require in ((~~his~~)) its sole discretion that some or all of such interest be transferred in cash or its equivalent. Such amount shall be held, accounted for, administered, and otherwise treated in the same manner as compensation deferred by the participant under the plan except that:

(a) Only the amount, if any, transferred to the plan which was deferred under the transferor plan in the taxable year when transfer occurs shall be treated as compensation deferred under the plan in such year.

(b) Such amount shall remain subject to, and shall be administered in accordance with, any irrevocable elections made under the transferor plan with respect to such amount.

(2) Transfers from the plan. The amounts credited to the account of a former participant in the plan may be transferred to another eligible state deferred compensation plan (within the meaning of section 457 of the code and the regulations thereunder) and in which the former participant currently participates, and if such plan provides for the acceptance of such amounts; provided, however, that if a participant terminates his service with the participating employer in order to accept employment with the entity sponsoring such plan and if such plan accepts transferred amounts, then payment of benefits under the plan will not commence, regardless of any other provision of this plan, and the deferrals will automatically be transferred to such plan.

(3) Application for transfer. If the conditions in subsections (1) and (2) of this section are met and the participant wishes to transfer his/her account, he/she shall complete any application form and/or other documents as may be required by the ((~~administrator~~)) ~~committee~~.

(4) Administrative rules. The committee shall prescribe such rules consistent with the provisions of subsections (1) and (2) of this section concerning plan-to-plan transfers as in its sole judgment it deems desirable for the orderly administration of the plan.

**WSR 89-16-101****PREPROPOSAL COMMENTS  
DEPARTMENT OF ECOLOGY**

[Filed August 2, 1989, 3:31 p.m.]

Subject of Possible Rule Making: A comprehensive rule for grant programs for waste reduction and recycling activities and projects. The rule will encompass grants to local governments, taxing jurisdictions and Indian tribes, funded by moneys in the Referenda 26 and 39 accounts, as provided for under chapters 43.88A [43.83A] and 43.99F RCW. The rule will also encompass waste reduction and recycling grants to local governments as provided for under ESHB 1671 (Waste tires, composting, and information and education), the Model Toxics Control Act, and chapter 70.93 RCW, Model Litter Control and Recycling Act. The rule would define eligibility criteria for grants, match requirements, and eligible costs.

Persons may comment on this subject in writing or by telephone to the Waste Management Grants Section, Cheryl Strange, Comprehensive Waste Reduction and Recycling Grants Program Regulation Development, Waste Management Grants Section, Department of Ecology, Mailstop PV-11, Olympia, WA 98504-8711,

(206) 438-6322, 585-6322 scan, Monday - Friday, 8 a.m. - 5 p.m.

Other Information or Comments by Agency at this Time, if any: This rule will be the subject of a statewide public involvement effort as part of the Department of Ecology's standard rule development process. Notices of public comment opportunities will be published in the State Register.

August 1, 1989  
Fred Olson  
Deputy Director

**WSR 89-16-102****PROPOSED RULES****DEPARTMENT OF ECOLOGY**

[Filed August 2, 1989, 3:34 p.m.]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Department of Ecology intends to adopt, amend, or repeal rules concerning establishment of a Phase One—Waste reduction and recycling grants program, chapter 173-318 WAC, to provide grants to local governments, taxing districts and Indian tribes from the Referenda 26 and 39 accounts under chapters 43.83A and 43.99F RCW.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on September 5, 1989.

The authority under which these rules are proposed are chapters 43.83A and 43.99F RCW.

The specific statute these rules are intended to implement are chapters 43.83A and 43.99F RCW.

This notice is connected to and continues the matter in Notice No. WSR 89-12-065 filed with the code reviser's office on June 7, 1989.

Dated: August 1, 1989  
By: Fred Olson  
Deputy Director

**WSR 89-16-103****PROPOSED RULES****BOARD OF HEALTH**

[Filed August 2, 1989, 3:49 p.m.]

Original Notice.

Title of Rule: New chapter 248-52 WAC, Recreational shellfish harvest regulation.

Purpose: To create a new rule to govern a new program; comply with Puget Sound Water Quality Authority directive to create rules governing monitoring of public shellfish beaches; and protect public health through classification of public shellfish beaches according to health standards.

Statutory Authority for Adoption: Chapter 90.70 RCW.

Statute Being Implemented: Chapter 90.70 RCW, Section SF-4, Puget Sound Water Quality Management Program.

**Summary:** Chapter 248-52 WAC will create a uniform monitoring and classification program for recreational shellfish beaches. Joint plans will be developed between the Department of Health and the 12 county health departments around Puget Sound to determine which agency will accomplish each task in the program.

**Reasons Supporting Proposal:** Pollution of recreational shellfish beaches exposes the public to health hazards. There is no public health program for recreational shellfish beaches and no uniform program.

**Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement:** Frank Cox, Shellfish Manager, OEHP, Tumwater, 753-5994.

**Name of Proponent:** Washington State Board of Health, governmental.

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

**Explanation of Rule, its Purpose, and Anticipated Effects:** Chapter 248-52 WAC is proposed new regulation for recreational shellfish harvest.

**Anticipated Effects:** Will remove public health hazards from recreational shellfish beaches and will upgrade the quality of shellfish. Will be in compliance with the Public Sound Water Quality Authority directive to create rules governing and monitoring shellfish beaches.

Proposal does not change existing rules.

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

**Hearing Location:** Richland City Hall, 505 Swift Boulevard, Richland, WA 99352, on September 13, 1989, at 9:30 a.m.

**Submit Written Comments to:** Washington State Board of Health, 1112 South Quince Street, ET-23, Olympia, WA 98504-0095, by September 9, 1989.

**Date of Intended Adoption:** September 22, 1989.

August 2, 1989  
Lucille Christenson  
Acting Secretary

#### Chapter 248-52 WAC

### RULES AND REGULATIONS OF STATE BOARD OF HEALTH FOR RECREATIONAL SHELLFISH BEACHES

#### NEW SECTION

##### WAC 248-52-001 AUTHORITY, PURPOSE, AND SCOPE.

(1) Authority. Under the authority of RCW 43.20.050, powers and duties of state board of health, these regulations are hereby established as minimum requirements for the monitoring and classification of recreational shellfish beaches.

(2) Purpose. It is the purpose of chapter 248-52 WAC to protect public health and establish procedures for evaluating the sanitary quality of recreational shellfish beaches.

(3) Scope.

(a) These regulations shall apply to recreational shellfish beaches under public ownership. Commercial shellfish harvest, even though it may occur on publicly owned beaches, is governed by chapter 248-58 WAC and chapter 69.30 RCW.

(b) These regulations shall apply to recreationally harvested shellfish on privately owned beaches when the general public has unlimited access to beaches for recreational shellfishing. The department may evaluate and monitor these privately owned beaches if the department determines it to be in the public interest.

(4) Other statutes related to this chapter are:

- (a) Chapter 69.30 RCW, sanitary control of shellfish; and
- (b) Chapter 248-58 WAC, sanitary control of shellfish.

#### NEW SECTION

##### WAC 248-52-005 DEFINITIONS. (1) Abbreviations:

- (a) "ml" means milliliter; and
- (b) "PSP" means paralytic shellfish poisoning.
- (2) "Beach evaluation" means the examination of the sanitary conditions of recreational shellfish beaches through water quality testing, shellfish tissue testing, PSP testing, and sanitary surveys.
- (3) "Beach inventory" means the department's list of recreational shellfish beaches governed by chapter 248-52 WAC.
- (4) "Closed classification" means a beach exceeds the standards for safe shellfish harvest.
- (5) "Conditionally open classification" means a recreational shellfish beach meets the standards for safe shellfish harvest during well-defined time periods, such as dry weather months, and is closed to shellfish harvest when the standards are exceeded.
- (6) "Department" means the Washington state department of health (DOH).
- (7) "Emergency closure" means temporary closure of a recreational shellfish beach when a contamination event is suspected of impacting an open or conditionally open beach.
- (8) "Geometric mean value" means a statistical calculation giving a mean value of data points. Geometric mean value is a term used in state water quality standards. The calculation is:
  - (a)  $a \times b \times c \times d = y$ ; and
  - (b)  $n$ th root of  $y =$  geometric mean value.  $N =$  number of data points which determines the power of the root.
- (9) "Health officer" means the health officer or an authorized representative of the city, county, city-county health department or district.
- (10) "Local board of health" means the city, town, county, city-county, or district board of health as defined under chapters 70.05, 70.08, and 70.46 RCW.
- (11) "Open classification" means a recreational shellfish beach which complies with WAC 248-52-030 standards for safe shellfish harvest without any restrictions due to health hazards.
- (12) "Paralytic shellfish poisoning (PSP)" means a human illness caused by eating shellfish that contain high levels of toxin which results from the shellfish consuming large amounts of toxin-producing microscopic marine organism called *Gonyaulax catenella*.
- (13) "Public ownership" means owned by the federal government, state government, a county, a city, or a port district.
- (14) "Recreational shellfish beach" means any beach under public ownership available to the public and any privately owned beach where the general public has unlimited access to recreationally harvest shellfish.
- (15) "Recreational shellfish harvest" means to harvest shellfish for personal consumption with no intention for sale or barter.
- (16) "Sanitary survey" means an evaluation of the sanitary conditions of the shoreline and uplands of a recreational shellfish beach.
- (17) "Shellfish" means, for the purposes of chapter 248-52 WAC, all varieties of oysters, clams, mussels, or scallops.
- (18) "Unclassified" means a recreational shellfish beach which does not have an initial classification because the department has incomplete sanitary survey data.

#### NEW SECTION

**WAC 248-52-010 GENERAL ADMINISTRATION. (1)** The department and the health officer for each local health jurisdiction shall develop a joint plan of operation designating the roles of each agency for administering chapter 248-52 WAC. This plan shall:

- (a) Specifically designate those recreational shellfish beaches included in the joint plan;
  - (b) Establish whether the department or the health officer shall assume primary responsibility for an identified beach;
  - (c) Provide for a minimum acceptable frequency of beach evaluation;
  - (d) Specify who has responsibility for water quality studies, sanitary surveys, PSP monitoring, beach classification, and public notification;
  - (e) Be signed by the secretary and the chairperson of the local board of health; and
  - (f) Be updated as needed to ensure proper operation of the plan.
- (2) If the local board of health adopts rules governing recreational shellfish harvest within its jurisdiction, the adopted rules shall be consistent with chapter 248-52 WAC.
- (3) The department shall develop guidelines on water quality monitoring, PSP monitoring, shoreline survey procedures, public information/notification, and other topics.

(4) Throughout this chapter, the term "health officer" may be substituted for the term "department" if the joint plan of operation delegates authority for action to the health officer.

#### NEW SECTION

**WAC 248-52-020 RECREATIONAL SHELLFISH BEACH CLASSIFICATION.** (1) The department or the health officer for each local health jurisdiction as designated in the joint plan of operation, under WAC 248-52-010, shall classify recreational shellfish beaches, based on the risk to public health from consuming shellfish. After completing an initial classification, the department or the health officer for each local health jurisdiction shall make an annual update based on the additional data collected during the year.

(2) The joint plan of operation's criteria used to classify beaches shall include the following:

- (a) Water quality data;
  - (b) A sanitary survey of pollution sources; and
  - (c) A review of natural and man-made toxins, including PSP.
- (3) The department shall classify recreational shellfish beaches as follows:
- (a) Open;
  - (b) Conditionally open;
  - (c) Closed;
  - (d) Emergency closure; and
  - (e) Unclassified.

#### NEW SECTION

**WAC 248-52-030 WATER QUALITY CRITERIA AND STANDARDS.** (1) The department shall classify the beach as open when the following three conditions are met:

- (a) The marine water covering a recreational shellfish beach shall not exceed a geometric mean value of fourteen fecal coliform bacteria/100 ml of water. In addition, not more than ten percent of the individual water samples may exceed forty-three fecal coliform bacteria/100 ml of water. The geometric mean value shall be calculated on no less than fifteen samples for each water quality station;
- (b) Upon completion of a sanitary survey, there are no major sources of pollution of public health significance identified as affecting the beach; and
- (c) Natural and man-made toxin levels shall not exceed established standards.

(2) The department shall classify the beach as conditionally open when standards for open criteria are met during a well-defined and predictable time period, such as dry weather months. Use of the conditionally open classification shall be limited to beaches where sufficient data is available to accurately establish the beach meets the open criteria for well-defined time periods.

(3) The department shall classify a beach as closed for failing to meet the open or conditionally open standard and the beach shall not be used for recreational shellfish harvest.

(4) The department shall list a recreational shellfish beach as unclassified until complete sanitary data is available. The department shall list initially the beach as unclassified on the beach inventory.

(5) In the event an open or conditionally open beach is suspected of being impacted by a source of pollution or other threat to public health, the department shall implement an emergency closure immediately. The closure shall remain in effect until the department's investigation verifies the beach is safe for recreational shellfish harvesting.

#### NEW SECTION

**WAC 248-52-040 MARINE WATER QUALITY TESTING.** The department shall test marine water in recreational shellfish areas for fecal coliform bacteria according to sampling and analysis protocols under National Shellfish Sanitation Program Manual of Operations for commercial shellfish harvest areas.

(1) The department shall establish the location of marine water sampling stations for each recreational shellfish beach to adequately reflect potential pollution sources for the area.

(2) The department shall collect a minimum of fifteen samples at each station prior to an area receiving a classification. The department shall time each sampling to reflect potential adverse pollution events.

#### NEW SECTION

**WAC 248-52-050 SHELLFISH MEAT QUALITY STANDARDS AND TESTING.** (1) The department shall:

- (a) Periodically test shellfish meat samples for fecal coliform bacteria to provide supportive information for water quality data;
- (b) Establish a routine schedule for collection of shellfish samples for each beach; and
- (c) Sample all beaches classified as open or conditionally open at a frequency determined by the director.

(2) When a toxic chemical is suspected to impact a recreational beach, the department shall conduct tests to identify the chemicals present in the shellfish tissue. In the event of an imminent health hazard, the department shall implement an emergency closure.

#### NEW SECTION

**WAC 248-52-060 RECREATIONAL SHELLFISH BEACH SANITARY SURVEY.** In addition to the evaluation of the shellfish growing waters, and before establishing a classification for the beach, the department shall conduct a sanitary survey of the shoreline and upland areas located adjacent to recreational shellfish beaches. The sanitary survey shall be updated as necessary to reflect changes in shoreline and upland sanitary conditions. A sanitary survey shall consist of:

- (1) Identifying and evaluating point source discharges in the vicinity of the beach;
- (2) Evaluating all on-site sewage disposal systems in the survey area; and
- (3) Evaluating impacts from other nonpoint sources, such as animal waste, in the area.

#### NEW SECTION

**WAC 248-52-070 PSP MONITORING OF RECREATIONAL BEACHES.** (1) The department shall conduct a paralytic shellfish poisoning (PSP) monitoring program for recreational shellfish beaches.

(2) The department shall coordinate the monitoring program with the health officer, and the joint plan of operation developed between the department and the health officer shall include the following elements:

- (a) A sampling schedule which includes the beaches sampled and the frequency of the sampling;
- (b) Designation of responsibility for a sample collection; and
- (c) A system of establishing beach closures due to PSP which includes:
  - (i) Closing the beach when the level of toxin exceeds 80 micrograms of toxin per 100 grams of shellfish meat;
  - (ii) Maintaining the beach closure until two consecutive samples of the same species test below the standard of 80 micrograms of toxin per 100 grams of shellfish meat; and
  - (iii) Closing beaches suspected of posing a PSP threat to public health when they are located in a PSP-impacted area that cannot be sampled on a frequent basis. The beaches shall remain closed until samples verify the area is safe to reopen.

#### NEW SECTION

**WAC 248-52-080 PUBLIC INFORMATION AND NOTIFICATION.** The department shall develop guidelines describing an approved public information/public notification system. The guidelines shall include methods for public notification, including posting, public announcements, and other control mechanisms the jurisdictional health agency deems necessary. The department shall ensure public notification is accomplished under the joint plan of operation.

**WSR 89-16-104**  
**PROPOSED RULES**  
**BOARD OF HEALTH**  
 [Filed August 2, 1989, 3:50 p.m.]

Original Notice.

Title of Rule: WAC 248-64-240 and 248-64-320, Noise provisions for primary and secondary schools.

Purpose: The amended rule requires primary and secondary schools to consider environmental noise for new school sites, and limit ventilation and other mechanical

noise sources in classrooms, and establishes an exemption for existing portable classrooms.

Statutory Authority for Adoption: RCW 43.20.050.

Summary: WAC 248-64-240 and 248-64-320 are amended to clarify the responsibilities of primary and secondary school officials in noise protection of students when designing and operating classrooms. The language of the amendment will simplify the enforcement of noise protection by locals.

Reasons Supporting Proposal: The rule is necessary to revise present State Board of Health rules for noise protection to update noise requirements for new, existing portable, vocational, and music classrooms.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Mark Veazie, OEHP, Department of Health, Tumwater, LD-11, 753-3473.

Name of Proponent: State Board of Health, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: WAC 248-64-240 and 248-64-320 sets noise level standards in classrooms of primary and secondary schools.

Proposal Changes the Following Existing Rules: WAC 248-64-240 Site approval, update noise requirement for new school sites; and WAC 248-64-320 Sound control, establishes design standards for noise from new ventilation systems. Establishes an exemption for existing portable classrooms. Updates noise requirements for vocational classrooms. Includes music classrooms in the vocational noise requirements and eliminates an inconsistent noise requirement for music classrooms.

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

Hearing Location: Richland City Hall, 505 Swift Boulevard, Richland, WA 99352, on September 13, 1989, at 9:30 a.m.

Submit Written Comments to: State Board of Health, ET-23, 1112 South Quince Street, Olympia, WA 98504, by September 10, 1989.

Date of Intended Adoption: September 22, 1989.

August 1, 1989  
Lucille Christenson  
Acting Secretary

AMENDATORY SECTION (Amending Order 88, filed 10/3/73)

WAC 248-64-240 SITE APPROVAL. (1) Before a new school facility is constructed, an addition is made to an existing school facility, or an existing school facility is remodeled, the board of education shall obtain written approval from the health officer that the proposed development site presents no health problems. The board of education may request the health officer ~~((to))~~ make a survey and submit a written health appraisal of any proposed school site.

(2) School sites shall be of a size sufficient to provide for the health and safety of the school enrollment.

(3) Noise from any source at a proposed ~~((new construction))~~ site for a new school, an addition to an existing school, or a portable classroom shall not exceed ~~((60))~~ an hourly average of 55 dBA ~~((for more than five percent of the time (L5)))~~ (Leq 60 minutes) and shall not exceed an hourly maximum (Lmax) of 75 dBA during the ~~((hours))~~ time of day the school is in session ~~((:))~~; except sites exceeding these sound levels are ~~((not considered))~~ acceptable ~~((, unless an appropriate))~~ if a plan for sound ~~((control))~~ reduction is included in the new construction

proposal and the plan for sound reduction is approved by the health officer.

AMENDATORY SECTION (Amending Order 124, filed 3/18/76)

WAC 248-64-320 SOUND CONTROL. (1) In new construction ~~((the entire facility shall be designed and constructed to limit ambient room noise levels to the average values published in chapter 35 of the 1973 edition of the American Society of Heating, Refrigeration and Air Conditioning Engineers Guide and Data Book for the respective type of area involved. Both exterior and interior sources of sound generation shall be considered in arriving at the final values. The maximum ambient noise level in industrial arts, vocational agriculture and trade and industrial facilities shall not exceed 65 dB(A) when all fume and dust exhaust systems are operating. The A-scale or octave band analysis method shall be utilized in making noise level measurements)),~~ plans submitted under section 250 of chapter 248-64 WAC shall specify ventilation equipment and other mechanical noise sources in classrooms are designed to provide background sound which conforms to a noise criterion curve or equivalent not to exceed NC-35. The owner shall certify equipment and features are installed according to the approved plans.

(2) ~~((The occupants in a school shall not be exposed to amplified music exceeding 90))~~ In new construction, the actual background noise at any student location within the classroom shall not exceed 45 dB ~~((A))~~ (Leq<sub>x</sub>) and 70 dB (Leq<sub>x</sub>) (unweighted scale) where x is thirty seconds or more. The health officer shall determine compliance with this section when the ventilation system and the ventilation system's noise generating components, e.g., condenser, heat pump, etc., are in operation.

(3) ~~((The maximum noise exposure in shop instructional areas shall correspond to WAC 296-62-090(11), the general occupational health standards as enforced by the department of labor and industries))~~ Existing portable classrooms, constructed before the effective date of this section, moved from one site to another on the same school property or within the same school district are exempt from the requirements of this section if the portable classrooms meet the following:

(a) Noise abating or noise generating features shall not be altered in a manner that may increase noise levels;

(b) The portable classrooms were previously in use for general instruction;

(c) Ownership of the portable classrooms will remain the same; and

(d) The new site is in compliance with WAC 248-64-240(3).

(4) In new construction, the maximum ambient noise level in industrial arts, vocational agriculture and trade, and industrial classrooms shall not exceed 65 dBA when all fume and dust exhaust systems are operating.

(5) The maximum noise exposure for students in vocational education and music classrooms shall not exceed the levels specified in Table 1.

TABLE 1

MAXIMUM NOISE EXPOSURES PERMISSIBLE

Duration per day (hours)	Sound Level (dBA)
8 hours	<del>((90))</del> 85
6 hours	<del>((92))</del> 87
4 hours	<del>((95))</del> 90
3 hours	<del>((97))</del> 92
2 hours	<del>((100))</del> 95
1-1/2 hours	<del>((102))</del> 97
1 hour	<del>((105))</del> 100
1/2 hour	<del>((110))</del> 105
1/4 hour	<del>((115))</del> 110

~~((Should the total noise exposure in shops exceed these levels, hearing protective devices such as ear plugs or muffs shall be provided to the))~~ Students ~~((so))~~ shall not be exposed to sound levels equal to or greater than 115 dBA.

(6) Should the total noise exposure in vocational education classrooms exceed the levels specified in Table 1 of subsection (5) of this section, hearing protectors, e.g., ear plugs, muffs, etc., shall be provided to the exposed students. Hearing protectors shall reduce student noise exposure to comply with the levels specified in Table 1 of subsection (5) of this section.



**WSR 89-16-105**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
**(Institutions)**

[Filed August 2, 1989, 3:52 p.m.]

**Original Notice.**

Title of Rule: Chapter 275-56 WAC, Community mental health programs, amending WAC 275-56-005, 275-56-010, 275-56-015, 275-56-020, 275-56-025, 275-56-035, 275-56-040, 275-56-050, 275-56-055, 275-56-060, 275-56-065, 275-56-070, 275-56-075, 275-56-080, 275-56-085, 275-56-090, 275-56-095, 275-56-100, 275-56-105, 275-56-110, 275-56-115, 275-56-135, 275-56-150, 275-56-165, 275-56-170, 275-56-175, 275-56-180, 275-56-185, 275-56-195, 275-56-200, 275-56-205, 275-56-210, 275-56-215, 275-56-220, 275-56-225, 275-56-230, 275-56-235, 275-56-240, 275-56-245, 275-56-260, 275-56-275, 275-56-285, 275-56-290, 275-56-295, 275-56-300, 275-56-305, 275-56-335, 275-56-340, 275-56-355, 275-56-365, 275-56-385, 275-56-400, 275-56-425 and 275-56-445; new WAC 275-56-016, 275-56-017, 275-56-037, 275-56-042, 275-56-043, 275-56-087, 275-56-088, 275-56-089 and 275-56-465; and repealing WAC 275-56-030, 275-56-120, 275-56-125, 275-56-130, 275-56-140, 275-56-145, 275-56-155, 275-56-160, 275-56-190, 275-56-250, 275-56-255, 275-56-265, 275-56-270, 275-56-280, 275-56-310, 275-56-315, 275-56-320, 275-56-325, 275-56-330, 275-56-345, 275-56-350, 275-56-360, 275-56-370, 275-56-375, 275-56-380, 275-56-390, 275-56-395, 275-56-405, 275-56-410, 275-56-415, 275-56-420, 275-56-430, 275-56-435, 275-56-440 and 275-56-450.

Purpose: To amend rules relating to community mental health.

Statutory Authority for Adoption: RCW 71.24.035.

Statute Being Implemented: RCW 71.24.035.

Summary: These rule changes will have the following effect: New definitions; new sections on the development of regional support networks; revisions to provider licensure; and new sections on resource management services, emergency response system, community support services, and residential services.

Reasons Supporting Proposal: This rule is necessary to establish rules and regulations for county and regional administration of community mental health programs, licensing service providers, information, accountability, contracts and services.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: David Hanig, Mental Health Division, 586-6766.

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

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

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

Proposal Changes the Following Existing Rules: See above.

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

These revisions to chapter 275-56 WAC are necessitated by changes in chapter 71.24 RCW, transferring response for administering the mental health programs to county government. The revisions generally reduce cost for providers of service. Providers of congregate care facilities, mental health care will be required to have an annual audit and receive clinical consultation from a mental health professional. These additional costs will vary depending on size of program but should not exceed \$15,000 per year. Counties which will be contracting with congregate care facilities for the first time are expected to increase reimbursement to cover these legitimate costs of doing business. Therefore, their should be little or no economic impact on these providers.

Hearing Location: OB-2 Auditorium, 12th and Franklin, Olympia, on September 5, 1989, at 10:00 a.m.; and at the Health Department, West 1101 College Avenue, Room 140, Spokane, on September 7, 1989, at 10:00 a.m.

Submit Written Comments to: Troyce Warner, Chief, Office of Issuances, Department of Social and Health Services, Mailstop OB-33H, Olympia, WA 98504, by September 5, 1989.

Date of Intended Adoption: September 22, 1989.

August 2, 1989

Leslie F. James, Director  
 Administrative Services

Reviser's note: WAC 275-56-037 and 275-56-195 are referred to in the agency's CR-102 Form; however, the proposed text of these sections were not included with the filing by the agency. cf. RCW 34.08.020 (1)(a).

AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-005 PURPOSE AND AUTHORITY. Chapter 275-56 WAC establishes rules and regulations for county and regional support network administration of community mental health programs, licensing service providers, information, accountability, contracts and services. The purpose of this chapter is to establish a county-managed community mental health program to help people experiencing mental illness retain respected and productive positions in their community. Chapter 275-56 WAC is adopted under (~~authority of~~) chapter 71.24 RCW.

(1) Chapter 275-56 WAC enables participation in the community mental health system by service providers which are profit or nonprofit businesses, private or public businesses, individuals or partnerships, as well as corporations. A provider may contract with a county or regional support network (RSN) for one or more services defined by chapter 71.24 RCW.

(2) The rules and regulations (~~of~~) for county (~~administration~~) duties are specified in two areas:

(a) County (~~administration and~~) planning (~~(f)~~) under WAC 275-56-020 (~~through~~), 275-56-025, 275-56-040, 275-56-050, 275-56-055, and 275-56-060(~~;~~); and

(b) County fiscal (~~administration~~-~~t~~) requirements under WAC 275-56-065 through 275-56-085(~~;~~).

(3) The rules and regulations for regional support network duties are specified in two areas:

(a) RSN development and planning (WAC 275-56-016, 275-56-017, 275-56-035, 275-56-042, 275-56-043, 275-56-050, 275-56-055, 275-56-060, 275-56-087, 275-56-088, and 275-56-089; and

(b) RSN fiscal requirements (WAC 275-56-065 through 275-56-085).

(4) Minimum standards for licensing service providers are specified in four areas:

(a) Licensing procedures (~~(f)~~) under WAC 275-56-090 through 275-56-105(~~;~~);

(b) Organizational administration ~~((of))~~ for the provider ~~((including))~~ under WAC 275-56-110 through 275-56-215 ~~(( ))~~, as follows:

- (i) Administration;
- (ii) Provider fiscal administration;
- (iii) Personnel management;
- (iv) Quality assurance;
- (v) Program evaluation; and
- (vi) Facilities ~~((:))~~;

(c) Services administration ~~((including))~~ under WAC 275-56-220 through ~~((275-56-330))~~ 275-56-340, as follows:

- (i) Accessibility and awareness of services;
- (ii) ~~((Client))~~ Consumer rights;
- (iii) ~~((Client))~~ Consumer entry, service planning, and service operations; and
- (iv) ~~((Client))~~ Consumer records ~~((:))~~;
- (d) Services ~~((including))~~ ~~((WAC 275-56-335))~~ under WAC 275-56-355 through ~~((275-56-445))~~ 275-56-465:
  - (i) Emergency services, including preadmission screening services;
  - (ii) Outpatient services;
  - (iii) Day treatment services;
  - (iv) Consultation and education services;
  - (v) Community support services; and
  - (vi) Residential services.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-010 PRIORITY POPULATIONS. Chapter 275-56 WAC establishes rules, regulations, and standards for community mental health programs providing for:

(1) Access to mental health services for residents of the state of Washington who ~~((in priority order))~~ are:

(a) In non-RSN counties, in priority order:

- (i) Acutely mentally ill;
- ~~((b))~~ (ii) Chronically mentally ill; or
- ~~((c))~~ (iii) Seriously disturbed.

(b) For RSNs, when established in no particular priority order:

- (i) Acutely mentally ill adults and children;
- (ii) Chronically mentally ill adults and children; or
- (iii) Seriously disturbed adults and children at risk of becoming acutely or chronically mentally ill, as determined by the RSN at their sole discretion.

(2) Mental health services recognizing the special needs of underserved groups within the priority populations, including:

- (a) Minorities ~~((:))~~;
- (b) Children ~~((:))~~;
- (c) Elderly ~~((:))~~;
- (d) Disabled ~~((:))~~; and
- (e) Low-income persons.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-015 DEFINITIONS. For the purposes of the rules, regulations, and standards of chapter 275-56 WAC, the following words and phrases shall have the following meaning:

(1) "Acutely mentally ill" means a condition limited to a short-term severe crisis episode of:

- (a) A mental disorder as defined in this chapter;
- (b) Being gravely disabled as defined in this chapter; ~~((or))~~
- (c) Presenting a likelihood of serious harm as defined in this chapter;

or (d) In the case of a child, is subjected to continual distress as indicated by repeated physical or sexual abuse or neglect.

(2) "Authority" means the board of county commissioners, county council, county executive, or RSN entity having the authority to establish a community mental health program.

(3) "Available resources" means funds appropriated by the legislature during any biennium for the purpose of providing community mental health programs. When RSNs are established or after July 1, 1995, "available resources" means:

(a) Federal funds, except those provided according to Title XIX of the Social Security Act; and

(b) State funds appropriated under this chapter or chapter 71.05 RCW by the legislature during any biennium for the purpose of providing mental health services.

~~((3))~~ (4) "Case management" means assistance to the ~~((client))~~ consumer and family or significant others to obtain, maintain, or develop ~~((an))~~ appropriate ~~((place))~~ resources for the ~~((client in the~~

community)) consumer. This ~~((service))~~ involves ~~((assistance in))~~ obtaining the full range of needed services ~~((routine monitoring, supervision of client's functioning, and establishing and maintaining support for the client and his or her family or significant others))~~ to help consumers establish and maintain respected positions in the community, including:

- (a) Housing;
- (b) Income;
- (c) Employment and other meaningful activities;
- (d) Routine monitoring and interventions; and
- (e) Crisis intervention and resolution.

~~((4))~~ (5) "Child" or "children" means a ~~((person or persons under eighteen))~~ consumer or consumers seventeen years of age and younger.

~~((5))~~ (6) "Chronically mentally ill" means a ~~((person))~~ consumer having a mental disorder and meeting at least one of the following criteria:

- (a) Has undergone two or more episodes of hospital care for a mental disorder within the preceding two years;
- (b) Has experienced a continuous psychiatric hospitalization or residential treatment exceeding six months duration within the preceding year; ~~((or))~~
- (c) Has been unable to engage in ~~((any))~~ substantial gainful activity ~~((subsection 46) of this section)~~ by reason of any mental disorder ~~((which has lasted))~~ lasting for a continuous period of not less than twelve months; or
- (d) In the case of a child:

(i) Is placed by the department or its designee two or more times outside of the home;

(ii) Is placed due to a mental disorder;

(iii) Is placed and the placement progresses to a more restrictive setting;

(iv) Is placed by the department including, but not limited to placement by child protective services and child welfare services.

~~((6))~~ "Clients" means persons, couples or families receiving clinical, coordinative, or supportive services.)

(7) "Clinical staff member" means a regularly employed or contracted staff member or supervisor engaged ~~((to any extent))~~ in providing direct evaluative, diagnostic, or therapeutic services to ~~((clients))~~ consumers. The term does not include volunteers or students.

(8) "Community mental health program" means the total mental health program established by a county or group of counties acting in combination for the purpose of providing mental health services in accordance with the Community Mental Health Services Act, chapter 71.24 RCW. After July 1, 1995, or when RSNs are established, "community mental health program" means all activities or programs using available resources, under subsection (3) of this section.

(9) "Community Mental Health Services Act" means chapter 71.24 RCW.

(10) "Community support services" means ~~((those))~~:

(a) For non-RSN counties before July 1, 1995, services for acutely and chronically mentally ill ~~((persons which include))~~ consumers including:

~~((a))~~ (i) Discharge planning for ~~((clients))~~ consumers leaving:

(A) State hospitals and other acute care inpatient facilities;

(B) Inpatient psychiatric facilities for consumers twenty years of age or younger; and

(C) Children's mental health residential treatment facilities;

~~((b))~~ (ii) Contacts with ~~((clients))~~ consumers, ~~((family))~~ families, schools, or significant others to provide for an effective program of community maintenance; and

~~((c))~~ (iii) Medication monitoring.

(b) After July 1, 1995, or when RSNs are established, for adult and children priority populations under WAC 275-56-010 (1)(b), services authorized, planned, and coordinated through resource management services include:

(i) Assessment and diagnosis;

(ii) Emergency crisis intervention available twenty-four hours a day, seven days a week;

(iii) Prescreening determinations for mentally ill consumers considered for placement in nursing homes as required by federal law;

(iv) Screening for patients considered for admission to residential services;

(v) Investigation, legal, and other nonresidential services (chapter 71.05 RCW);

(vi) Case management services;

(vii) Psychiatric treatment, including medication supervision;

(viii) Counseling;

(ix) Psychotherapy;  
(x) Assured transfer of relevant patient information among service providers;

(xi) Maintenance of client tracking information for priority populations; and

(xii) Other services determined by RSNs.

(11) "Consumers" means persons, couples or families receiving clinical, coordinative, or supportive services.

(12) "Consultation" means review and recommendations regarding the job responsibilities, activities(;) or decisions of administrative, clinical(;) or clerical staff, contracted employees, volunteers(;) or students by ((a person or) persons with appropriate knowledge and experience to make ((such) recommendations. This definition does not constitute a definition of consultation and education.

((+2)) (13) "Consultation and education services" means those services provided to assist others in the community ((to understand) in understanding and ((care) caring for ((acutely and chronically mentally ill and seriously disturbed persons and includes)) priority populations including:

- (a) Consultation to other community providers(;); and
- (b) Educational and public information services.

((+3) "County authority" means the board of county commissioners, county council or county executive having the authority to establish a community mental health program.)

(14) "Crisis" means a situation where((, because of severe internal or external stresses,) a person is acutely mentally ill or experiencing serious disruption in cognitive, volitional, psychosocial or physiological functioning.

(15) "Crisis respite" means residential support services provided to the consumer during a crisis.

(16) "Crisis response system" means the system designed to resolve crises in the least restrictive manner possible, including:

- (a) Emergency services;
- (b) Crisis intervention;
- (c) Crisis respite;
- (d) Investigation and detention services; and
- (e) Evaluation and treatment services.

(17) "Day treatment services" means ((those) services for mentally ill ((persons which include) consumers, including training in basic living and social skills, supported work, vocational rehabilitation, day activities, and may include therapeutic treatment.

((+6)) (18) "Department" means the department of social and health services.

((+7)) (19) "Direct treatment services" means clinical services provided directly to ((clients to meet) consumers meeting the ((clients) consumer's mental health needs, as distinct from activities conducted with other persons, organizations, or groups on behalf of ((clients) consumers, and also as distinct from supervisory, consultative or training activities conducted with regard to ((clients) consumers or services.

((+8)) (20) "Disabled" means a ((developmentally disabled person or one with) consumer with a developmental disability, serious physical or sensory impairment.

((+9)) (21) "Elderly" means a person sixty years of age or older.

((+20) "Emergency" means a situation where there is likelihood of serious harm to the person, other persons or property resulting from the actions or threatened actions of a mentally ill person, or when the person is gravely disabled.

(+21) (22) "Emergency services" means those responses and intervention services provided to ((persons) consumers experiencing mental health emergencies or crises ((and include)), including:

- (a) Twenty-four hour telephone service;
- (b) Twenty-four hour crisis intervention and outreach services; and
- (c) ((Crisis resolution services, and
- (d)) Preadmission screening services.

((+22)) (23) "Geriatric long-term rehabilitative care" means long-term rehabilitative care for individuals age fifty-five and over, or under fifty-five who, because of psychoneurological impairments, are appropriate for this level of care.

(24) "Governing body" means the final decision-making body for a provider.

((+23)) (25) "Gravely disabled" means a condition where a ((person) consumer, as a result of a mental disorder:

- (a) Is in danger of serious physical harm resulting from a failure to provide for ((his or her) their essential human needs of health or safety; or

(b) Manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognition or volitional control over ((his or her) their actions and is not receiving such care as is essential for ((his or her) their health or safety.

((+24)) (26) "Individualized service plan" (ISP) means the plan developed by resource management services assuring continuity of care and identifying needed residential and community support services.

(27) "Individualized treatment plan" (ITP) means the plan developed by the service provider identifying treatment needs and methods of treatment and, in RSNs, is consistent with the ISP.

(28) "Less restrictive setting" means that service in which the consumer functions at maximum independence in the most normative environment possible.

(29) "Long-term rehabilitative care" means an institutional or community-based residential program for adults or children who:

- (a) Require twenty-four hour supervision;
- (b) Do not require extensive medical care; and
- (c) Are highly dysfunctional; or
- (d) Are behaviorally impaired; or
- (e) Are noncompliant with medication regimes.

(30) "Material adjustment" means a budget revision equaling ten percent of a cost center.

((+25)) (31) "Mental disorder" means any organic, mental, or emotional impairment having substantial adverse effect on ((an individual's) a consumer's cognitive or volitional functions.

((+26)) (32) "Mental health professional" means:

(a) A physician or osteopath licensed under chapter 18.57 or 18.71 RCW, who is board eligible in psychiatry; or

(b) A psychologist licensed under chapter 18.83 RCW; or

(c) A psychiatric nurse or social worker; or

(d) A person having at least a masters degree in behavioral sciences, nursing sciences, or related field from an accredited college or university and having at least two years' experience in the direct treatment of mentally ill consumers under the supervision of a mental health professional; or

(e) A mental health counselor or marriage and family therapist certified under chapter 18.19 RCW and having at least two years' experience in the direct treatment of mentally ill consumers under the supervision of a mental health professional; or

(f) A professionally licensed occupational or physical therapist and having at least two years' experience in the direct treatment of mentally ill consumers under the supervision of a mental health professional.

(33) "Mental health services" means those services required ((pursuant to) under chapter 71.24 RCW, including:

(a) In non-RSN counties:

(i) Emergency services, including screening for patients being considered for admission to state hospitals;

((+b)) (ii) Outpatient services;

((+c)) (iii) Day treatment;

((+d)) (iv) Consultation and education services; and

((+e)) (v) Community support services.

((+27)) (b) When RSNs are established, or after July 1, 1995, "mental health services" shall mean all services provided by RSNs.

(34) "Mentally ill persons" and "the mentally ill" means a person or condition defined in this chapter as:

- (a) Acutely mentally ill;
- (b) Chronically mentally ill; or
- (c) Seriously disturbed.

((+28)) (35) "Minority" or "ethnic minority" means any of the following general population groups:

(a) American Indian or Alaskan native(;);

(b) Asian or Pacific Islander(;);

(c) Black(;); or

(d) Hispanic.

((+29)) (36) "Outpatient services" means those services provided ((in less than a residential or day treatment setting for clients whose dysfunction is not so severe as to need such intense or restrictive service)) to priority populations needing less intensive treatment than that provided through inpatient, residential, or day treatment programs. ((Outpatient) Services ((may) shall include, but are not limited to(;):

(a) Evaluation(, diagnosis;);

(b) Individual, family, and group psychotherapy(;); and

(c) Medication management(, and activities therapy).

~~((30))~~ (37) "Preadmission screening services" means those services provided for ~~((clients))~~ consumers being considered for voluntary admission to state hospitals to determine the appropriateness of admission and availability of alternatives.

~~((31))~~ (38) "Properly executed accounting documents" means accounting documents processed in a manner consistent with provider policies and procedures and providing sufficient and adequate documentation for an audit of the agency's financial transactions.

~~((32))~~ (39) "Provider" means licensed service provider as defined in chapter 71.24 RCW.

~~((33))~~ (40) "Regional support network" (RSN) means a county authority or group of county authorities recognized by the secretary that enter into joint operating agreements to contract with the secretary under this chapter.

(41) "Registration records" means all the records of the RSN treatment facilities and other persons providing services to the department, county departments, or facilities. Registration records identify individuals receiving or who may have received services for mental illness which have been funded by available resources.

(42) "Residential services" means a complete range of residences and supports authorized by resource management services. These may involve a facility, a distinct part thereof or services supporting community living, including, at least:

(a) Evaluation and treatment services as defined in chapter 71.05 RCW;

(b) Crisis respite care;

(c) Long-term adaptive and rehabilitative care;

(d) Supervised care;

(e) Supportive living services; and

(f) Support services to nursing home residents.

(43) "Resource management services" means the planning, coordination, and authorization of residential and community support services administered under an ISP for priority populations, including:

(a) Seven day a week, twenty-four hour a day availability of information regarding mentally ill adults' and children's enrollment in services; and

(b) Access to their ISP by county-designated mental health professionals, evaluation and treatment facilities, and others as determined by the RSN.

(44) "Secretary" means the secretary of the department of social and health services.

~~((34))~~ (45) "Seriously disturbed person" means a ~~((person))~~ consumer who:

(a) Is gravely disabled or presents a likelihood of serious harm to self or others as a result of a mental disorder as defined in chapter 71.05 RCW;

(b) Has been on conditional release status at some time during the preceding two years from an evaluation and treatment facility or a state mental health hospital;

(c) Has a mental disorder ~~((which causes))~~ causing major impairment in several areas of daily living;

(d) Exhibits suicidal preoccupation or attempts; or

(e) Is a minor child diagnosed by a mental health professional as defined in RCW 71.05.020, as experiencing a mental disorder which is clearly interfering with the child's functioning in family or school, or with peers or is clearly interfering with the child's personality development and learning.

~~((35))~~ (46) "Substantial gainful activity" is work ~~((that involves))~~ involving significant physical or mental activities done for pay or profit. Substantial gainful activity means, for elderly persons who are retired and those persons who are disabled due to physical or mental impairment, the ability to manage retirement and/or disability income and activities of daily living. Substantial gainful activity means, for children, the ability to productively participate in educational activities.

(47) "Supervised living" means facility-based care for adults requiring twenty-four hour supervision and minimal-to-moderate on-site programming which is primarily directed at maintaining consumers at this level of care or preparing consumers to transition into supportive living services.

~~((36))~~ (48) "Supervision" means regular or occasional ~~((over-sight))~~ monitoring of the administrative, clinical or clerical work performance of staff, students, volunteers or contracted employees by ~~((person or))~~ persons with the authority to give direction and require change.

~~((37))~~ (49) "Supportive living" means nonfacility programs for adults and children who require a flexible array of services and supports to successfully live in their homes.

(50) "Training" means planned educational events or activities designed to instill or enhance skills and to increase knowledge.

(51) "Treatment records" means registration and all other records concerning consumers receiving or at any time having received services for mental illness, which are maintained by the department, counties, RSNs, and service providers. Treatment records do not include notes or records maintained for personal use by RSN or treatment facility staff providing treatment services if the notes or records are unavailable to others.

#### NEW SECTION

WAC 275-56-016 REGIONAL SUPPORT NETWORKS—RECOGNITION AND CERTIFICATION. (1) A county or group of counties desiring recognition as a regional support network (RSN) shall submit to the department:

(a) A statement of intent for recognition as an RSN;

(b) Documentation showing a total RSN population greater than forty thousand;

(c) For RSNs of more than one county, documentation of interlocal agreements, including:

(i) Identification of a single authority; and

(ii) Assignment of all responsibilities to specified parties;

(d) A preliminary plan, detailing the following elements:

(i) Crisis response system (WAC 275-56-089);

(ii) Resource management services (WAC 275-56-087);

(iii) System of ongoing care, including:

(A) Community support services (WAC 275-56-088); and

(B) Residential services (WAC 275-56-465);

(iv) Taking responsibility for short-term commitments.

(2) Counties desiring recognition as RSNs by December 1, 1989, shall submit notice of intent and preliminary plans to the department by October 30, 1989. Counties desiring recognition as RSNs by January 1, 1993, shall submit notice of intent and preliminary plans by November 30, 1992.

(3) Within thirty days of application, the department shall provide written response either:

(a) Recognizing the RSN; or

(b) Denying recognition and stating the reasons for denial pursuant to subsection (1) of this section.

(4) Recognition and initial certification shall depend on the RSN meeting the standards for planning and provision of services as specified in this chapter.

(5) Renewal of certification shall occur prior to each contract between the department and the RSN.

#### NEW SECTION

WAC 275-56-017 REGIONAL SUPPORT NETWORK PLANNING—SIX-YEAR AND BIENNIAL PLANS. (1) Within three months of recognition, the RSN shall submit an overall plan outlining the preliminary plan. Development of the plan shall include participation by consumers, advocates, and service providers.

(2) The overall plan shall be for a six-year period and include the following elements:

(a) Estimated timelines for implementation of each phase;

(b) Estimated operating and capital budgets;

(c) Documentation that state funds are in no case used to replace local funds from any source used to finance mental health services prior to January 1, 1990;

(d) Administration and provision of:

(i) Crisis response system (WAC 275-56-089);

(ii) Resource management services (WAC 275-56-087) with the definition of access points and criteria for consumer admission and discharge from resource management services; and

(iii) System of ongoing care, including:

(A) Community support services (WAC 275-56-088), with the definition of criteria for admission to and discharge from each component of the RSN's system; and

(B) Residential services (WAC 275-56-465), with the definition of criteria for admission to and discharge from each component in the continuum;

(e) An estimate of the number of transfers from nursing homes due to the Omnibus Budget Reconciliation Act (OBRA);

(f) The appointment of a mental health advisory board to advise the authority on RSN plans and policies. The composition of the board shall be broadly representative of the demographic character of the region and the mentally ill consumers served and shall include:

- (i) Consumers;
- (ii) Family and other advocates; and
- (iii) Parents of mentally ill children;
- (g) Provision of eighty-five percent of seventy-two hour detentions and fourteen-day commitments within the RSN by:
  - (i) July 1, 1993, for RSNs recognized before July 1, 1991;
  - (ii) July 1, 1995, for RSNs recognized after June 30, 1991;
- (h) Administration of a portion of funds appropriated by the legislature to house mentally ill consumers from the RSN, excluding mentally ill offenders (chapter 10.77 RCW), in state institutions. The RSN shall provide for up to seventeen days of evaluation and treatment services (pursuant to chapter 71.05 RCW) in appropriate residential services, which may include state institutions. The RSNs shall reimburse the state for use of state institutions at a rate equal to that assumed by the legislature when appropriating funds for such care at state institutions during the biennium when reimbursement occurs. This requirement must be met by:
  - (i) July 1, 1993, for RSNs recognized before July 1, 1991;
  - (ii) July 1, 1995, for RSNs recognized after June 30, 1991;
- (i) Mental health services designed for, available and accessible to children, elderly, minorities, disabled, and low-income priority populations. In RSNs where a significant ethnic minority exists, as defined by department guidelines, the plan shall ensure that culturally relevant services are available and accessible to this population.
- (3) Consumer residency in an RSN shall be defined according to guidelines determined by the department in consultation with RSNs.
- (4) The RSN shall submit an updated two-year plan each biennium in accordance with department guidelines for RSN planning. The RSN shall identify capital and operating budget requests in each biennial plan.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-020 COUNTY (~~ADMINISTRATION AND~~) PLANNING—BIENNIAL MENTAL HEALTH NEEDS ASSESSMENT. (~~The~~) Prior to July 1, 1995, the non-RSN county authority shall submit to the department (~~a~~) biennial mental health needs assessments in accordance with department guidelines.

(1) The county authority shall prepare and submit to the department a biennial needs assessment of county residents (of the county) who are acutely mentally ill, chronically mentally ill, or seriously disturbed, including minorities, children, elderly, disabled, and low-income groups in these priority populations (shall be prepared for submittal to the state). The biennial needs assessment shall determine need (~~with respect to~~) for mental health services required by the Community Mental Health Services Act.

(2) The biennial needs assessment (~~with~~) shall include:

- (a) Estimates of the type and extent of significant mental health needs of the mentally ill, including estimates of the number of chronically mentally ill (~~persons~~) consumers, seriously disturbed (~~persons~~) consumers, and acute crises occurring in the county during the biennium.
  - (b) A projection of the amount and type of mental health services necessary to meet identified mental health needs of the acutely mentally ill, chronically mentally ill, and seriously disturbed.
  - (c) Identification of public and private resources available to meet the mental health needs of the acutely mentally ill, chronically mentally ill, and seriously disturbed, including:
    - (i) Identification of licensed service providers in the county.
    - (ii) Assessment of the capability of the current mental health program and providers to meet the needs of the mentally ill.
    - (d) A prioritization of unmet needs for the mentally ill.
- (~~3~~) ~~The biennial needs assessment shall be conducted in accordance with department guidelines for needs assessment.~~

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-025 COUNTY (~~ADMINISTRATION AND~~) PLANNING—BIENNIAL MENTAL HEALTH PLAN AND BUDGET. (~~The~~) Prior to July 1, 1995, the non-RSN county authority shall submit to the department a biennial mental health plan and budget in accordance with department standards.

(1) The biennial plan shall address the needs identified in the biennial needs assessment for the acutely mentally ill, chronically mentally ill, and seriously disturbed, including minorities, children, elderly, disabled, and low-income groups in these priority populations. The biennial plan shall be developed based on available resources and priorities established in the biennial needs assessment.

- (2) The biennial plan shall include the following components:
  - (a) (~~A plan narrative identifying~~) Identification of needs to be met, goals and objectives, an action plan for coordination and delivery of mental health services(;) and program development activities (related to) on needs and priorities identified in the biennial needs assessment. The plan (narrative) shall include all mental health services required by the Community Mental Health Services Act (and may include optional services) for priority populations, including:
    - (i) Emergency services including preadmission screening services;
    - (ii) Outpatient services;
    - (iii) Day treatment;
    - (iv) Consultation and education services;
    - (v) Community support services;
    - (vi) Inpatient services (optional); and
    - (vii) Residential services (optional).

(b) Description of how mental health services are to be made available to priority consumers throughout the county, including location.

The plan shall indicate how services shall be extended to mentally ill consumers who, because of situation, age or disability, cannot travel to facilities where mental health services are routinely provided.

(c) Description of how mental health services are to be made available and accessible to children, elderly, minorities, disabled, and low-income consumers who are acutely mentally ill, chronically mentally ill, or seriously disturbed. In counties where a significant ethnic minority, as defined by department guidelines, exists, the county plan shall ensure that culturally relevant services are available and accessible to this population.

(d) A budget identifying revenues and expenditures for mental health services, program development activities, and administration of the mental health program and services. The budget (with) shall be submitted in accordance with the requirements specified in WAC 275-56-070.

(3) (~~The biennial plan shall be developed in accordance with the planning guidelines of the department.~~)

(~~4~~) The secretary may modify deadlines for submission of plans, responses to written reviews or contract proposals when, in the secretary's judgment, the modification (~~would~~) enables the county to improve the program planning process.

(~~5~~) (4) The secretary may authorize the county to continue providing services in accordance with the previous plan (~~and~~) by amending the existing contract, as necessary, and reimburse at the average level of the previous contract, in order to continue services until the contract is executed.

(~~6~~) (5) Any provider having applied to participate in the community mental health program who objects to county decisions regarding the biennial plan may request a hearing before the county authority. When an appeal is made, the county authority shall review the appeal and notify the provider, in writing, of the appeal disposition within thirty days after the appeal (~~has been~~) is received.

(~~7~~) (6) Any county objecting to the department's disposition of the county's biennial plan may request an administrative review pursuant to the Administrative Procedure Act, chapter (~~34-04~~) 34.05 RCW.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-035 COUNTY (~~ADMINISTRATION~~) AND REGIONAL SUPPORT NETWORK PLANNING—PROVIDERS ELIGIBLE FOR FUNDING. The (~~county~~) authority shall ensure the biennial plan is inclusive of only licensed service providers.

(1) The county or RSN may become a provider under the following conditions:

(a) No other provider is available to provide the mental health services; (~~and~~) or

(b) The county (~~has demonstrated~~) or RSN demonstrates to the department that (~~the county~~) it can provide the mental health services more efficiently and cost effectively than other available providers without loss of quality of care. Evidence that (~~the county~~) it would be more efficient and cost effective than other available providers includes, but is not limited to, lower administrative costs, lower unit cost for comparable services, and higher productivity.

(2) (~~Where the county is a licensed service provider of mental health services, the department shall meet the following responsibilities of the county authority for the services:~~)

(a) ~~Contract monitoring of the provider (WAC 275-56-050);~~

(b) ~~Fiscal auditing of the provider (WAC 275-56-085);~~

(c) ~~Review an appeal of the provider (WAC 275-56-025(6)).~~

~~(3)~~) If a county decides not to participate in the community mental health program, the department shall assume all responsibilities ~~((of the county authority))~~ for planning and administering mental health services in that county.

~~((4))~~ (3) Providers contracting with the county or RSN for mental health services shall be licensed by the department in accordance with state minimum standards for community mental health programs.

~~((5))~~ (4) Counties or RSNs proposing to contract with more than one licensed provider shall demonstrate the following criteria are met:

(a) Assured continuity of care ~~((is assured))~~;

(b) Services ~~((will be))~~ provided in an efficient and cost-effective manner; and

(c) Duplication of services and administrative costs are minimized.

~~((6))~~ (5) County or RSN contracts with individual providers licensed under chapters 18.57, 18.71, 18.83 or 18.88 RCW shall require ~~((aff))~~ fiscal accountability and participation in the client ~~((tracking))~~ mental health information systems as required in this chapter.

~~((7))~~ (6) The department shall determine standards in this chapter applicable to individual providers which shall be incorporated in the contracts with the individual providers.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-040 COUNTY ~~((ADMINISTRATION AND))~~ PLANNING—BIENNIAL PLAN AS A BASIS FOR CONTRACTING. ~~((The county authority))~~ Prior to July 1, 1995, the department shall ~~((utilize))~~ use the biennial plan and budget as the basis for contracting with the county authority.

(1) A work statement and budget shall be incorporated into the contract ~~((with the department))~~.

(2) The contract between the ~~((county))~~ department and the ~~((department))~~ county shall serve as the basis for county contracts with providers.

(3) When contracting with providers, the county shall ~~((utilize))~~ use standardized contract terms and conditions consistent with department guidelines for contracting and including requirements for at least the following:

(a) Reporting of revenue, expenditures, service outcomes, and statistical information on all mental health services provided to priority populations by the provider; and

(b) Compliance with minimum standards as defined under this chapter for community mental health programs.

#### NEW SECTION

WAC 275-56-042 REGIONAL SUPPORT NETWORKS PLANNING—BIENNIAL PLAN AS A BASIS FOR CONTRACTING. The department shall, within available resources, contract with RSNs certified to perform services.

(1) Biennial goals identified in the six-year plan and biennial updates shall serve as the primary source for contractual expectations. The contract shall include:

(a) Requirements under WAC 275-56-017; and

(b) A fiscal plan.

(2) The contract shall specify the requirements for timely reporting of data, statistics, schedules, and information, including:

(a) Fiscal reports;

(b) Reports on the development of identified service components; and

(c) Reports on utilization under WAC 275-56-050.

#### NEW SECTION

WAC 275-56-043 REGIONAL SUPPORT NETWORKS—PENALTIES FOR NONCOMPLIANCE. (1) Failure to provide the department with requested data, statistics, schedules, or information; filing of fraudulent reports; or failure to meet contractual terms may result in:

(a) Suspension, revocation, limitation, or restriction of certification;

(b) Refusal to grant certification;

(c) The department petitioning the superior court to restrain any person or governmental unit from operating an RSN or service provider without certification or a license. The department may petition the superior court to issue a warrant, authorizing the department to enter at reasonable times, and examine the records, books, and accounts of any RSN or service provider.

(2) The department shall deny funding to RSNs based solely upon formal findings of noncompliance with the terms of the RSN's contract.

(3) Any RSN objecting to the department's disposition of the plan may request an administrative review under the Administrative Procedure Act, chapter 34.05 RCW.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-050 COUNTY ~~((ADMINISTRATION))~~ AND REGIONAL SUPPORT NETWORK PLANNING—~~((COUNTY))~~ MONITORING OF PROVIDERS. The ~~((county))~~ authority shall be responsible for monitoring providers ~~((which have contracted))~~ contracting with the ~~((county))~~ authority to provide mental health services.

(1) The ~~((county))~~ authority shall evaluate, at least annually, ~~((each))~~ provider~~((s))~~ compliance with ~~((its))~~ contract work statements.

(2) Each biennium, the ~~((county))~~ authority shall ensure a program audit of the provider is conducted in accordance with guidelines of the department.

(3) The RSN, when established, shall ensure independent reviews of utilization of services authorized and coordinated through resource management services. If necessary, the RSN shall take corrective action based on findings from the review. At a minimum, the review shall determine to what extent:

(a) Consumers who are high utilizers of acute care services are enrolled and served;

(b) Consumers in community support and residential services are receiving sufficient and not unnecessary services; and

(c) Mental health services are available and accessible to underserved groups (WAC 275-56-010 (1)(b) and (2)).

(4) The ~~((county))~~ authority shall notify the department of ~~((any))~~ findings ~~((resulting from the county's monitoring of providers))~~ indicating ~~((that))~~ the provider is not in compliance with ~~((contract terms))~~ licensing requirements. The ~~((county))~~ authority shall submit a written report of program evaluations and audits to the department within thirty days of completion.

~~((4))~~ (5) Prior to July 1, 1995, in non-RSN counties, responsibilities specified in this section may be assumed by one county ~~((where))~~ when a combination of counties ~~((have established))~~ establishes a community mental health program, and the administration of the program is provided by one county.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-055 COUNTY ~~((ADMINISTRATION))~~ AND REGIONAL SUPPORT NETWORK PLANNING—~~((CLIENT TRACKING))~~ MENTAL HEALTH INFORMATION SYSTEM. The ~~((county))~~ authority shall ~~((be responsible for ensuring))~~ ensure that ~~((client tracking))~~ information for ~~((the chronically mentally ill))~~ priority populations is ~~((maintained on))~~ promptly reported to the state mental health ~~((client tracking))~~ information system. The ~~((state))~~ department and the authority shall use the mental health ~~((client tracking))~~ information system ~~((will be a centralized file which may be used by))~~ for state-wide, county ~~((authorities for tracking of the chronically mentally ill))~~, and/or RSN management reports and for locating priority population consumers.

(1) ~~((The counties shall require all))~~ State hospitals, certified evaluation and treatment facilities, other inpatient or residential facilities, county-designated mental health professionals, resource management services, and licensed providers ~~((of service to the chronically mentally ill to))~~ under contract to the authority or department shall collect and submit the following information consistent with department guidelines:

(a) ~~((A department-designated client identifier enabling the person to be uniquely identified in any mental health service he or she receives.~~

(b) Name of the state hospital, certified evaluation and treatment facility, other inpatient or residential facility or licensed provider referring the client, and the date of referral.

(c) Identification of the facility or provider accepting the client upon referral from another facility or provider, including designation of the licensed provider providing case management services, if any.

(d) Service utilization in the community mental health program since the most recent date of referral or release from another facility or provider, including provider name and beginning and ending dates of treatment.



~~(2) The client tracking information shall be provided to the state client tracking system by state hospitals, certified evaluation and treatment facilities, other inpatient or residential facilities, county-designated mental health professionals (chapter 71.05 RCW), and licensed providers under contract to the county authority or department.~~

~~(a) Referring entities referenced in this section shall provide the department with client tracking information consistent with department guidelines on notification of client referral or release.~~

~~(b) Providers accepting a client referred from another facility or provider shall notify the state client tracking system of the outcome of the referral, and any subsequent referrals, transfers, or termination of the client) Name, birthdate, sex, and other identifiers enabling the consumer to be uniquely identified;~~

~~(b) For registered consumers, the number identifying the agency registering the consumer;~~

~~(c) For registered consumers who are enrolled, the number identifying the agency enrolling the consumer and information required by resource management services necessary to complete the ISP (WAC 275-56-087);~~

~~(d) Services provided; and~~

~~(e) Notification of consumer registration within twenty-four hours and notification of enrollment and discharge within seventy-two hours.~~

~~(2) Consumers receiving mental health services other than initial assessment shall be registered. Registered consumers approved by resource management services for community support or residential services shall be considered enrolled.~~

~~(3) The confidentiality of information contained in the ((client tracking file or record)) mental health information system shall be maintained ((in accordance with)) according to WAC 275-56-240 and chapter 71.05 RCW ((71.05.390 through 71.05.440)). All county, RSN, or provider staff having access to the ((client tracking file or record)) mental health information systems shall be instructed in these confidentiality requirements. A statement signed by the ((individual)) staff acknowledging ((his or her)) understanding and agreement to abide by these requirements shall be kept on file by the county, RSN, or provider.~~

~~(4) If ((a county)) an authority chooses to maintain a client tracking system based on other than the state mental health client tracking system, prior approval by the department is required.~~

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-060 COUNTY ((ADMINISTRATION)) AND REGIONAL SUPPORT NETWORK PLANNING—((COUNTY)) COORDINATION OF SERVICES. The RSN, when established, or the county authority shall ensure coordination of services for ((the acutely mentally ill, chronically mentally ill, and seriously disturbed, including underserved groups within these)) priority populations (WAC 275-56-010). The ((county)) authority shall ((utilize)) use information from the state ((client tracking)) mental health information systems to coordinate ((community support and outreach)) mental health services. The ((county)) authority may contract with and designate a provider to meet the requirements of this section.

(1) ((Service providers discharging or referring chronically mentally ill clients to another service provider shall provide written notification to the state mental health client tracking system and the receiving agency of that discharge or referral within seventy-two hours.

~~(2) The receiving agency shall notify the state mental health client tracking system of the admission of the referred client within seventy-two hours of the admission. If the client has not been admitted within two weeks of the referral date, the receiving agency shall notify the state mental health client tracking system of the noncompleted referral.~~

~~(3) The county authority or its designee shall utilize information from the state mental health client tracking system to ensure efforts are made to provide needed services to all chronically mentally ill persons referred to providers, inpatient, or residential facilities within the county. When the county or its designee receives notification of noncompleted or inappropriate referrals, the county or its designee shall determine and document the reasons and attempt to arrange an appropriate referral.~~

~~(4) The ((county)) authority shall ((utilize)) use information from the ((state client tracking system)) mental health information systems to routinely monitor continuity of care for ((chronically)) mentally ill ((clients)) consumers.~~

~~((5)) (2) The ((county)) authority shall at least annually ((utilize client tracking)) use mental health information systems data to assess the effectiveness of referral patterns and procedures.~~

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-065 COUNTY AND REGIONAL SUPPORT NETWORK FISCAL ADMINISTRATION—DISBURSEMENT OF FUNDS ADVANCED BY THE DEPARTMENT. The ((county)) authority shall be responsible for establishing procedures ((to ensure)) ensuring proper application and use of funds advanced by the department for the community mental health program. The ((county)) authority shall maintain adequate documentation of disbursements of the advance account to providers.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-070 COUNTY AND REGIONAL SUPPORT NETWORK FISCAL ADMINISTRATION—SUBMITTAL AND APPROVAL OF MENTAL HEALTH BUDGET. The ((county)) authority shall submit a mental health budget to the department for approval consistent with department guidelines ((of the department)).

(1) The ((county)) budget shall include ((all)) available resources from the department, RSN, and county mental health funds. The budget shall categorize estimated revenues and expenses according to the department's budgeting, accounting, reporting system (BARS), or other department standards.

(2) The mental health budgets ((of)) for all providers contracting with the ((county)) authority shall be on file with the ((county)) authority. Provider budgets shall include available resources and other revenues ((that will support)) supporting mental health services for ((acutely mentally ill, chronically mentally ill, and seriously disturbed clients)) priority populations. The provider budget shall categorize estimated revenues and expenses according to ((the)) department ((s standardized accounting system)) standards.

(3) The county or RSN mental health budget and all material adjustments thereof shall be reviewed and formally approved by the ((county)) authority prior to review and approval by the department.

(4) All county, RSN, or provider requests for federal funding to support any aspect of the community mental health program shall be submitted to the department for review and approval before the request is submitted to any federal agency.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-075 COUNTY AND REGIONAL SUPPORT NETWORK FISCAL ADMINISTRATION—ACCOUNTING RECORDS. The RSN, when established, or the county accounting records shall clearly identify all revenues ((received)) from ((the department)) available resources and expenditures ((thereof)) consistent with the department's budgeting, accounting, reporting system (BARS), or other department standards.

Accounting records shall be supported by properly executed accounting documents. Records, supporting documentation and statistical reports shall be retained for a period of five years, with the following qualifications:

(1) If any litigation, claim, or audit is started before the expiration of the five-year period, the records shall be retained until ((all)) litigation, claims, or audit findings involving the records ((have been)) are resolved.

(2) Records for nonexpendable property acquired with resources from the department shall be retained for five years after final disposition.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-080 COUNTY AND REGIONAL SUPPORT NETWORK FISCAL ADMINISTRATION—REPORTS TO AND AUDITS BY THE DEPARTMENT. The RSN, when established, or the county shall maintain financial records and provide the department with information on the fiscal performance of the community mental health program.

(1) An original and one copy of the financial report shall be submitted to the department on a semiannual basis consistent with department guidelines ((of the department)).

(a) The report shall account for all mental health funds included in the ((county's)) contract with the department.

(b) The report shall be due in the department within forty days following the end of each reporting period.

(2) All county records of mental health funds provided to the county by the department shall be maintained in an auditable format. These records shall be available for audit upon request by the department or the department's designated audit agent.



AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-085 COUNTY AND REGIONAL SUPPORT NETWORK FISCAL ADMINISTRATION—BIENNIAL FISCAL AUDIT OF PROVIDERS. The RSN, when established, or the county authority or designee shall ~~((be responsible for performing))~~ perform a biennial fiscal audit of each provider ~~((which is))~~ under contract ~~((to the county))~~ to provide mental health services.

(1) The biennial audit shall be conducted in accordance with applicable, generally accepted auditing standards (GAAS).

(2) Documentation shall verify that the reports of such audits ~~((have been))~~ are reviewed by the governing body of the provider and the ~~((county))~~ authority.

(3) The biennial audit shall be completed within twelve months following the end of the department's biennium.

(4) The ~~((county))~~ authority shall notify the department of ~~((any))~~ audit findings indicating the provider is not in compliance with the county's contract or with minimum standards for community mental health programs.

(5) The ~~((county))~~ authority may use an independent audit secured by the provider to meet the requirements of the biennial ~~((county))~~ audit.

(6) Where available resources from the department can be separated from other provider revenues ~~((of the provider))~~, the audit shall apply only to available resources. Otherwise the ~~((county))~~ authority shall perform a biennial fiscal audit of all provider revenues ~~((of the provider))~~.

NEW SECTION

WAC 275-56-087 REGIONAL SUPPORT NETWORKS—RESOURCE MANAGEMENT SERVICES. RSNs, when established, shall ensure the development of resource management services to provide integrated and coordinated services for priority consumers (WAC 275-56-010 (1)(b)), needing community support and residential services.

(1) Resource management services shall develop written criteria for admissions, placements, transfers, and discharges to and from the system of ongoing community and residential services (WAC 275-56-088 and 275-56-465). Such criteria shall ensure that priority population consumers who are high utilizers of acute care services be enrolled and served.

(2) Resource management services shall identify and establish methods of access to the system which shall include but not be limited to consumers identified by:

- (a) Crisis response system;
- (b) Inpatient programs;
- (c) Jails;
- (d) Shelters;
- (e) Community support and residential providers; and
- (f) Families and advocates.

(3) Resource management services shall assess referrals from the crisis response system and inpatient programs within three working days of referral, and if enrolled in community support services, the consumer shall be assigned a case manager within three additional working days.

(4) Resource management services shall, in collaboration with the consumer or legally responsible other, determine consumer placement within the system of community support and residential services, ensuring that enrolled consumers are provided an integrated and coordinated individualized service plan (ISP) for adequate services and treatment, including:

- (a) Housing;
- (b) Treatment;
- (c) Supports to minimize acute crises;
- (d) Income supports; and
- (e) Services to address the specialized needs of underserved populations.

(5) The consumer's preferences shall be given maximum consideration in development and implementation of the ISP for services and placement.

(6) Resource management services shall identify a single entity with primary responsibility for effective implementation of each consumer's ISP.

(7) Resource management services staff shall have clinical training assuring appropriate assessment, admission, placement, transfers, and discharges. Resource management services supervisors shall be mental health professionals.

(8) Resource management services shall participate in the state mental health information systems, reporting admissions, placements, transfers, and discharges immediately upon notification of such changes.

(9) Resource management services shall assure access to seven day a week, twenty-four hour availability of information regarding mentally ill adults' and children's enrollment in services and their ISP's to county-designated mental health professionals, evaluation and treatment facilities, and others as determined by the RSN.

NEW SECTION

WAC 275-56-088 REGIONAL SUPPORT NETWORKS—COMMUNITY SUPPORT SERVICES. After July 1, 1995, or when RSNs are established, for adults and children priority populations (WAC 275-56-010 (1)(b)), community support services shall include:

- (1) Assessment and diagnosis (WAC 275-56-260);
- (2) Emergency crisis intervention available twenty-four hours, seven days a week (WAC 275-56-355);
- (3) Prescreening determinations for mentally ill consumers being considered for placement in nursing homes as required by federal law and department issuances;
- (4) Screening for consumers being considered for admission to residential services;
- (5) Discharge planning for consumers leaving state mental hospitals, other acute care inpatient facilities, and other children's mental health residential treatment facilities (WAC 275-56-445);
- (6) Investigation, legal, and other nonresidential services (chapter 71.05 RCW);
- (7) Case management services (WAC 275-56-445);
- (8) Psychiatric treatment, including medication supervision (WAC 275-56-295);
- (9) Counseling (WAC 275-56-385);
- (10) Psychotherapy (WAC 275-56-385);
- (11) Assuring transfer of relevant patient information between service providers (WAC 275-56-240);
- (12) Participation in the state mental health information systems for priority populations (WAC 275-56-055); and
- (13) Other services determined by RSNs.

NEW SECTION

WAC 275-56-089 REGIONAL SUPPORT NETWORKS—CRISIS RESPONSE SYSTEM. RSNs, when established, shall develop an integrated crisis response system (CRS). The CRS shall serve consumers of all ages in emotional crisis in the community.

(1) The CRS shall provide twenty-four hour telephone screening (WAC 275-56-355 (1)(a)) which has working relationships with other emergency telephone systems, where available.

(2) To ensure the least restrictive resolution of the crisis, the RSN shall integrate the provision of the following services:

- (a) Initial screening and assessment (WAC 275-56-355) by a mental health professional (MHP) to determine:
  - (i) Whether the crisis has an emotional or mental illness basis;
  - (ii) Course of action; and
  - (iii) Assignment of resources necessary to resolve the crisis;
- (b) Twenty-four hour mobile outreach to conduct face-to-face evaluations (WAC 275-56-355 (1)(b));
- (c) Support and assistance to stabilize the consumer in the community, if possible;
- (d) Crisis respite care (WAC 275-56-465(5));
- (e) Investigation and detention services (chapter 71.05 RCW);
- (f) Twenty-four hour access to:
  - (i) Voluntary and involuntary (chapter 71.05 RCW) psychiatric inpatient care;
  - (ii) Medical services, including:
    - (A) Emergency medical services;
    - (B) Prescription services;
    - (C) Medication administration; and
    - (D) Assessment for organic complications;
  - (iii) Interpretative services enabling staff to communicate with consumers;
- (g) Within available resources and extent of authority, twenty-four hour access to:
  - (i) Drug and alcohol detoxification resources; and
  - (ii) Emergency basic services, including:
    - (A) Food;
    - (B) Clothing;

- (C) Shelter; and
- (D) Transportation.

(3) CRS staff shall use the mental health information systems to determine consumer enrollment status in the ongoing system of community support or residential services.

(a) If the consumer is enrolled by resource management services, CRS staff shall involve the case manager and/or primary therapist in resolving the crisis.

(b) CRS staff shall refer priority population consumers (WAC 275-56-010 (1)(b)) who are unenrolled to resource management services.

(4) The CRS shall develop and maintain working relationships with supportive services needed by consumers in crisis, but not available in the mental health system.

(5) Caregivers shall have immediate access to CRS staff.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-090 LICENSING PROCEDURES FOR PROVIDERS—APPLICABILITY OF MINIMUM STANDARDS FOR COMMUNITY MENTAL HEALTH PROGRAMS. The department shall license providers (excluding individual providers licensed under chapter 18.57, 18.71, 18.83 or 18.88 RCW) ~~(shall be licensed by the department)~~ according to established standards before ~~(entering)~~ they may enter into a contract with the RSN, when established, or the county to provide mental health services.

(1) A provider contracting with the county or RSN for ~~(a)h~~ services required by the Community Mental Health Services Act shall meet all minimum standards for ~~(organizational administration, services administration, and services)~~ service delivery in this chapter.

(2) ~~(Where)~~ The department shall determine the minimum standards when the provider contracts with the county or RSN for some but not all of the required mental health services ~~(the department shall determine the minimum standards applicable to the provider and the contracted services)~~.

(3) ~~(Where)~~ When a provider is part of a superordinate structure (e.g., county, hospital, university), the standards shall apply only to the community mental health component of that structure.

(4) ~~(Where)~~ When a provider is able to separate contracted mental health services for ~~(the acutely mentally ill, chronically mentally ill, and seriously disturbed)~~ priority populations from mental health services provided other ~~(client)~~ consumer populations, ~~(organizational administration, services administration, and services)~~ service standards shall apply only to the contracted services. The provider shall demonstrate to the department's satisfaction that ~~(the)~~ contracted services are distinct from other services with respect to ~~(the following)~~:

- (a) Budget, revenues, and expenditures~~(;)~~;
- (b) Staffing~~(;)~~; and
- (c) ~~(Clients)~~ Consumers served~~(, and~~
- (d) Identification in the organizational structure~~(;)~~.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-095 LICENSING PROCEDURES FOR PROVIDERS—APPLICATION AND APPROVAL. The department shall review applications for licensure and approve those ~~(which meet)~~ meeting minimum standards for community mental health programs.

(1) Applications for licensure shall be submitted to the department on forms furnished by the department. The applicant shall indicate the services for which licensure is requested.

(a) Applications shall be signed by the applicant's governing body and administrator.

(b) The applicant shall send a copy of the application to the RSN, county authority, or ~~(the)~~ designee. The RSN, county authority, or ~~(the)~~ designee may review the application and send written comments to the department with a copy to the applicant. If the department does not receive a response from the RSN, county authority, or ~~(the)~~ designee within thirty days, the department shall proceed with the application.

(2) The department shall conduct an on-site review ~~(shall be conducted for the purpose of collecting)~~ to collect and ~~(analyzing the)~~ analyze information ~~(necessary for the department)~~ to determine ~~(whether)~~ if a provider is in compliance with the minimum standards ~~(specified in)~~ of this chapter. The department shall provide forty-five days written notice prior to the date scheduled for the licensure review.

(3) The department shall notify the applicant of the review results ~~(of the review)~~ and make the review report ~~(of the on-site review)~~

available to the applicant and ~~(county)~~ the authority within sixty days of the last day of the on-site review.

(4) The ~~(applicant may appeal the department's licensure decision within thirty days of notification of decision. The appeal shall be made in accordance with the Administrative Procedure Act, chapter 34.04 RCW)~~ department's notice of denial, revocation, suspension, or modification of a licensing decision is governed by RCW 43.20A.— (section 95, chapter 175, Laws of 1989). The provider's right to an adjudicative proceeding is in the same law.

(5) A provider wanting to contest a department licensing decision shall, within twenty-eight days of receipt of the decision:

(a) File a written application for an adjudicative proceeding by a method showing proof of receipt with the Office of Appeals, P.O. Box 2465, Olympia, WA 98504; and

(b) Include in or with the application:

- (i) A specific statement of the issue or issues and law involved;
- (ii) The grounds for contesting the department decision; and
- (iii) A copy of the department decision being contested.

The proceeding shall be governed by the Administrative Procedure Act (chapter 34.05 RCW); RCW 43.20A.— (section 95, chapter 175, Laws of 1989); this section; and chapter 388-08 WAC. If any provision of this section conflicts with chapter 388-08 WAC, the provision in this section governs.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-100 LICENSING PROCEDURES FOR PROVIDERS—WAIVER OF RULES. ~~(Any)~~ (1) A provider or applicant subject to the provisions of this chapter may seek a waiver of any requirement of this chapter~~(:~~

(1) The provider or applicant shall file a written request for a waiver with the department which shall include:

(a) The name and address of the provider or applicant seeking the waiver;

(b) The specific section or subsection of this chapter for which waiver is sought;

(c) An explanation of why a waiver of the section or subsection is necessary;

(d) A description of the alternative practice or procedure the provider proposes to follow in lieu of that required by the section or subsection, or a plan for satisfying the requirement with the section or subsection for which the waiver is sought; and

(e) ~~(y)~~ by submitting forms furnished by the department and signed ~~(documentation)~~ approval from the ~~(county)~~ authority or designee reviewing the waiver including recommendations regarding the request.

(2) Upon receipt of a request for waiver, the department shall consider the following:

(a) Impact on accountability, efficiency, and quality of care;

(b) ~~(The)~~ Degree of noncompliance ~~(being)~~ sought;

(c) Whether the waiver ~~(would)~~ runs counter to the intent of chapter 71.24 RCW or other laws or regulations; and

(d) ~~(Whether)~~ Precedents, if any ~~(similar requests for waiver have been granted or denied)~~.

(3) The department's response to the waiver request shall be provided in writing within sixty days of receipt of the request.

(a) If the waiver is granted, the notice shall include:

(i) ~~(The)~~ Section or subsection waived;

(ii) ~~(Any)~~ Conditions ~~(which the applicant must comply with)~~;

(iii) ~~(The)~~ Duration of the waiver which shall in no case exceed two years from the date of the licensure; and

(iv) Notification that the waiver shall be subject to review and possible renewal, if requested.

(b) If the waiver request is denied, the notice shall include reasons for the decision.

(4) The denial of a waiver request may be appealed to the secretary ~~(, whose decision shall be final)~~ in accordance with the Administrative Procedure Act, chapter 34.05 RCW.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-105 LICENSING PROCEDURES FOR PROVIDERS—LICENSURE STATUS. The department shall, based on findings of a licensure review, assign the provider one of the following licensure statuses:

(1) Licensed

(a) Under this status the ~~(provider is eligible to enter into a)~~ authority may contract with the ~~(county authority)~~ provider to provide those mental health services for which the provider is licensed.

(b) The department may require the provider ~~((to))~~ submit and implement a plan of correction to resolve deficiencies. The department may revoke the license if the provider does not implement the ~~((provider's))~~ plan of correction.

(c) At any time the department receives information indicating the provider ~~((has))~~ is not ~~((continued to comply))~~ in compliance with minimum standards for community mental health programs, the department may conduct a new licensure review.

(d) The department may revoke the license if the review ~~((determines))~~ shows the provider is not in substantial compliance.

(e) If evidence indicates that the health and safety of the ~~((client))~~ consumer is in danger, the revocation may be ~~((made effective))~~ immediately effective.

~~((2))~~ (2) Interim licensure

~~((a))~~ Interim licensure shall be given to all providers contracting with a county authority to provide mental health services as of the effective date of this chapter.

~~((b))~~ Interim licensure shall remain in effect until notification of licensure status resulting from the department's first licensure review of the provider or until two years following the effective date of this chapter.

~~((c))~~ Following the department's first licensure review the provider shall have the licensure status assigned by the department:

~~((3))~~ (3) Probationary licensure

(a) Under this status the provider is eligible to contract with the ~~((county))~~ authority on conditions specified by the department.

(b) To achieve full licensure the provider shall demonstrate to the department that it has met the conditions of the probationary status.

(c) The provider shall request that the department ~~((to))~~ review its corrective actions within six months of notification of probationary status or its licensure shall be revoked.

(d) The department shall review the provider's corrective actions and make a redetermination of licensure status within six months of the date of the provider's request for review.

(e) Probationary status shall only be assigned a provider as an outcome of the department's first licensure review of a provider or ~~((of))~~ a new provider service ~~((of that provider))~~.

~~((4))~~ (3) Provisional licensure

A new provider or a provider planning to offer a new service may be given a provisional license for up to one year if the following conditions are met:

(a) It has an acceptable detailed plan for the development and operation of such service;

(b) It can demonstrate the availability of administrative and clinical expertise required to develop and provide the planned services; and

(c) It has the fiscal management and existing or projected resources to reasonably assure ~~((the))~~ stability and solvency of the planned service.

~~((5))~~ (4) The ~~((provider's contract with the county))~~ authority shall ~~((be terminated))~~ terminate the contract with the provider thirty days following the department's notification to the provider and the ~~((county))~~ authority of failure to attain or maintain licensure.

~~((6))~~ (5) Providers failing to attain licensure or whose licensure ~~((has been))~~ is revoked may reapply for licensure no earlier than six months following the date of the department's notification.

(a) The application shall document the actions the provider has taken to correct deficiencies found in the prior licensure review.

(b) If the application demonstrates the provider has made every reasonable effort to correct deficiencies, the department shall schedule a licensure review to evaluate compliance with those standards previously unmet.

~~((7))~~ (6) A license shall be in effect for two years or until a review for relicensure ~~((has been))~~ is conducted.

AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-110 PROVIDER ADMINISTRATION—POLICIES AND PROCEDURES. The provider shall have written policies and procedures for ~~((operations and administration))~~ the delivery of services. The provider's policies and procedures shall ~~((include))~~:

- (1) Fiscal administration;
- (2) Personnel management;
- (3) Affirmative action;
- (4) Staff training;
- (5) Quality assurance;
- (6) Client rights;
- (7) Client records;
- (8) Client entry, service planning, operations, and

~~((9 Services))~~ serve to ensure maintenance of minimum standards as established by the department in this chapter.

AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-115 PROVIDER ADMINISTRATION—GOVERNING BODY. (1) The provider shall have a governing body which shall ~~((be responsible for the provider's))~~:

- (1) Policies;
  - (2) Total budget;
  - (3) Biennial plan and budget for services proposed for contract with the county authority, and
  - (4) Contract with the county authority for mental health services)
- authorize and approve:
- (a) Policies;
  - (b) Budget and audit; and
  - (c) Contract with the RSN or county authority for mental health services.

(2) The governing body shall designate an administrator.

AMENDATORY SECTION (Amending Order 2474, filed 2/27/87)

WAC 275-56-135 PROVIDER FISCAL ADMINISTRATION—WRITTEN SCHEDULE OF FEES. The provider, excepting services also licensed under chapter 248-14, 248-16 or 248-25 WAC, shall establish and use a sliding fee schedule based on the resources available to the ~~((client))~~ consumer to pay for mental health services and the provider's actual cost of care.

(1) ~~((Use of the fee schedule shall be approved by))~~ The department ~~((as part of the licensing process. Effective April 1, 1987, approval will))~~ shall only ~~((be given to))~~ approve sliding scale fee schedules ~~((which do))~~ not ~~((require))~~ requiring payment from ~~((individuals))~~ consumers with ~~((an))~~ income levels equal to or below the grant standards for the general assistance program (WAC 388-29-100).

(2) The fee schedule shall be accessible to the provider's staff and ~~((clients))~~ consumers.

AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-150 PROVIDER FISCAL ADMINISTRATION—ACCOUNTING SYSTEM. The provider shall maintain an ~~((appropriate))~~ accounting system ~~((for administration of financial resources))~~:

~~((1))~~ (1) The provider shall maintain the accounting system) in accordance with applicable, generally accepted accounting principles (GAAP) and department standards.

~~((2))~~ (2) Accounting records shall clearly identify all revenues by source.

~~((3))~~ (3) All expenses shall be recorded in a manner to clearly show the budget category charged.) (1) Financial records, supporting documentation, and statistical reports shall be retained for a period of five years, with the following qualifications:

(a) If any litigation, claim, or audit is started before the expiration of the five-year period, the records shall be retained until all litigation, claims, or audit findings involving the records is resolved.

(b) Records for nonexpendable property acquired with resources from the department shall be retained for five years after final disposition of the property.

(2) The provider shall prepare a formal, written budget of all expected revenues and expenses which identifies mental health services for priority populations. The budget shall categorize revenues by source and expenses by types of services and/or program components consistent with GAAP and department standards.

(3) Financial statements shall be prepared at least annually in conformity with generally accepted accounting principles (GAAP) and shall be available to the authority and department upon request.

(4) If the provider has a contract with the RSN or county, the provider shall submit to the authority at least semiannual revenue and expense reports based on department standards. The revenue and expense reports shall include the relationship of the approved budget to actual revenue and expenditure.

AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-165 PROVIDER FISCAL ADMINISTRATION—INDEPENDENT AUDIT OF FINANCIAL OPERATIONS. The provider's financial operations shall receive an independent audit at least biennially.

(1) The audit shall be conducted in accordance with generally accepted auditing standards (GAAS).

(2) ~~((Documentation shall verify that the report of the audit has been reviewed by the governing body.~~

~~((3))~~ The audit shall be completed within twelve months following the end of the state's biennium.

~~((4))~~ (3) The RSN or county biennial fiscal audit of the provider may be used to meet the audit requirements of this section.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-170 PERSONNEL MANAGEMENT—PERSONNEL RECORDS. A personnel record shall be kept on file by the provider for each staff member. ~~((The))~~

(1) Clinical staff personnel records shall contain:

~~((1))~~ (a) Documentation verifying education, experience, and clinical training;

~~((2))~~ (b) Verification of required licensure or certification;

~~((3))~~ (c) Job ~~((description))~~ title; and

~~((4))~~ (d) Documentation of continuing education ~~((including in-service training received and training needs; and~~

~~((5) Documentation of the staff member's review of client rights)).~~

(2) The provider shall maintain a job description for each job title.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-175 PERSONNEL MANAGEMENT—STAFF QUALIFICATIONS. The provider shall ensure that all direct treatment services ~~((shall be))~~ are provided and supervised by staff members with the ~~((appropriate))~~ clinical qualifications listed below.

(1) All direct treatment services shall be provided by a mental health professional or under the clinical supervision of a mental health professional as defined ~~((pursuant to))~~ under chapter 71.05 RCW (as follows:

(a) A physician or osteopath licensed pursuant to chapter 18.57 or 18.71 RCW, who is board eligible in psychiatry; or

(b) A psychologist licensed pursuant to chapter 18.83 RCW; or

(c) A psychiatric nurse or social worker; or

(d) A person having at least a masters degree in behavioral, nursing sciences, or related field from an accredited college or university and having at least two years' experience in the direct treatment of mentally ill clients under the supervision of a mental health professional; or

(e) A person professionally registered or certificated (e.g., registered nurse, occupational therapist, physical therapist) and having at least three years' experience in working with mentally ill clients under supervision of a mental health professional. Such a person shall be defined as a mental health professional only when working within the skill areas for which he or she is registered or certificated)) and WAC 275-56-015(32).

(2) Clinical supervision and consultation for each service component shall be provided by a mental health professional with two years' experience in that service component.

(3) The staff member with overall responsibility for providing clinical services shall be a mental health professional with at least five years' experience in mental health services to priority populations and have documented supervisory training or experience.

(4) A clinical staff member or trainee not meeting the qualifications stated in subsection (1) of this section shall only provide direct treatment, screening, case management or support services under the following conditions:

(a) The person has been evaluated by a mental health professional and determined to possess the skills and knowledge necessary to ~~((work with))~~ serve the ~~((client))~~ consumer population ~~((to be served;))~~ and in the identified function or role ~~((to be))~~ performed; ~~((and))~~ or

(b) The service is provided under the supervision of a mental health professional ~~((or as part of an organized treatment team)).~~

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-180 PERSONNEL MANAGEMENT—CLINICAL SUPERVISION. The provider shall ensure that all persons providing direct treatment services ~~((shall))~~ receive appropriate clinical supervision and/or consultation.

(1) ~~((Clinical supervision shall be provided by a mental health professional.~~

~~((2))~~ Full-time clinical staff members who are mental health professionals providing direct treatment services shall receive at least one

hour ~~((per))~~ every two weeks of clinical supervision and/or consultation. Proportionately less time is required for part-time staff and volunteers. ~~((Persons))~~ Mental health professionals with medical and/or overall clinical responsibilities shall receive ~~((appropriate))~~ peer consultation, as needed.

~~((3) Other))~~ (2) Full-time ~~((clinical))~~ nonmental health professional staff members providing direct treatment services shall receive at least two hours per week of clinical supervision from a mental health professional. Proportionately less time is required for part-time staff.

~~((4) Volunteers and trainees providing direct services, who are mental health professionals, shall receive at least three hours per week of clinical supervision from a mental health professional. Proportionately less time is required for persons providing direct treatment services on a part-time basis.~~

~~((5))~~ (3) Volunteers and trainees providing direct ~~((treatment))~~ services, who are not mental health professionals, shall receive at least one hour of clinical supervision from a mental health professional for every ~~((five))~~ twenty hours of direct treatment services provided. ~~((Volunteers, trainees or other persons providing telephone screening or telephone crisis counseling shall not be subject to this subsection; given clinical supervision is available in person, by telephone, or by radio communication at all times.~~

~~((6))~~ (4) Clinical backup by a mental health professional in person, by telephone, or by radio communication shall be available to staff at all times when service is being provided.

~~((7))~~ (5) Where required by law, specialized services (e.g., medical, psychiatric, psychological, and nursing services) shall be provided or supervised by ~~((appropriately))~~ licensed or credentialed persons in accordance with respective professional standards.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-185 PERSONNEL MANAGEMENT—QUALIFICATIONS APPROPRIATE TO THE NEEDS OF THE ~~((CLIENT))~~ CONSUMER POPULATION. The provider shall ensure that the clinical qualifications of persons providing and/or supervising direct treatment services ~~((shall))~~ reflect the needs of the ~~((client))~~ consumer population.

(1) ~~((Services to persons acutely mentally ill, chronically mentally ill, or seriously disturbed shall be provided by or under the supervision of a mental health professional with at least two years of experience in treatment of such clients.~~

(2)) Services directed to children shall be provided by, under the supervision of, or with consultation from a child mental health specialist defined as follows:

(a) A mental health professional having completed a minimum of one hundred actual hours (not quarter or semester hours) of specialized training devoted to the study of child development and the treatment of seriously disturbed children and their families; and

(b) Having the equivalent of one year of full-time experience in the treatment of seriously disturbed children and their families under the supervision of a child mental health specialist.

~~((3))~~ (2) Services directed to the elderly shall be provided by, under the supervision of, or with consultation from a geriatric mental health specialist defined as follows:

(a) A mental health professional having completed a minimum of one hundred actual hours (not quarter or semester hours) of specialized training devoted to the problems and treatment of the elderly; and

(b) Having the equivalent of one year of full-time experience in the treatment of the elderly, under the supervision of a geriatric mental health specialist.

~~((4))~~ (3) Services directed to minority ~~((persons))~~ consumers shall be provided by, under the supervision of, or with consultation from a minority mental health specialist defined as follows:

(a) A mental health professional having ~~((completed a minimum of one hundred actual hours (not quarter or semester hours) of specialized training devoted to minority issues and treatment of minority persons; and~~

~~((b) Having))~~ the equivalent of one year of full-time experience in the treatment of ~~((persons))~~ consumers in the minority group ~~((he or she serves))~~ served. Such experience shall have been supervised by a mental health ~~((professional and shall have included consultation with minority providers and/or community leaders who are members of))~~ specialist in the minority group served; and

(b) Received sixteen annual hours of related specialized training up to a total of one hundred hours; or

(c) Completed a minimum of one hundred actual hours (not quarter or semester hours) of specialized training devoted to minority issues and treatment of minority consumers.

~~((5))~~ (4) Services directed to ~~((disabled persons))~~ consumers with a disability shall be provided by, under the supervision of or with consultation from a mental health specialist with special expertise in working with that disabled group.

(a) If the ~~((client))~~ consumer is deaf, the specialist shall be a mental health professional knowledgeable of deaf culture and psychosocial problems, and able to communicate ~~((with the person and be knowledgeable of the special psychosocial problems of the deaf))~~ fluently in the preferred language system of the consumer.

(b) The specialist for ~~((developmentally disabled clients))~~ consumers with developmental disabilities shall have a minimum of one hundred actual hours (not semester or quarter hours) of specialized training devoted to the problem and treatment of the developmentally disabled, or have one year of supervised experience in a developmental disability or special education program, or be a developmental disability or special education professional.

~~((6))~~ (5) Where the mental health specialists required under this section are unavailable within the RSN, when established, or county, the ~~((provider))~~ authority shall:

(a) Document effort to acquire the services of the required specialists; and

(b) Develop a training program using in-service training or outside resources to assist ~~((existing staff members))~~ service providers to acquire necessary skills and experience to serve the needs of the consumer population; and, if a significant ethnic minority, as defined by department guidelines, exists in the county or RSN, the authority shall develop the training program to assist provider staff members to acquire the specialized training and supervision to become qualified specialists; or

(c) Contract or otherwise establish a working relationship with the required specialists to provide all or part of the direct treatment services for these populations or to supervise or provide consultation to staff members providing direct treatment services to these populations.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-200 PERSONNEL MANAGEMENT—TRAINING ~~((OPPORTUNITIES))~~. The provider shall make training opportunities ~~((shall be made))~~ available to administrative, clinical and clerical staff, and volunteers relevant to their areas of responsibility through in-service programs and/or training offered by outside resources.

(1) Each full-time clinical staff member, including volunteers, shall receive a minimum of ~~((forty))~~ twenty-four hours of training per year without loss of pay. Proportionately less training shall be received by part-time clinical staff.

(2) Volunteers, trainees or other nonprofessional persons providing telephone screening or telephone crisis counseling shall receive a minimum of thirty hours of appropriate training prior to providing telephone screening or telephone crisis counseling.

(3) Required training is in addition to routine supervision or consultation.

(4) ~~((Training shall be consistent with needs identified in the individual's personnel file.~~

~~((5) All training received by staff and volunteers shall be documented in the personnel files.))~~ The provider shall maintain minimal documentation of all training.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-205 QUALITY ASSURANCE—CASE REVIEW. The provider shall establish and maintain a quality assurance ~~((case review process shall be established for all direct treatment services.~~

~~((1) The quality assurance review shall objectively assess the progress and outcome of treatment.~~

~~((a) The review shall be conducted by a person or persons not participating in treatment of the case under review. The review may be conducted by an outside consultant.~~

~~((b) At least one mental health professional shall participate in the review.~~

~~((c) At least fifteen cases or five percent, whichever is larger, of the provider's open cases shall be randomly sampled every three months and reviewed for quality of care.~~

~~((i) The sample shall be stratified to:~~

~~((A) Represent each mental health service at least every six months;~~  
~~((B) Represent at least one case from each primary therapist or case manager every six months;~~

~~((ii) The cases shall represent acutely mentally ill, chronically mentally ill, and seriously disturbed persons appropriate to the service provided;~~

~~((2) The case review shall result in a determination of whether:~~

~~((a) The client's psychosocial, medical and treatment history, mental and medical status, and special assessments support the needs, problems, and diagnosis specified in the individual's service plan;~~

~~((b) Treatment goals follow from identified needs and problems, identify the expected outcome of treatment, and can be realistically achieved;~~

~~((c) Case progress indicates the goals of treatment have been or will be achieved;~~

~~((d) Medication and other services prescribed or assigned are utilized appropriately; and~~

~~((e) The client should continue in treatment.~~

~~((3) Client records shall be accurate and complete and shall contain the information required by this chapter.~~

~~((4) Corrective actions shall be recommended where a case review indicates inappropriate clinical care.~~

~~((a) Corrective action shall be considered for both the service program and the individual client's service plan.~~

~~((b) Recommendations for corrective action shall be submitted to the primary therapist or case manager, his or her supervisor, and other appropriate supervisors.~~

~~((c) Actions taken in regard to an individual client as a result of the review shall be documented in the client's record))~~ program to enhance consumer care through objective assessment of such care and the correction of identified problems.

~~((1) Problem identification: The quality assurance program shall include identification of important or potential problems, or related concerns, in the care of consumers, including whether:~~

~~((a) Treatment goals follow from identified needs and problems, identify the expected outcomes of treatment, and can be realistically achieved;~~

~~((b) Case progress indicates the goals of treatment have been or will be achieved; and~~

~~((c) Medications are justified.~~

~~((2) Problem assessment: The quality assurance program shall include objective assessment of the cause and scope of the problems or concerns.~~

~~((3) Problem correction: The quality assurance program shall include implementation, by appropriate individuals of decisions or actions designed to eliminate identified problems.~~

~~((4) Monitoring of problem resolution: The provider shall, through periodic monitoring of the results of the corrective actions taken, assure that the identified problem is eliminated or satisfactorily reduced.~~

~~((5) The review shall be conducted by a person or persons not participating in treatment of the case under review.~~

~~((6) The quality assurance program shall assure review of each clinical staff person's work and each service component over twelve months.~~

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-210 PROGRAM EVALUATION—REQUIREMENTS. ~~((The provider shall have a system for determining the degree to which service activities meet its goals and objectives.~~

~~((1) The provider shall have an information system providing relevant, accurate, and timely data in order to monitor program goals and objectives. The provider shall maintain sufficient data to report the Washington state mental health information system minimum data set.~~

~~((2) At least one study of provider operations and intended results of services shall be completed annually. The studies shall address priority issues of concern to the provider and be related to its goals and objectives.~~

~~((3))~~ Program evaluation or research involving human subjects shall be conducted in accordance with RCW 71.05.390, and "Guide to DSHS policy on protection of human research subjects," July 1, 1981.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-215 FACILITY CHARACTERISTICS. The provider shall deliver services ~~((shall be provided))~~ in a setting safe and conducive to the attainment of ~~((therapeutic))~~ ITP goals.

~~((1))~~ Provider facilities shall meet federal, state, and local requirements, including building, health, and fire codes.

~~((2)) Group therapy rooms shall be of adequate size to accommodate the groups without crowding.~~

~~(3) Rooms used for client services shall be fully enclosed, have closing doors, and shall be reasonably soundproofed to reduce both distracting noises and the possibility of conversations being overheard outside the room.~~

~~((4)) If physical examinations are routinely performed within the facility, a suitably equipped examination room shall be available.~~

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-220 SERVICES ADMINISTRATION—ACCESSIBILITY. ~~((Services))~~ The provider shall ~~((be))~~ deliver services in an accessible ~~((in a))~~ and nondiscriminatory manner and at times and locations ~~((which facilitate client utilization of services))~~ that assist consumer use.

~~(1) Services to priority populations (WAC 275-56-010) shall include alternative locations for service delivery, including home visits, school visits, or visits to other community agencies.~~

~~((1)) (2) Services to ((acutely and chronically mentally ill and seriously disturbed clients)) priority population consumers from underserved groups, including minorities, children, the elderly, disabled, and low-income ((persons)) consumers shall be accessible and meet the special needs of these populations.~~

~~(a) The provider shall eliminate or substantially reduce physical, communication, and sociocultural barriers to utilization of services. The provider shall assure access to TTY and certified interpreters for hearing impaired consumers.~~

~~((1)) (c) Services shall be compatible with the culture and in the language of ethnic minority ((clients)) consumers where a significant ethnic minority population as defined by department guidelines, exists in the RSN or county.~~

~~((1)) (d) In-home services shall be available to homebound ((persons)) consumers, where possible.~~

~~((1)) (e) Alternative service delivery models shall be provided, where possible, to enhance utilization by these underserved groups.~~

~~((2)) (3) Services shall be provided regularly on some evenings and/or weekends as determined by ((client and potential)) consumer needs.~~

~~((3)) (4) If the provider does not offer ((appropriate)) necessary services, the ((client)) consumer shall be referred to such services and the provider shall facilitate the referral.~~

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-225 SERVICES ADMINISTRATION—AWARENESS OF SERVICES. The location of the provider and services offered shall be ~~((made known to the public))~~ publicized.

~~(1) The provider shall maintain listings in ((att)) telephone and other public directories of the service area.~~

~~(2) The provider shall publish and disseminate brochures and other materials describing services and hours of operation.~~

~~((1)) (3) ((The provider shall publish and disseminate)) Bilingual ((brochures and other)) materials shall be disseminated when there is a significant non-English speaking population in the service area.~~

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-230 SERVICES ADMINISTRATION—~~((CLIENT))~~ CONSUMER RIGHTS. The provider shall maintain written policies and procedures relating to ~~((client))~~ consumer rights, and shall ensure all personnel are informed and adhere to policies and procedures.

~~(1) ((Clients)) Consumers, prospective ((clients)) consumers, and/or legally responsible others shall be informed of ((client)) consumer rights at admission.~~

~~(2) The provider shall post a written statement of ((client)) consumer rights in public areas. A copy shall be available to ((clients)) consumers on request. Providers of only telephone services (e.g., crisis lines) shall post the statement of ((client)) consumer rights in a location visible to staff and volunteers during working hours.~~

~~(3) Provider staff shall make information available regarding local advocacy organizations that may assist consumers in understanding their rights.~~

~~(4) The statement of ((client)) consumer rights shall include at least:~~

~~(a) The right to receive appropriate care and treatment, employing the least restrictive alternatives available;~~

~~(b) The right to be treated with respect and dignity;~~

~~(c) The right to receive treatment which is nondiscriminatory and sensitive to differences of race, culture, language, sex, age, national origin, disability, creed, socioeconomic status, marital status, sexual orientation, and ability to pay((:));~~

~~(d) The right to an individualized service plan reflecting problems and/or needs identified for or with the ((client)) consumer;~~

~~(e) The right to confidentiality as specified in relevant statutes (chapter 71.05 RCW) and regulations (chapter 275-55 WAC and WAC 275-56-240)((:));~~

~~((1)) (f) The right to refuse any proposed treatment consistent with chapter 71.05 RCW;~~

~~(g) The right to review the consumer's case record under conditions specified in WAC 275-56-235(2);~~

~~(h) The right to receive an explanation of all medications prescribed, including expected effect and possible side effects;~~

~~(i) The right to be free of any sexual exploitation or harassment;~~

~~(j) The right to lodge a grievance with the provider if the consumer has reason to believe their rights have been violated. The statement shall include the grievance procedure.~~

~~(5) Policies of the provider shall address circumstances where confidentiality shall not be maintained, including at least:~~

~~(a) ((Where)) When there is reason to suspect the occurrence of adult or child abuse or neglect;~~

~~(b) ((Where there is)) When the consumer presents a clear threat to do serious bodily harm to self or others; and~~

~~(c) To a court under court order((:));~~

~~(d) The right to refuse any proposed treatment consistent with chapter 71.05 RCW;~~

~~(e) The right to review the client's case record under conditions specified in WAC 275-56-235(2);~~

~~(f) The right to receive an explanation of all medications prescribed, including expected effect and possible side effects;~~

~~(g) The right to be free of any sexual exploitation or harassment;~~

~~(h) The right to lodge a grievance with the provider if the client has reason to believe his or her rights have been violated. The statement shall include the grievance procedure.~~

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-235 SERVICES ADMINISTRATION—PROTECTION OF ~~((CLIENT))~~ CONSUMER RIGHTS. The provider shall protect and ensure the rights of all ~~((clients))~~ consumers and former ~~((clients))~~ consumers.

~~(1) ((Neither evaluation nor treatment services shall be provided to any person under fourteen years of age without the signed consent of the parent or guardian. In an emergency, such child may be seen for one session without consent of parent or guardian. Parental consent for evaluation or treatment services shall not be necessary in the case of a child referred by child protective services or other public agency because of physical, sexual, or psychological abuse or neglect by a parent or parent surrogate.~~

~~(2) When client, or the parent or guardian of a child thirteen years of age or under, requests review of his or her case record, the provider shall:~~

~~(a) Grant the request within seven days, except the request need not be granted if the provider knows or has reason to believe the parent or parent surrogate has been a child abuser or might otherwise harm the child. Any minor thirteen years of age or older may request and receive outpatient treatment without consent of the minor's parents. Parental consent for evaluation and treatment services shall not be necessary in the case of a child referred by child protective services or other public agency because of physical, sexual, or psychological abuse or neglect by a parent or parent surrogate.~~

~~(2) When the consumer, or the consumer's legally responsible other, requests review of their case records, the provider shall:~~

~~(a) Grant the request within seven days, unless the provider knows or has reason to believe the parent or parent surrogate has been a child abuser or might otherwise harm the child;~~

~~(b) Review the case record in order to identify and remove any material confidential to another person((:));~~

~~(c) In the presence of a staff member, allow the ((client)) consumer sufficient time and privacy to review the record to ((his or her)) their satisfaction. A clinical staff member shall be available to answer questions((:));~~

~~(d) Permit the following persons to be present during the review, with the consent of the ((client)) consumer;~~

~~(i) Next-of-kin((:));~~



- (ii) ~~((The family))~~ Consumer's physician ~~((or))~~;
- (iii) ~~((The client's))~~ Consumer's attorney ~~((:))~~; or
- (iv) Consumer's advocate;
- (e) Document the review session in the ~~((client's))~~ consumer's record ~~((:))~~;
- (f) Assess a reasonable and uniform charge for reproduction, if so desired.
- (3) The written, informed consent of the ~~((client))~~ consumer or legally responsible other shall be obtained before:
  - (a) Use of ~~((any))~~ medication ~~((:))~~;
  - (b) Initiation of ~~((any))~~ nonemergency ~~((service))~~ treatment plan ~~((:))~~;
  - (c) Use of ~~((any))~~ unusual diagnostic or treatment procedure ~~((:))~~;
  - (d) Use of ~~((any))~~ audio and/or visual device to record the ~~((client's))~~ consumer's behavior ~~((:))~~;
  - (e) The ~~((client))~~ consumer serves as a subject for ~~((any))~~ research.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-240 SERVICES ADMINISTRATION—CONFIDENTIALITY OF ~~((CLIENT))~~ CONSUMER INFORMATION. The provider shall protect the confidentiality of all information relating to ~~((clients))~~ consumers or former ~~((clients))~~ consumers pursuant to this chapter and chapter 71.05 RCW.

(1) The provider shall disclose no confidential information, including the fact a person is or has been a ~~((client))~~ consumer, without ~~((a current))~~ the informed consent signed by the ~~((client))~~ consumer or legally responsible other except as set forth in subsection (3) of this section.

(2) Standardized forms authorizing release and/or exchange of confidential information shall be used and contain the following:

- (a) ~~((The))~~ Name of the ~~((client,))~~ consumer;
- (b) ~~((The))~~ Date ~~((:))~~;
- (c) ~~((The))~~ Name and address of the provider ~~((:))~~;
- (d) ~~((The))~~ Name and address of the person or entity to whom the information is to be provided ~~((:))~~;
- (e) ~~((The))~~ Reason for disclosure ~~((:))~~;
- (f) ~~((The))~~ Specific kind of information to be disclosed ~~((:))~~;
- (g) ~~((The))~~ Period of time the consent is to be in force ~~((:))~~;
- (h) ~~((The))~~ Signature of the ~~((client))~~ consumer and/or responsible other ~~((:))~~; and
- (i) ~~((The))~~ Signature of a witness.

(3) Exceptions to subsection (1) of this section are as follows:

- (a) Disclosures permitted under relevant statute (chapters 10.77 and 71.05 RCW) or regulations (chapter 275-55 WAC);
- (b) To a court under court order;
- (c) The fact of admission and any pertinent information and records may be disclosed:

(i) To provider personnel, as needed; however, volunteers and trainees shall have access to ~~((client))~~ consumer records only ~~((to the extent))~~ as necessary for treatment;

(ii) ~~((To the extent))~~ As necessary to make an insurance or medical assistance claim. This shall include the department, RSN, county, and providers authorized by the RSN or their designee;

(iii) To a county-designated mental health professional (chapter 71.05 RCW);

(iv) To a hospital or emergency medical personnel for purposes of dealing with an emergency; and

(v) To law enforcement or public health officers under the following conditions:

(A) Only ~~((to the extent))~~ as necessary to carry out the responsibilities of the law enforcement or public health officer;

(B) Such persons shall be responsible for keeping all information confidential ~~((pursuant to))~~ under these standards.

(vi) To a certified evaluation and treatment facility (chapter 71.05 RCW) or to facilitate transfer of the consumer from one treatment facility to another provider, limited to the following:

- (A) Treatment records required by law;
- (B) A summary of all somatic treatments; and
- (C) A discharge summary, which may not include the complete treatment record, but may include:

- (I) Statement of the consumer's problem;
- (II) Treatment goals;
- (III) Type of treatment provided; and
- (IV) Recommendation for further treatment;

(vii) To the person designated by the RSN or county to track ~~((the chronically mentally ill))~~ priority populations. Such disclosures shall be limited to the facts of admission, discharge or referral of ~~((chronically mentally ill persons))~~ priority populations;

(d) Pertinent information must be disclosed, and the provider is obligated to initiate disclosure, under the following conditions:

(i) To child or adult protective services in accordance with RCW 26.44.030 or chapter 74.34 RCW;

(ii) To law enforcement officers and the intended victim when there is a clear ~~((and serious))~~ threat of homicide or intent to do serious bodily harm to another person ~~((or persons:))~~;

(e) To the extent necessary to use a collection agency or the court system to collect delinquent consumer fees when the consumer has sufficient resources to afford payment;

(f) To an individual or organization as necessary for management or financial audits or program monitoring and evaluation. Such information shall remain confidential and may not be used in a manner which discloses the name or other identifying information about the consumer whose records are being released;

(g) For purposes of research as permitted under chapter 42.48 RCW;

(h) To the department, RSN, county or designee, resource management services responsible for serving the consumer or service providers designated by resource management services as necessary to determine placements, progress, and adequacy of treatment;

(i) To the consumer's counsel or guardian ad litem pursuant to chapter 71.05 RCW;

(j) To a correctional facility or correctional officer who is responsible for the supervision of a consumer who is receiving evaluation and treatment services. Release of records under this subsection is limited to:

- (i) Evaluation report provided for a written supervision plan;
- (ii) Discharge summary including a record or summary of all somatic treatments at the termination of any treatment provided as part of the supervision plan;

(iii) When an individual is returned from a treatment facility to a correctional facility, the following information shall be disclosed: Any information necessary to establish or implement changes in the individual's treatment plan or the level or the kind of supervision as determined by resource management services. Disclosure shall be made to clinical staff or the supervising corrections officer, as appropriate;

(k) To staff members of the protection and advocacy agency or to staff members of a private, nonprofit corporation for the purpose of protecting and advocating the rights of consumers with mental illness or developmental disabilities. Resource management services may limit the release of information to:

- (i) Name, birthdate, and county of residence of the consumer;
- (ii) Information regarding whether the consumer was voluntarily admitted, or involuntarily committed;
- (iii) Date and place of admission, placement, or commitment;
- (iv) Name and address of a guardian of the consumer; and
- (v) Date and place of the guardian's appointment.

Any staff member who wishes to obtain additional information shall notify the consumer's resource management services in writing of the request and of the resource management services' right to object. The staff member shall send the notice by mail to the guardian's address. If the guardian does not object in writing within fifteen days after the notice is mailed, the staff member may obtain the additional information. If the guardian objects in writing within fifteen days after the notice is mailed, the staff member may not obtain the additional information;

(l) Within the department as necessary to coordinate treatment for mental illness, developmental disabilities, alcoholism, or drug abuse of individuals who are under the supervision of the department.

(4) All disclosures made, both with and without the ~~((client's))~~ consumer's consent, shall be documented in the case record to include:

- (a) Date of disclosure;
- (b) Person or entity receiving information;
- (c) Nature of information disclosed; and
- (d) Reasons for disclosure ~~((if consent has not been obtained))~~.

(5) All consumer records shall be stored in a manner ensuring record security and consumer confidentiality. Records shall be maintained in locked cabinets or be housed in a secure room with a lockable door.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-245 SERVICES ADMINISTRATION—RESOLVING ~~((CLIENT))~~ CONSUMER GRIEVANCES. The provider shall ~~((act promptly to hear and take appropriate steps to resolve client grievances. Procedures shall ensure the involvement of appropriate supervisory and administrative staff, and the governing body, as~~



necessary. Confidential information shall not be disclosed to the governing body pursuant to client grievances without the signed consent of the client)) establish a formal procedure giving consumers the opportunity to report grievances and have them investigated and resolved promptly, including:

(1) Grievances must be put in writing and be dated and signed by the consumer or their representative;

(2) The names or titles of designated supervisory or administrative staff to whom grievances may be taken;

(3) A staff person shall not participate in accepting, investigating, or deciding any grievance in which they are the aggrieved person;

(4) Consumers may choose a staff member, family member, friend, or other advocate to represent them through the grievance procedure. The provider shall make assistance available to help the consumer initiate the grievance;

(5) A written report of the investigation and initial disposition of the grievance shall be made to the consumer within thirty days;

(6) If dissatisfied, the consumer may appeal decisions of the grievance staff to the administrator. A written report of the administrator's decision shall be made to the consumer within thirty days;

(7) There shall be no retaliation, formal or informal, against a grievant;

(8) The provider shall retain full records of all grievances in agency confidential files, but not in a consumer's case records;

(9) The consumer may appeal the administrator's decision to the agency's governing board. A written report of the governing board's decision shall be made to the consumer within thirty days;

(10) The consumer may appeal the governing board's decision to the county or RSN authority. A written report of the authority's response shall be made to the consumer within thirty days.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-260 SERVICES ADMINISTRATION—INTAKE AND INITIAL EVALUATION. ((At intake a clinical staff member shall assess and document the client's presenting problems, history, mental status, need for additional examinations, and treatment needs:

(1) A formal, standardized application for services shall be completed by or for each client and shall become a part of the client's record.

(2) Information describing client rights and confidentiality of information shall be provided at the time of intake.

(3) The initial evaluation shall include:

(a) A clear statement of the presenting problems preferably in the client's own words and/or the parent's words in the case of a child.

(b) A psychosocial, substance abuse, and medical history.

(c) A history of mental health treatment covering at least the last two years.

(d) For children, a developmental history and assessment of academic background and learning problems.

(e) A mental status examination.

(f) Direct observation of client behavior.

(g) An assessment of the client's current level of functioning, strengths, needs, and problems, a provisional diagnosis (Diagnostic and Statistical Manual, 3rd edition), and a determination as to whether the person is acutely mentally ill, chronically mentally ill or seriously disturbed.

(h) The name and telephone number of the client's present or most recent physician, and the date of the most recent examination or treatment by the physician.

(4) The client shall be referred for a medical examination when determined necessary. All clients aged sixty and over shall be referred for a medical examination, if such examination has not been done within the preceding ninety days.

(5) The need for special psychiatric, psychological, neurological, medical or other examinations, tests or procedures shall be determined. The basis for such decisions shall be documented and appropriate referrals made. Before a diagnosis of primary degenerative dementia with senile or presenile onset is made, assessments shall be completed to rule out all forms of treatable medical or mental disorders.

(6) Fees appropriate to the client's ability to pay shall be established, and the client shall be informed of the fees and of the provider's fee policies during the intake process:)) Upon entry into nonemergency services, a clinical staff member shall obtain or develop a current assessment and initiate the individualized treatment plan (ITP).

(1) The following shall be obtained or developed during the intake session:

(a) A standardized application and consent for services completed by or for each consumer as part of the consumer's record;

(b) Written information describing consumer rights and confidentiality of information provided each consumer;

(c) A clear statement of the present problems, preferably in the consumer's own words and/or the parent's words, in the case of a child;

(d) A history of mental health treatment covering at least the last two years;

(e) The name of the consumer's most recent physician, if known;

(f) A mental status exam; and

(g) An initial plan of action oriented to the presenting problems.

(2) A full evaluation, obtained within fourteen days, shall include the following additional information:

(a) A psychosocial history, including substance abuse;

(b) A medical history, including an account of medications used during the past six months. The client shall be referred for a medical examination when determined necessary. All clients aged sixty and over shall be referred for a medical examination, if such examination has not been done within the preceding ninety days;

(c) For children, a developmental history and description of any academic or learning problems;

(d) A description of the consumer's current level of functioning, social supports, strengths, and needs;

(e) A provisional diagnosis. Before a diagnosis of primary degenerative dementia with senile or presenile onset is made, assessments shall be completed to rule out all forms of treatable medical or mental disorders; and

(f) A determination on priority population status.

(3) For purposes of outreach to hard-to-serve consumers, any of the above items may be left incomplete, providing that noncompletion and reasons are documented in the record monthly.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-275 SERVICES ADMINISTRATION—DEVELOPMENT OF INDIVIDUALIZED ((SERVICE)) TREATMENT PLAN. Provider staff shall develop an individualized ((service)) treatment plan ((shall be developed)) (ITP) for each ((client)) enrolled consumer.

(1) From the assessment, the plan shall identify ((each)) those problems ((or need)) to be addressed in treatment.

(2) The ((plan)) ITP shall contain clearly stated goals for the treatment of those problems.

(a) Each goal shall state the intended ((result to occur)) outcome in ((client)) consumer behavior, skills, attitudes, or circumstances as a result of treatment.

(b) The ((plan)) ITP shall ((specify)) contain an expected time-frame for the attainment of goals ((and for termination)).

((3)) The plan shall identify the services and specific treatment modalities to be utilized:

((a)) (c) The ((plan)) ITP shall include referral for necessary services not offered by the provider.

((b)) (3) The ITP shall identify the primary therapist and/or case manager responsible for providing and coordinating services ((shall be identified)).

(4) The ((plan)) ITP shall ((clearly show the relationships between the proposed services, intended results, and needs of the client, including how treatment goals are to be met by the particular modalities and techniques to be utilized)) describe the service components provided.

(5) An assessment and review of progress and updating of the ((plan)) ITP shall be performed at least every ninety days ((in the case of outpatient, day treatment or community support services)).

(a) The primary therapist and/or case manager shall assess with the consumer their progress and need for continued treatment, and where appropriate, modify the ITP and reproject the length of time for goal attainment.

(b) The clinical supervisor shall review, approve, and sign ninety-day summaries prepared by the primary therapist or case manager.

(6) The ((client)) consumer shall participate in ((service)) treatment planning and implementation according to ((his or her)) ability, and the family shall be involved where available and appropriate to the ((client's)) consumer's needs.

(7) The ((client)) consumer or responsible other shall consent to treatment by signing the ((initial service plan)) ITP and ((when significant changes are made in)) updates to the plan. In the event the ((client)) consumer refuses to sign, efforts to obtain signature shall be documented.

(8) The ~~((service plan))~~ ITP shall be completed and a mental health professional shall review and sign the ~~((plan))~~ ITP within thirty days after initiating the ITP. ~~((When appropriate and sufficient staff are available, the initial service plan shall be reviewed and revised as necessary by a multidisciplinary treatment team including individuals licensed under chapter 18.57, 18.71, 18.83 or 18.88 RCW.))~~

(9) For providers contracting with RSNs, the ITP and updates to the ITP shall be consistent with resource management services' ISP.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-285 SERVICES ADMINISTRATION—PROGRESS NOTES ~~((AND REVIEW))~~. ~~((Client progress in meeting goals shall be documented in the case record:))~~

(1) Progress notes shall be recorded in the case and group record as follows:

- (a) After every client contact for outpatient services;
- (b) At least weekly for day treatment services;
- (c) After each event for emergency services;
- (d) Providers utilizing a problem-oriented record system may record progress less frequently, provided a narrative summary of client progress is entered in the case record at least every thirty days, and the date and type of each contact is recorded.

(2) Progress notes shall document each service provided, including date, nature of service, progress toward established goals, changes in service plan, referrals, extraordinary events, and be signed by the responsible staff member.

(3) The service plan and progress shall be formally assessed at least every ninety days for outpatient, day treatment, and community support services:

(4) The assessment of progress shall cover course and progress of treatment in relationship to client needs, problems and goals, noting unusual events, assessing current status and need for continued treatment, reprojecting length of treatment, and modifying the service plan, if necessary.

(5) The clinical supervisor shall participate where possible in the formal progress assessment, and in all cases shall review, approve, and sign summaries prepared by the primary therapist or case manager. ~~((Consumer progress in achieving treatment goals shall be documented in the case record.))~~

(1) Staff responsible for the provision or coordination of a consumer's treatment shall enter either documentation of progress after each contact or a narrative summary of the consumer's progress in the consumer's case record at least monthly.

(2) The summary shall include specific progress toward each established goal, changes in treatment plans, referrals, and extraordinary events. The responsible staff member shall sign the summary.

(3) The record shall contain documentation of all service types provided to the consumer and the dates provided.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-290 SERVICES ADMINISTRATION—TRANSFER AND ~~((TERMINATION))~~ CONTINUITY OF CARE. The provider shall assure continuity of care ~~((shall be assured))~~ and promptly close cases ~~((shall be closed promptly))~~ upon transfer or termination.

(1) ~~((A comprehensive summary shall be prepared by responsible staff))~~ The case manager and/or primary therapist shall prepare a service summary and ~~((shall be made))~~ make it available to the provider assuming primary responsibility for the ~~((client))~~ consumer. ~~((A copy shall be placed in the client's record.))~~

(2) ~~((Cases involving planned transfer and termination shall be closed within fourteen days of final contact.))~~

(3) Planned and/or necessary leaves from treatment for up to ninety days shall be documented in the client's record, and the case need not be closed.

(4) Other cases shall be closed within ninety days of the last attempt to contact the client. ~~((The case manager and/or primary therapist shall follow up any unexplained interruptions in ((client)) consumer contacts ((shall be followed up by the primary therapist or case manager, and these attempts documented in the client's record. Special efforts shall be made to contact the client when he or she is thought to be dangerous to self or others or property or gravely disabled, and shall be documented in the client's record)), as clinically appropriate, prior to termination.))~~

(3) The provider shall keep open cases in which the consumer was committed under chapter 71.05 RCW.

(4) Providers contracting with RSNs shall promptly notify resource management services regarding unexplained interruptions. Resource management services shall approve all terminations.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-295 SERVICES ADMINISTRATION—MEDICAL RESPONSIBILITY. Medical responsibility shall be vested in a psychiatrist, other physician or osteopath.

(1) A physician licensed to practice ~~((pursuant to))~~ under chapter 18.57 or 18.71 RCW, and at least board eligible in psychiatry, shall be responsible for medical services. ~~((a))~~ Providers unable to recruit a psychiatrist may employ a physician without board eligibility in psychiatry provided:

~~((i))~~ (a) Psychiatric consultation is provided to the physician at least monthly; and

~~((ii))~~ (b) The psychiatrist is accessible in person, by telephone, or by radio communication to the physician for emergency consultation.

~~((iii))~~ The physician participates in at least twenty hours per year of continuing medical education in psychiatry.

(b) The provider may divide medical responsibility among a number of physicians employed in part-time staff or consultative roles.))

(2) Medications shall be reviewed at least every three months by a physician. ~~((A registered nurse or))~~

(3) Only licensed ~~((practical nurse))~~ staff may administer medications ~~((under the supervision of a physician. Medications shall be monitored by a physician or registered nurse (WAC 308-120-300)).))~~

~~((3))~~ (4) Medication information shall be maintained in the ~~((client))~~ consumer record documenting at least the following for each prescribed medication:

~~((i))~~ (a) Name of medication~~((;))~~;

~~((ii))~~ (b) Dosage and method of administration~~((;))~~;

~~((iii))~~ (c) Purpose of medication~~((;))~~;

~~((iv))~~ (d) Dates prescribed, reviewed and/or renewed~~((;))~~;

~~((v))~~ (e) Observed effects and side effects, including laboratory findings and corrective actions taken for side effects~~((;))~~;

~~((vi))~~ (f) Reasons for change or termination of medication~~((;))~~;

and ~~((vii))~~ (g) Name and signature of prescribing person.

~~((4))~~ When a psychiatrist is available, he or she shall participate in multidisciplinary teams responsible for treatment planning and review.))

(5) When medical problems are suspected or identified, a psychiatrist or other physician shall be consulted and included in treatment planning ~~((at regular intervals))~~.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-300 SERVICES ADMINISTRATION—MEDICATION STORAGE. Provider staff shall inspect and inventory medication storage areas ~~((shall be inspected and inventoried))~~ at least quarterly ~~((by the administrator, or designated clinical staff member)).~~

(1) ~~((All))~~ Medications shall be kept in locked storage.

(2) ~~((Any))~~ Medications kept in a refrigerator containing other items shall be kept in a separate container with proper security.

(3) No outdated medications shall be retained, and medications shall be disposed of in accordance with regulations of the state board of pharmacy.

(4) Medications for external use shall be stored separately from oral and injectable medications.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-305 SERVICES ADMINISTRATION—EXTRAORDINARY OCCURRENCES. ~~((There shall be written procedures for the handling, review, and documentation of extraordinary occurrences:))~~

~~((1))~~ Procedures shall be established for responding to and) The provider shall write and establish procedures for handling, reviewing, and documenting situations involving:

~~((a))~~ Injury to clients or staff;

~~((b))~~ (1) Injury;

(2) Suicide or homicide by a ~~((client))~~ consumer;

~~((c))~~ (Client) (3) Consumer behavior so bizarre or disruptive as to threaten the program;

~~((d))~~ (4) Disaster or threatened disaster ~~((of natural or human origin.))~~

~~(2) Extraordinary occurrences shall be reported to appropriate supervisory staff, administrator, and governing body.~~

~~(3) Each such occurrence shall be subject to a case review by one or more mental health professionals not participating in the treatment of the client.~~

~~(a) A corrective action plan to prevent similar occurrences shall be developed where appropriate.~~

~~(b) The review, correction action plan, and its implementation shall be documented, including entries in the client's record where appropriate).~~

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-335 SERVICES ADMINISTRATION—CONSUMER RECORD RETENTION AND DESTRUCTION ~~((OF CLIENT RECORDS)). ((Records shall be retained by))~~ The provider ~~((in accordance with WAC 275-56-325 and shall be destroyed))~~ shall retain records and destroy obsolete records in a manner completely eradicating content and ~~((client))~~ consumer names.

(1) ~~((Client))~~ The provider shall retain consumer records ~~((shall be retained))~~ for a period of not less than five years beyond the last contact with the ~~((client))~~ consumer.

(2) When the ~~((client))~~ consumer is a minor, the provider shall retain the record ~~((shall be maintained))~~ for a period of not less than three years beyond the ~~((client's))~~ consumer's eighteenth birthday, or five years beyond the last contact, whichever is the longer period of time.

(3) The provider shall retain a complete termination summary and reports of special assessment and/or examination procedures ~~((shall be retained))~~ for a period of not less than ten years beyond the last contact with the ~~((client))~~ consumer or three years beyond the ~~((client's))~~ consumer's eighteenth birthday, whichever is the longer period of time.

(4) The provider shall retain emergency records such as telephone crisis logs ~~((shall be retained))~~ for not less than two years.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-340 ~~((EMERGENCY))~~ SERVICES—WRITTEN DESCRIPTIONS. ~~((There))~~ The provider shall ~~((be))~~ maintain written descriptions of all ~~((emergency))~~ service(s) components specifying:

- (1) Nature, location, and availability of services;
- (2) ~~((Qualifications of staff;~~
- ~~((3) Client))~~ Consumer needs addressed by these services;
- ~~((4) Usual referral sources and))~~ (3) Procedures; and
- ~~((5) Policies for each emergency service component to include criteria for outreach response;~~

~~((6) Policies on responding to referrals, preadmissions screening services, and liaison and communication with state hospitals, and other common referral sources, and other preadmission screening services;~~

~~((7))~~ (4) Expected ~~((client))~~ consumer outcomes stated ~~((, as much as possible,))~~ in behavioral terms ~~((, and~~

~~((8) Expected service outcome stated in terms of appropriate admission to state hospitals and diversion to less restrictive alternatives)).~~

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-355 EMERGENCY SERVICES ~~((= TWENTY-FOUR HOUR OUTREACH SERVICES)).~~ ~~((Twenty-four hour))~~ The provider shall deliver emergency ~~((outreach))~~ services ~~((shall be provided in the home or other community setting. Outreach services shall consist))~~ twenty-four hours per day consisting of ~~((face-to-face))~~ evaluation and treatment of mental health emergencies and crises for acutely mentally ill ~~((persons))~~ consumers of all ages ~~((, and with))~~;

(1) ~~((Be provided in accordance with written protocol;~~

~~((2) Be provided promptly after screening and dispatch, and document any decision not to respond;~~

~~((3))~~ Subcomponents of emergency services shall include:

(a) Telephone emergency services; and

(b) Crisis stabilization and outreach services.

(2) All emergency services shall:

(a) Seek to stabilize the emergency or crisis situation and provide ~~((immediate or continuing))~~ treatment and support in the least restrictive, clinically appropriate environment available;

~~((4))~~ (b) Be closely coordinated with the RSN or county's involuntary treatment system, and draw upon the resources of that system as needed;

~~((5) Utilize))~~ (c) Use and mobilize ~~((all))~~ other necessary community emergency resources;

~~((6))~~ (d) Be appropriate to the age of the ~~((person))~~ consumer, and involve family and significant others when indicated and possible;

~~((7))~~ (e) Refer, when appropriate, to other services of the provider or to other resources. When a consumer receiving emergency services is determined to be a priority consumer (WAC 275-56-010) and in need of further treatment, the provider shall maintain continuity of care through transfer to other services of the provider or referral to other appropriate providers and resources. For providers contracting with RSNs, the provider shall refer nonenrolled priority consumers to resource management services;

~~((8))~~ (f) Provide follow-up on emergency contacts to maintain stabilization and ~~((to))~~ ensure referrals are carried out and needed services and linkages are provided; and

~~((9))~~ (g) Document all contacts and the contact's disposition, including any significant departures from written ~~((protocol))~~ procedures. Emergency records shall document, if available, the following:

(i) Consumer name, address, and telephone number;

(ii) Name and telephone number of person or agency making initial contact (if other than consumer);

(iii) Time of initial contact;

(iv) Responsible staff;

(v) Time and location of outreach;

(vi) Nature of emergency;

(vii) Summary of services provided; and

(viii) Referrals or other disposition, including to resource management services.

(3) Telephone emergency services shall:

(a) Respond promptly to calls and provide information, referral, or immediate counseling to assist the caller in resolving the emergency;

(b) Facilitate access to other emergency services in the community, as necessary;

(c) Document all telephone contacts and disposition; and

(d) Ensure that emergency telephone numbers be prominently listed in telephone directories in areas served by the provider.

(4) Crisis stabilization and outreach services to consumers shall:

(a) Be conducted fact-to-face;

(b) Be provided promptly after screening and dispatch; and

(c) Document disposition, including decisions not to respond, and referrals made.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-365 ~~((EMERGENCY SERVICES=))~~ PREADMISSION SCREENING SERVICES. Where applicable, the provider shall deliver screening ~~((shall be provided))~~ services for voluntary admission to state hospitals. Information, screening, and assessment shall be provided to ~~((persons))~~ consumers on referral or at their own request to determine need for and appropriateness of admission to a state hospital.

(1) ~~((Information and assistance shall be provided in the same manner and subject to applicable standards for emergency services;~~

~~((2) All common referral sources shall be informed of the availability of preadmission screening services and requested to utilize these services in lieu of direct referral to a state hospital;~~

~~((3) Assessments shall include face-to-face or telephone contact with the client and discussion with the referral source when possible;~~

~~((4))~~ The availability of appropriate alternatives shall be explored and discussed with ~~((client))~~ the consumer and referral source. Admission to a less restrictive and/or less costly alternative shall be facilitated where appropriate.

~~((5) Screening services shall utilize state hospitals when the following conditions are met:~~

(a) The client meets standards for involuntary commitment under chapter 71.05 RCW;

(b) The client will accept voluntary admission;

(c) No appropriate alternative is available to the client; and

(d) The state hospital serving the county agrees to admit the client.

~~((6) Pre-admission))~~ (2) Preadmission screening of involuntary ~~((clients))~~ consumers shall be performed subject to chapter 71.05 RCW and chapter 275-55 WAC.

(3) Staff shall be mental health professionals trained in assessing clinical status, severity of disturbance, and availability of less restrictive and/or less costly alternatives.

(4) The provider shall maintain a record of all preadmission screening services. The record shall document:

(a) Consumer name;

- (b) Referring agency or person;
- (c) Referral information, including evidence of appropriateness for involuntary detention;
- (d) Services provided; and
- (e) Recommendations and disposition.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-385 ~~OUTPATIENT SERVICES~~(=~~SERVICE DELIVERY~~). (1) The provider shall deliver outpatient services (~~shall be provided~~) to (~~acutely and chronically mentally ill and seriously disturbed persons~~) priority populations when appropriate to their treatment needs.

~~((1))~~ Outpatient services shall include the following modalities:

- (a) Individual therapy;
- (b) Group therapy;
- (c) Family therapy;
- (d) Marital or couples therapy;
- (e) Medication evaluation and monitoring; and
- (f) Activities therapy.

~~(2)~~ Outpatient services shall be provided in accordance with written protocol. Significant departures from protocol shall be documented in the client's record:

~~(3))~~ (2) Outpatient services to underserved groups ((minorities, children, elderly, disabled, and low-income persons within the priority populations)) (WAC 275-56-010(2)) shall, ((where)) when possible, (include alternative models of service delivery such as):

- (a) ((Services in a location and environment appropriate to the clientele;
- (b) Outreach services such as home visits, school visits or visits to other community agencies; and)) Provide options to mainstream service delivery models;
- (b) Emphasize and incorporate the values and norms of the group served; and
- (c) Utilize services offered by natural caregivers or traditional healers.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-400 ~~DAY TREATMENT SERVICES—SERVICE DELIVERY~~. The provider shall deliver day treatment services (~~shall be provided~~) on a regular basis to (~~acutely and chronically mentally ill and seriously disturbed persons~~) priority populations needing this type of service.

(1) Day treatment services shall be provided (~~in accordance with written protocol. Significant departures from protocol shall be documented in the client's record~~) by adequate numbers of staff, as follows:

- (a) One clinical staff member shall be present in all day treatment sessions conducted by the provider;
- (b) Minimum staff-to-consumer ratios for day treatment sessions shall be maintained as follows:
  - (i) One clinical staff member for every four consumers thirteen years of age and under, with at least one such staff member a child mental health specialist;
  - (ii) One clinical staff member for every six consumers aged fourteen through seventeen, with at least one such staff member a child mental health specialist; and
  - (iii) One clinical staff member for every twelve consumers aged eighteen and over, and with one such staff member a geriatric mental health specialist in sessions serving primarily elderly consumers. One clinical staff member for every eight consumers shall be present in any group therapy.

(2) Day treatment services shall be available to (~~clients~~) consumers at least three times weekly.

(3) Day treatment services shall be planned and structured activities designed for:

- (a) Maintaining (~~clients~~) consumers in an environment less restrictive than an inpatient setting (~~through~~) by structuring ((of)) their day and leisure time((-);
- (b) Developing daily living, social, and prevocational skills (~~to increase~~) increasing the likelihood of ((clients)) consumers engaging in productive activities, and attaining the capacity for independent or semi-independent living((-); and
- (c) Assisting (~~clients~~) consumers in making the transition from acute inpatient services or serving as an alternative to inpatient care.

(4) ~~((The provider shall maintain formal agreements or working relationships and coordinate services where possible with other persons, agencies or facilities serving day treatment clients:))~~

Each day treatment program shall provide or arrange for the following service components, with the particular mix determined by consumer need:

- (a) Training in basic living and social skills;
  - (b) Vocational habilitation or rehabilitation, including prevocational services;
  - (c) Sheltered work, training, or education;
  - (d) Day activities, including socialization and recreation; and
  - (e) Therapeutic community or milieu therapy.
- (5) Day treatment services shall be age-appropriate as follows:
- (a) Services to school-age children shall include or arrange for suitable educational and developmental programs;
  - (i) Children with special educational needs shall be provided with special educational programs by cooperative arrangements with schools; and
  - (ii) Day treatment shall be scheduled to permit regular school attendance for consumers able to function in a regular school setting.
  - (b) Services to children shall include parent involvement, when possible; and
  - (c) Services to elderly shall include attention to medical and nutritional needs and shall arrange for emergency medical services during all hours of operation.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-425 ~~CONSULTATION AND EDUCATION SERVICES~~(=~~SERVICE DELIVERY~~). The provider shall deliver consultation and education services (~~shall be provided~~) to assist others in the community to understand and care for (~~acutely and chronically mentally ill and seriously disturbed persons~~) priority populations.

(1) ~~((Case consultation shall be available to staff of other services, including inpatient and residential facilities, and other community caregivers as a means of developing or improving service delivery for the priority populations:~~

~~(2))~~ The following components may be provided:

- (a) Case consultation to other providers to assist them in the care of priority consumers;
- (b) Program consultation to other entities to assist in program design and planning for treatment and support services for ((acutely and chronically mentally ill and seriously disturbed persons)) priority populations;
- ~~((b))~~ (c) Continuing education programs and training for community caregivers to develop and/or increase their skills in providing mental health services to the priority populations and underserved groups;
- ~~((c))~~ (d) Information and education for the public about mental health issues and services through various public media (newspapers, television, radio), and presentations to community groups; and
- ~~((d))~~ (e) Educational services for families of ((acutely and chronically mentally ill and seriously disturbed persons)) priority populations.
- ~~((3))~~ (2) Records shall be maintained of all consultation and education services provided.

#### AMENDATORY SECTION (Amending Order 1957, filed 4/7/83)

WAC 275-56-445 ~~COMMUNITY SUPPORT SERVICES~~(=~~SERVICE DELIVERY~~). The provider shall deliver a program of community support services (~~shall be provided to acutely and chronically mentally ill persons to assist such persons in living in the community~~) to priority populations to help maintain consumers at their highest possible level of functioning.

(1) ~~((Services shall be provided in accordance with written protocol. Any significant departure from protocol shall be documented in the client's record:))~~ Community support services shall be provided by staff, as follows:

- (a) Each consumer shall have one case manager responsible for coordination of services, including mental health, residential, social, vocational, health, educational, income management, and other necessary support services on the consumer's behalf;
- (b) The case manager or case management team shall have primary responsibility for twenty-four hour crisis intervention for enrollees. For providers contracting with RSNs, the crisis response system (WAC 275-56-089) shall be involved, as necessary;

(c) The case manager shall consult with and assist other significant persons (e.g., family, landlord, clergy, police, physician, attorney) to be supportive and act in the best interests of the consumer;

(d) The case manager shall assist the enrolled consumer to achieve goals identified in the ISP and ITP;

(e) The case manager shall participate with other treatment staff and providers in treatment and discharge planning for the enrolled consumer;

(f) For providers contracting with an RSN, the case manager shall periodically review the ISP and coordinate its revision and updates with resource management services and other providers.

(2) (~~Acutely and chronically mentally ill persons seeking or referred for community support services shall be screened, admitted to the service, and assigned a case manager if appropriate.~~)

(3)) In non-RSN counties, provider staff shall attempt to contact referred ((clients)) consumers within two working days of the ((client's)) consumer's release from a state mental health facility, certified evaluation and treatment facility (chapter 71.05 RCW), or other inpatient psychiatric facility in order to describe and offer community support and other available services.

(3) The provider, or resource management services when established, shall maintain a liaison with state mental health facilities, certified evaluation and treatment facilities (chapter 71.05 RCW) and other local inpatient psychiatric facilities to be informed of the status of consumers, former consumers, and potential consumers needing community support services.

(a) When an enrolled consumer is in the inpatient facility, the case manager shall contact facility staff and the consumer at least weekly.

(b) The case manager shall participate in treatment and discharge planning for both voluntary and involuntary patients in inpatient facilities when those patients are enrolled consumers of the provider or are accepted for community support services. In RSNs, the case manager shall have primary responsibility for discharge planning for enrolled involuntary patients.

(4) The provider shall establish and maintain working relationships or formal agreements with:

(a) County-designated mental health professionals (chapter 71.05 RCW);

(b) Community services offices (CSO);

(c) Social Security and employment security offices;

(d) Division of vocational rehabilitation;

(e) Residential services;

(f) Advocate and self-help groups; and

(g) Other entities needed to implement the ISP.

#### NEW SECTION

WAC 275-56-465 REGIONAL SUPPORT NETWORK—RESIDENTIAL MENTAL HEALTH SERVICES. (1) The RSN, when established, shall ensure consumer access to a full range of residential services, including:

(a) Crisis respite services;

(b) Supportive living services;

(c) Supervised living services;

(d) Long-term adaptive and rehabilitative services;

(e) Support services to nursing home residents; and

(f) Evaluation and treatment services pursuant to chapter 71.05 RCW.

(2) Residential services shall emphasize the development of permanent homes for consumers and provision of support services to consumers in those homes.

(3) Resource management services shall refer consumers to the most clinically appropriate, least restrictive residential setting, while giving full consideration to the consumer's preferences.

(4) Each residential component shall ensure that each consumer:

(a) Receives sufficient supports to minimize the likelihood of hospitalization; and

(b) Is assisted when making residential transitions.

(5) Each residential component shall participate, whenever required, in the state mental health client information systems, reporting admissions and discharges.

(6) Crisis respite: The RSN shall provide crisis respite services as a component of both the crisis response system and the ongoing systems of community support and residential services.

(a) Crisis respite services shall include:

(i) In-home respite, in which services are brought to the consumer in their own home; and

(ii) Supported respite, in which the consumer is transferred from their home to another home-like setting where he/she receives services.

(b) A mental health professional shall approve access to crisis respite services.

(c) Services shall be made available to consumers of any age.

(d) Provider staff shall refer nonenrolled consumers to after-care services, including resource management services. If the consumer is currently enrolled, then the case manager shall be responsible for the coordination of after-care services.

(e) Provider staff shall, as appropriate, engage and involve significant others during the period of crisis respite.

(f) Provider staff shall have twenty-four hour access to:

(i) Crisis response system (WAC 275-56-089);

(ii) A mental health professional;

(iii) Prescription services; and

(iv) Medication administration.

(g) Crisis respite services shall require ongoing training for all staff in the effective treatment of consumers experiencing a mental health crisis.

(7) Supportive living services shall provide care to consumers in their own home in the community. Supportive living services may be provided as a component of community support services.

(a) Resource management services (WAC 275-56-087) shall approve placement in and transfer from long-term rehabilitative services: When a consumer is discharged due to an unauthorized leave, provider staff shall notify resource management services.

(b) The program shall include:

(i) An assessment of level of functioning;

(ii) An ITP (WAC 275-56-275);

(iii) Provider staff shall offer and encourage participation in a minimum of twenty-eight hours per week of activities provided during the day, evening and weekend hours, including:

(A) Therapeutic community;

(B) Self-care and daily living skills;

(C) Medication management and education;

(D) Exercise; and

(E) Vocational opportunities, as appropriate;

(iv) Twenty-four access to:

(A) Crisis response system (WAC 275-56-089);

(B) Emergency medical services;

(C) Prescription services; and

(D) Medication administration.

(c) All clinical staff shall receive training in the effective treatment of consumers in residential settings.

(d) The provider shall maintain staffing levels which ensure twenty-four hour, seven days per week safety and supervision of consumers.

(i) The provider shall ensure at least one clinical staff member for every seven consumers during days and evenings, and one clinical staff member for every sixteen consumers at night.

(ii) Staff shall be available and awake at all times.

(iii) The provider shall identify one staff person to assume clinical responsibility on each shift.

(8) Supervised living services shall be licensed under chapter 248-16 WAC.

(a) Staff shall have access to twenty-four hour consultation from a geriatric specialist.

(b) A nurse shall be on the premises at all times.

(c) All clinical staff shall receive training in the effective treatment of geriatric consumers in residential settings.

(9) Long-term rehabilitative services shall be licensed under chapter 248-25 WAC.

(a) Resource management services (WAC 275-56-087) shall approve placements in and transfers from supervised living services. When a consumer is discharged due to an emergency or unauthorized leave, provider staff shall notify resource management services.

(b) The program shall include:

(i) An assessment of level of functioning;

(ii) An ITP (WAC 275-56-275);

(iii) The provider shall offer and encourage participation in a minimum of fourteen hours per week of varied, supervised activities to help foster independence and self-reliance;

(iv) The provider shall monitor the consumption of consumer medications and develop written procedures to include:

(A) Secure storage of medications;

(B) Assuring timely prescription refills; and

(C) Documentation of medication consumption;

- (v) Twenty-four hour access to:
  - (A) Crisis response system (WAC 275-56-089);
  - (B) Emergency medical services;
  - (C) Prescription services; and
  - (D) Medication administration.
- (c) All clinical staff shall receive training in the effective treatment of consumers in residential settings.
- (d) The provider shall maintain staffing levels which ensure twenty-four hour, seven days per week safety and supervision of program participants.
  - (i) The provider shall ensure at least one clinical staff member for every twenty consumers during afternoons and evenings, and at least one clinical staff member at night.
  - (ii) Staff shall be available and awake at all times.
  - (iii) The provider shall identify one staff person to assume clinical responsibility on each shift.
  - (iv) The provider shall be exempt from WAC 275-56-175(2) if staff have daily access to a mental health professional for clinical consultation under WAC 275-56-180.
- (v) Supervised living services shall be exempt from WAC 275-56-175(3).
- (10) Geriatric long-term rehabilitative services shall be licensed under chapter 248-14 or 248-25 WAC, and subsection (9) of this section.
  - (a) Resource management services (WAC 275-56-087) shall approve placements in and transfers from supportive living services. When a consumer is discharged due to an emergency or unauthorized leave, provider staff shall notify resource management services.
  - (b) Supportive living services staff shall assist consumers in locating and accessing homes in the community.
    - (i) The provider shall develop an inventory of housing stock available to participating consumers.
    - (ii) The provider shall develop agreements with landlords to assure continued housing for consumer tenants, including during crises.
  - (c) The program shall include:
    - (i) An assessment of level of functioning;
    - (ii) An ITP (WAC 275-56-275);
    - (iii) Ongoing medication services;
    - (iv) Twenty-four hour, seven days per week coverage of crisis situations, including access to:
      - (A) Crisis response system (WAC 275-56-089);
      - (B) Emergency medical services;
      - (C) Prescription services; and
      - (D) Medication administration;
  - (v) Regularly scheduled contacts with consumers for independent living training and support. Service length and intensity shall depend on consumer need and address:
    - (A) Personal safety and emergency procedures;
    - (B) Money management and budgeting;
    - (C) Nutrition;
    - (D) Health and personal hygiene; and
    - (E) Community resources.
  - (d) All clinical staff shall receive training in the effective treatment of consumers in independent settings.
  - (e) Each staff shall have primary responsibility for no more than fifteen consumers.
  - (f) Routine staff coverage shall include evening and weekend hours.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 275-56-030 COUNTY ADMINISTRATION AND PLANNING—AVAILABILITY AND ACCESSIBILITY OF REQUIRED MENTAL HEALTH SERVICES FOR ACUTELY MENTALLY ILL, CHRONICALLY MENTALLY ILL, AND SERIOUSLY DISTURBED PERSONS.
- WAC 275-56-120 PROVIDER ADMINISTRATION—DESIGNATION OF ADMINISTRATOR.
- WAC 275-56-125 PROVIDER ADMINISTRATION—ORGANIZATIONAL STRUCTURE.
- WAC 275-56-130 PROVIDER FISCAL ADMINISTRATION—FISCAL POLICIES AND PROCEDURES.
- WAC 275-56-140 PROVIDER FISCAL ADMINISTRATION—PROCEDURES TO MAXIMIZE REVENUES.

WAC 275-56-145 PROVIDER FISCAL ADMINISTRATION—BUDGET OF EXPECTED REVENUES AND EXPENSES.

WAC 275-56-155 PROVIDER FISCAL ADMINISTRATION—DOCUMENTATION AND RETENTION OF ACCOUNTING TRANSACTIONS.

WAC 275-56-160 PROVIDER FISCAL ADMINISTRATION—FISCAL MANAGEMENT SYSTEM REPORTING.

WAC 275-56-190 PERSONNEL MANAGEMENT—ADMINISTRATIVE QUALIFICATIONS.

WAC 275-56-250 SERVICES ADMINISTRATION—POLICIES AND PROCEDURES FOR PROVIDER OPERATIONS.

WAC 275-56-255 SERVICES ADMINISTRATION—SCREENING AND INFORMATION AND REFERRAL.

WAC 275-56-265 SERVICES ADMINISTRATION—DRUG USE PROFILE.

WAC 275-56-270 SERVICES ADMINISTRATION—COORDINATION OF SERVICE.

WAC 275-56-280 SERVICES ADMINISTRATION—GROUP SERVICE PLAN.

WAC 275-56-310 SERVICES ADMINISTRATION—POLICIES AND PROCEDURES RELATED TO CLIENT RECORDS.

WAC 275-56-315 SERVICES ADMINISTRATION—CONTENT OF CLIENT RECORDS.

WAC 275-56-320 SERVICES ADMINISTRATION—OUTPATIENT GROUP RECORDS.

WAC 275-56-325 SERVICES ADMINISTRATION—TELEPHONE AND OUTREACH EMERGENCY SERVICES RECORDS.

WAC 275-56-330 SERVICES ADMINISTRATION—SECURITY OF CLIENT RECORDS.

WAC 275-56-345 EMERGENCY SERVICES—STAFFING.

WAC 275-56-350 EMERGENCY SERVICES—TWENTY-FOUR HOUR TELEPHONE SERVICES.

WAC 275-56-360 EMERGENCY SERVICES—CRISIS INTERVENTION SERVICES.

WAC 275-56-370 EMERGENCY SERVICES—RECORD OF PREADMISSION SCREENING SERVICES.

WAC 275-56-375 OUTPATIENT SERVICES—WRITTEN DESCRIPTIONS.

WAC 275-56-380 OUTPATIENT SERVICES—STAFFING.

WAC 275-56-390 DAY TREATMENT SERVICES—WRITTEN DESCRIPTIONS.

WAC 275-56-395 DAY TREATMENT SERVICES—STAFFING.

WAC 275-56-405 DAY TREATMENT SERVICES—SERVICE COMPONENTS.

WAC 275-56-410 DAY TREATMENT SERVICES—AGE-APPROPRIATE SERVICES.

WAC 275-56-415 CONSULTATION AND EDUCATION SERVICES—WRITTEN DESCRIPTIONS.

WAC 275-56-420 CONSULTATION AND EDUCATION SERVICES—STAFFING.

WAC 275-56-430 COMMUNITY SUPPORT SERVICES—WRITTEN DESCRIPTIONS.

WAC 275-56-435 COMMUNITY SUPPORT SERVICES—STAFFING AND CASE MANAGEMENT.

WAC 275-56-440 COMMUNITY SUPPORT SERVICES—COORDINATION WITH INPATIENT FACILITIES AND OTHER AGENCIES.

WAC 275-56-450 COMMUNITY SUPPORT SERVICES—RECORD OF COMMUNITY SUPPORT SERVICES.

**WSR 89-16-106**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
**(Public Assistance)**

[Order 2836—Filed August 2, 1989, 3:52 p.m.]

I, Leslie F. James, director of Administrative Services,  
do promulgate and adopt at Olympia, Washington, the

annexed rules relating to citizenship and alien status, amending WAC 388-49-310.

This action is taken pursuant to Notice No. WSR 89-12-075 filed with the code reviser on June 7, 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 74.04.510 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 July 24, 1989.

By Leslie F. James, Director  
Administrative Services

AMENDATORY SECTION (Amending Order 2770, filed 3/2/89)

WAC 388-49-310 CITIZENSHIP AND ALIEN STATUS. (1) The department shall require applicants to sign the application attesting to their citizenship or alien status as described under WAC 388-49-030(6).

(2) The department shall consider applicants ~~((who fail)) failing~~ to meet the requirements of ~~((WAC 388-49-310)) subsection (1) of this section~~ as ineligible household members under WAC 388-49-190(4), 388-49-420(5), and 388-49-480(2).

(3) Except for subsection (4) of this section, the department shall require persons participating in the food stamp program to be residents of the United States and either:

- (a) A United States citizen; or
- (b) An alien lawfully admitted for permanent residence; or
- (c) An alien who:
  - (i) Entered the United States ~~((prior to)) before~~ January 1, 1972, or some later date as required by law; and
  - (ii) Has continuously maintained residency in the United States since then; and
  - (iii) Is not ineligible for citizenship but is considered to be lawfully admitted for permanent residence as a result of an exercise of discretion by the attorney general ~~((pursuant to)) under~~ section 249 of the Immigration and Nationality Act.

(d) An alien who qualified for entry after March 17, 1980, because of persecution or fear of persecution on account of race, religion, or political opinion ~~((pursuant to)) under~~ sections 203 (a)(7), 207, and 208 of the Immigration and Nationality Act; or

(e) An alien qualified for conditional entry ~~((prior to)) before~~ March 18, 1980, ~~((pursuant to)) under~~ former section 203 (a)(7) of the Immigration and Nationality Act; or

(f) An alien granted asylum through an exercise of discretion by the attorney general ~~((pursuant to)) under~~ section 208 of the Immigration and Nationality Act; or

(g) An alien lawfully present in the United States as a result of:

(i) An exercise of discretion by the attorney general for emergent reasons or reasons deemed strictly in the public interest ~~((pursuant to)) under~~ section 212 (d)(5) of the Immigration and Nationality Act; or

(ii) A grant of parole by the attorney general.

(h) An alien living within the United States for whom the attorney general ~~((has)) withheld~~ deportation ~~((pursuant to)) under~~ section 243 of the Immigration and Nationality Act, because ~~((of)) the ((judgment of the))~~ attorney general ~~((that)) judges~~ the alien ~~((would otherwise be)) is~~ subject to persecution ~~((on account)) because~~ of race, religion, or political opinion; or

(i) An alien having temporary resident status as a special agricultural worker under section 210 of the Immigration and Nationality Act.

(4) The department shall consider aliens legalized under section 245A of the Immigration and Nationality Act ineligible for five years after attaining temporary resident status except for ~~((those)) aliens~~ who:

(a) Attain permanent resident status~~((;))~~; and

(b) ~~((Receive Supplemental Security Income)) Are~~ aged, blind, or disabled as defined under section 1614 ~~((a)(1) of the Social Security Act.~~

(5) The household shall provide verification when:

(a) Citizenship is questionable~~((;))~~; or

(b) One or more of its members are aliens.

(i) The department shall not contact the immigration and naturalization service to obtain information without the alien's written consent.

(ii) The department shall give the household failing to provide verification the option of:

(A) Withdrawing the application~~((;))~~; or

(B) Participating without the alien member.

(6) An applicant shall be ineligible until:

(a) Questionable citizenship is verified~~((;))~~; or

(b) Lawful alien status is verified.

(7) The department shall accept a statement under a penalty of perjury signed by a United States citizen that the applicant is a United States citizen when:

(a) The applicant cannot produce acceptable citizenship verification; and

(b) The household can reasonably explain why the verification is not available.

(8) The department shall notify immigration and naturalization services when any household member is ineligible because that person is present in the United States in violation of a known deportation order of the Immigration and Nationality Act.

(9) Lawfully admitted aliens who are ineligible include:

(a) Alien visitors,

(b) Tourists,

(c) Diplomats, ~~((or)) and~~

(d) Students with temporary status.



**WSR 89-16-107**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
**(Public Assistance)**

[Order 2837—Filed August 2, 1989, 3:54 p.m.]

I, Leslie F. James, director of Administrative Services, do promulgate and adopt at Olympia, Washington, the annexed rules relating to student, amending WAC 388-49-330.

This action is taken pursuant to Notice No. WSR 89-11-056 filed with the code reviser on May 17, 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 74.04.510 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 July 24, 1989.

By Leslie F. James, Director  
Administrative Services

**AMENDATORY SECTION** (Amending Order 2575, filed 12/31/87)

WAC 388-49-330 STUDENT. (1) A student, as defined ((in)) under WAC 388-49-020, shall meet one of the following criteria to receive food stamps:

(a) Work and ~~((be paid))~~ receive payment for a minimum of twenty hours per week. A self-employed student's minimum ~~((of twenty hours per week))~~ weekly earnings shall at least be equal to the federal minimum hourly wage multiplied by twenty hours;

(b) Receive money from a federal or state work study program during the regular school year;

(c) Be responsible for the care of a dependent household member under six years of age;

(d) Be responsible for the care of a dependent household member at least six years of age, but under twelve years of age, and the ~~((CSO))~~ department has determined adequate child care is not available;

(e) Receive benefits from the aid to families with dependent children program; or

(f) Attend an institution of higher education through a program under Job Training Partnership Act (JTPA).

(2) Student status begins the first day of the school term.

(3) Student status continues through normal periods of class attendance, vacation, and recess.

(4) Student status is lost when a student:

(a) Graduates((;));

(b) Is suspended((;));

(c) Is expelled((;));

(d) Drops out((;)); or

(e) Does not intend to register for the next normal school term excluding summer school.

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

**WSR 89-16-108**  
**PROPOSED RULES**  
**UTILITIES AND TRANSPORTATION**  
**COMMISSION**

[Filed August 2, 1989, 3:59 p.m.]

Original Notice.

Title of Rule: WAC 480-120-138 relating to customer-owned pay telephones. The proposed amendatory section is shown below as Appendix A, Docket No. U-89-2846-R. Written and/or oral submissions may also contain data, views, and arguments concerning the effect of the purposed amendment on economic values, pursuant to chapter 43.21H RCW.

Purpose: To provide greater uniformity in the provision of pay telephone service, and to ease in some respects current restrictions applicable to customer-owned pay telephones (COCOTS).

Statutory Authority for Adoption: RCW 80.01.040.

Summary: Makes pay telephones owned and operated by local exchange companies subject to equipment requirements of the rule, equalizing relationships with COCOT providers; revises notice requirements, and provides for one-way calling, extension telephones, and credit card calling in some circumstances.

Reasons Supporting Proposal: COCOTS are a new industry arising from the breakup of the Bell System. When rules were initially adopted, it was unknown what the full impact on the industry might be. As experience has been gained, and problems discussed and evaluated, the current amendments were developed in conjunction with the industry, to accommodate the operations of COCOT distributors.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Paul Curl, Acting Secretary, and the utilities staff of the commission, 1300 South Evergreen Park Drive S.W, Olympia, WA, (206) 753-6451.

Name of Proponent: Washington Utilities and Transportation Commission, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The rule makes pay telephones owned and operated by local exchange companies subject to its terms, in part; it revises notice requirements on the instrument itself, clarifies coin operation; provides for one-way, extension, and credit card operation in designated circumstances; provides for connection with local exchange companies in accordance with applicable tariffs; provides for reader instruction and lighting, prohibits cordless telephones; and provides for directories. The purpose is, in general, to liberalize usage of COCOT, which is in turn expected to make these facilities more available to the public.

Proposal Changes the Following Existing Rules: It makes pay telephones owned and operated by local exchange companies subject to its terms, in part; it revises notice requirements on the instrument itself, clarifies coin operation; provides for one-way, extension, and credit card operation in designated circumstances; provides for connection with local exchange companies in accordance with applicable tariffs; provides for reader instruction and lighting, prohibits cordless telephones; and provides for directories.

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

The amendments tend to reduce rather than impose restrictions on COCOT service.

Hearing Location: Commission Hearing Room, Second Floor, Chandler Plaza Building, 1300 South Evergreen Park Drive S.W., Olympia, WA, on September 20, 1989, at 9:00 a.m.

Submit Written Comments to: Paul Curl, Acting Secretary, 1300 South Evergreen Park Drive S.W., Olympia, WA, by September 11, 1989.

Date of Intended Adoption: September 20, 1989.

August 2, 1989

Paul Curl

Acting Secretary

#### APPENDIX "A"

AMENDATORY SECTION (Amending Order R-239, Cause No. U-85-45, filed 9/20/85)

WAC 480-120-138 CUSTOMER-OWNED PAY TELEPHONES—LOCAL AND INTRASTATE. Every telecommunications company operating an exchange within the state of Washington may allow customer-owned pay telephones to be connected to the company's network for purposes of interconnection and use of registered devices for local and intrastate communications. Every such telecommunications company offering such service shall file tariffs with the commission which shall set rates and conditions of service and shall allow the connection of customer-owned pay telephones to the local and intrastate network under the following terms and conditions.

In order to achieve state-wide uniformity, pay telephones owned and operated by local telecommunications companies shall be subject to the equipment provisions of this section. In the event technical limitations preclude conformity by the local telephone exchange company, an exemption is granted to subsections (9) and (12) of this section.

For purposes of these rules, the term "subscriber" is defined as a party subscribing for a pay telephone access line for the purpose of connecting a customer-owned pay telephone to a local exchange.

(1) Customer-owned pay telephones must be connected to the company network in compliance with Part 68 of the Federal Communications Commission rules and regulations and the current National Electric Code and National Electric Safety Code, and must be registered with the Federal Communications Commission, or installed behind a coupling device which has been registered with the Federal Communications Commission.

(2) All customer-owned pay telephones shall provide dial tone first to assure emergency access to operators without the use of a coin.

(3) The caller must be able to access without the use of a coin the operator and 911 where available.

(4) The subscriber shall pay the local directory assistance charge currently in effect for each customer-owned pay telephone and may charge the user for directory assistance calls. The charge for each directory assistance call paid by the user shall not exceed the current per call charge paid by the subscriber.

(5) Emergency numbers (operator assistance and 911) must be clearly posted at each location of a customer-owned pay telephone.

(6) Information must be displayed on the front of the customer-owned pay telephone consisting of ((local address and)) the name, address, telephone number of the owner, and a toll-free telephone number where a caller can obtain assistance in the event the customer-

owned pay telephone malfunctions in any way((:)). Procedures for obtaining a refund from the subscriber((and notice that the customer-owned pay telephone is not being provided by the local telephone company)) must be displayed.

(7) The number of the customer-owned pay telephone must be displayed on each instrument.

(8) The subscriber shall ensure that the customer-owned pay telephone is compatible for use with hearing aids and its installation complies with all applicable federal, state, and local laws and regulations concerning the use of telephones by disabled persons.

(9) The customer-owned pay telephone, if coin-operated, must return the coins to the caller in the case of an incomplete call and must be capable of receiving nickels, dimes, and quarters. Local telecommunications company pay telephones shall not be subject to the requirements of this subsection.

(10) All customer-owned pay telephones must be capable of providing access to all interexchange carriers where such access is available.

(11) ((Pay telephone access lines must provide two-way service and there shall be no charge imposed by the subscriber for incoming calls.)) Except for service provided to hospitals, libraries, or similar public facilities in which a telephone ring might cause undue disturbance, or upon written request of a law enforcement agency, pay telephone access lines must provide two-way service, and there shall be no charge imposed by the subscriber for incoming calls. Any telephone confined to one-way service shall be so marked on the front of the instrument. Local telecommunications company pay telephones are subject to the requirements of this section.

(12) Customer-owned pay telephones may be connected only to pay telephone access lines in accordance with the tariffs offered by the local telephone company.

(13) A subscriber must order a separate pay telephone access line for each customer-owned pay telephone installed ((and will be billed the tariffed rate for each pay telephone access line. No other telecommunications instrument may be connected to a pay telephone access line)). Extension telephones may be connected to a pay telephone access line when facilities:

(a) Prevent origination of calls from the extension station; and

(b) Prevent third-party access to transmission from either the extension or the coin-operated telephone instrument.

(14) Credit card only customer-owned pay telephones shall be permitted only under the following circumstances:

(a) There is another coin-operated telephone, which will accept coins, within one hundred feet and on the same floor of the card only pay telephone.

(b) The telephone clearly identifies the credit cards that will be accepted.

(c) All such telephones are otherwise in full compliance with this section.

(15) Involuntary changes in telephone numbers upon conversion of semipublic or public service from company-owned to customer-owned coin-operated telephones is prohibited.

(16) No fee shall be charged for nonpublished numbers on a customer-owned pay telephone line.

(17) Lighting sufficient for the average user to read the instruction card, day and night, shall be provided by the customer-owned pay telephone subscriber. Sufficient lighting is defined as a minimum of seventy-five footcandles of illumination on the surface of all information provided by the subscriber.

(18) Cordless telephones shall not be connected to a customer-owned pay telephone line.

(19) Violations of the tariff, commission rules pertaining to customer-owned pay telephone service, or other requirements contained in these rules will subject customer-owned pay telephone to disconnection of service if the deficiency is not corrected within five days from date of written notification to the subscriber.

It shall be the responsibility of every telecommunications company operating an exchange to assure that any subscriber taking service pursuant to these rules and to tariffs filed pursuant to these rules meets all of the terms and conditions contained within these rules and the tariffs so filed. It shall be the duty of the local telecommunications company to enforce the terms and conditions contained herein.

It shall be the responsibility of the local telecommunications company to provide free of charge one current telephone directory each year for each pay telephone access line. It shall be the responsibility of the subscriber to make a reasonable effort that there is, at all times, a current directory available at every customer-owned coin-operated telephone.

The pay telephone access lines for a customer-owned telephone will be charged at rates according to the relevant tariff as approved by the commission.

~~((Pay telephones owned and operated by the local telecommunications company or any interexchange carrier tariffed to do business in Washington shall not be subject to these rules.))~~

**Table of WAC Sections Affected**

**KEY TO TABLE**

**Symbols:**

- AMD = Amendment of existing section
- NEW = New section not previously codified
- OBJEC = Notice of objection by Joint Administrative Rules Review Committee
- 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-18-080	REP	89-11-024	132D-20-160	REP-P	89-05-012	132D-140-070	NEW	89-06-012
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132D-18-090	REP	89-11-024	132D-20-170	REP-P	89-07-070	132D-276-010	NEW-P	89-07-062
132D-18-100	REP-P	89-07-062	132D-20-170	REP	89-11-025	132D-276-010	NEW	89-11-024
132D-18-100	REP	89-11-024	132D-20-170	REP-W	89-05-046	132D-276-020	NEW-P	89-07-062
132D-18-110	REP-P	89-07-062	132D-20-180	REP-P	89-07-070	132D-276-020	NEW	89-11-024
132D-18-110	REP	89-11-024	132D-20-180	REP	89-11-025	132D-276-030	NEW-P	89-07-062
132D-18-120	REP-P	89-07-062	132D-20-180	REP-W	89-05-046	132D-276-030	NEW	89-11-024
132D-18-120	REP	89-11-024	132D-20-180	REP-P	89-07-070	132D-276-040	NEW-P	89-07-062
132D-18-130	REP-P	89-07-062	132D-20-180	REP	89-11-025	132D-276-040	NEW	89-11-024
132D-18-130	REP	89-11-024	132D-20-190	REP-P	89-05-012	132D-276-050	NEW-P	89-07-062
132D-18-140	REP-P	89-07-062	132D-20-190	REP-W	89-05-046	132D-276-050	NEW	89-11-024
132D-18-140	REP	89-11-024	132D-20-190	REP-P	89-07-070	132D-276-060	NEW-P	89-07-062
132D-18-150	REP-P	89-07-062	132D-20-190	REP	89-11-025	132D-276-060	NEW	89-11-024
132D-18-150	REP	89-11-024	132D-20-200	REP-P	89-05-012	132D-276-070	NEW-P	89-07-062
132D-20-010	REP-P	89-05-012	132D-20-200	REP-W	89-05-046	132D-276-070	NEW	89-11-024
132D-20-010	REP-W	89-05-046	132D-20-200	REP-P	89-07-070	132D-276-080	NEW-P	89-07-062
132D-20-010	REP-P	89-07-070	132D-20-200	REP	89-11-025	132D-276-080	NEW	89-11-024
132D-20-010	REP	89-11-025	132D-20-210	REP-P	89-05-012	132D-276-090	NEW-P	89-07-062
132D-20-020	REP-P	89-05-012	132D-20-210	REP-W	89-05-046	132D-276-090	NEW	89-11-024
132D-20-020	REP-W	89-05-046	132D-20-210	REP-P	89-07-070	132D-276-100	NEW-P	89-07-062
132D-20-020	REP-P	89-07-070	132D-20-210	REP	89-11-025	132D-276-100	NEW	89-11-024
132D-20-020	REP	89-11-025	132D-20-220	REP-P	89-05-012	132D-276-110	NEW-P	89-07-062
132D-20-030	REP-P	89-05-012	132D-20-220	REP-W	89-05-046	132D-276-110	NEW	89-11-024
132D-20-030	REP-W	89-05-046	132D-20-220	REP-P	89-07-070	132D-276-120	NEW-P	89-07-062
132D-20-030	REP-P	89-07-070	132D-20-220	REP	89-11-025	132D-276-120	NEW	89-11-024
132D-20-030	REP	89-11-025	132D-20-230	REP-P	89-05-012	132D-276-130	NEW-P	89-07-062
132D-20-040	REP-P	89-05-012	132D-20-230	REP-W	89-05-046	132D-276-130	NEW	89-11-024
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132D-280-010	NEW	89-11-044	132N-276-070	AMD	89-12-024	137-28-090	AMD	89-04-032
132D-280-020	NEW-P	89-07-063	132N-276-080	AMD-P	89-04-035	137-28-094	NEW	89-04-032
132D-280-020	NEW	89-11-044	132N-276-080	AMD	89-12-024	137-28-097	AMD	89-04-032
132D-280-025	NEW-P	89-07-063	132N-276-110	AMD-P	89-04-035	137-28-107	NEW	89-04-032
132D-280-025	NEW	89-11-044	132N-276-110	AMD	89-12-024	137-36-020	AMD-E	89-04-029
132D-280-030	NEW-P	89-07-063	132N-276-130	AMD-P	89-04-035	137-36-030	AMD-E	89-04-029
132D-280-030	NEW	89-11-044	132N-276-130	AMD	89-12-024	137-36-040	AMD-E	89-04-029
132D-280-035	NEW-P	89-07-063	132N-276-150	AMD-P	89-04-035	137-44-010	NEW-P	89-11-029
132D-280-035	NEW	89-11-044	132N-276-150	AMD	89-12-024	137-44-020	NEW-P	89-11-029
132D-280-040	NEW-P	89-07-063	132Q-04-035	AMD-C	89-04-018	137-44-030	NEW-P	89-11-029
132D-280-040	NEW	89-11-044	132Q-04-035	AMD-C	89-06-023	137-44-040	NEW-P	89-11-029
132D-300-010	NEW-P	89-07-058	132Q-04-035	AMD	89-07-068	137-44-050	NEW-P	89-11-029
132D-300-010	NEW	89-11-038	132V-15-010	NEW-P	89-13-072	137-44-060	NEW-P	89-11-029
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132D-300-030	NEW	89-11-038	132V-15-050	NEW-P	89-13-072	137-44-100	NEW-P	89-11-029
132D-325-010	NEW-P	89-05-048	132V-15-060	NEW-P	89-13-072	137-44-110	NEW-P	89-11-029
132D-325-010	NEW	89-09-042	132V-15-070	NEW-P	89-13-072	137-44-120	NEW-P	89-11-029
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132D-350-030	NEW-P	89-07-064	132V-15-120	NEW-P	89-13-072	137-44-170	NEW-P	89-11-029
132D-350-030	NEW	89-11-026	132Y-300-001	NEW	89-04-008	137-44-180	NEW-P	89-11-029
132D-350-040	NEW-P	89-07-064	132Y-300-002	NEW	89-04-008	137-44-190	NEW-P	89-11-029
132D-350-040	NEW	89-11-026	132Y-300-003	NEW	89-04-008	137-44-200	NEW-P	89-11-029
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132D-350-050	NEW	89-11-026	132Y-310-010	NEW-P	89-08-023	137-44-220	NEW-P	89-11-029
132F-120-090	AMD-P	89-08-069	132Y-310-010	NEW	89-12-056	137-44-230	NEW-P	89-11-029
132F-120-090	AMD	89-14-025	132Y-310-020	NEW-P	89-08-023	137-44-240	NEW-P	89-11-029
132F-120-090	AMD	89-15-000	132Y-310-020	NEW	89-12-056	137-44-250	NEW-P	89-11-029
132I-120-315	AMD-P	89-04-039	132Y-310-030	NEW-P	89-08-023	137-44-260	NEW-P	89-11-029
132I-120-315	AMD	89-08-016	132Y-310-030	NEW	89-12-056	137-56-010	AMD-P	89-02-058
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132I-120-400	AMD	89-08-016	132Y-310-040	NEW	89-12-056	137-56-015	AMD-P	89-02-058
132I-120-405	AMD-P	89-04-039	132Y-320-010	NEW-P	89-08-022	137-56-015	AMD-C	89-07-083
132I-120-405	AMD	89-08-016	132Y-320-010	NEW	89-12-057	137-56-030	AMD-P	89-02-058
132I-120-410	AMD-P	89-04-039	132Y-320-020	NEW-P	89-08-022	137-56-030	AMD-C	89-07-083
132I-120-410	AMD	89-08-016	132Y-320-020	NEW	89-12-057	137-56-040	AMD-P	89-02-058
132I-120-425	AMD-P	89-04-039	132Y-320-030	NEW-P	89-08-022	137-56-040	AMD-C	89-07-083
132I-120-425	AMD	89-08-016	132Y-320-030	NEW	89-12-057	137-56-050	AMD-P	89-02-058
132I-120-430	AMD-P	89-04-039	132Y-320-040	NEW-P	89-08-022	137-56-050	AMD-C	89-07-083
132I-120-430	AMD	89-08-016	132Y-320-040	NEW	89-12-057	137-56-060	AMD-P	89-02-058
132I-136-010	REP-P	89-08-015	132Y-320-050	NEW-P	89-08-022	137-56-060	AMD-C	89-07-083
132I-136-010	REP	89-11-091	132Y-320-050	NEW	89-12-057	137-56-070	AMD-P	89-02-058
132I-136-020	REP-P	89-08-015	132Y-320-060	NEW-P	89-08-022	137-56-070	AMD-C	89-07-083
132I-136-020	REP	89-11-091	132Y-320-060	NEW	89-12-057	137-56-080	AMD-P	89-02-058
132I-136-030	REP-P	89-08-015	132Y-320-070	NEW-P	89-08-022	137-56-080	AMD-C	89-07-083
132I-136-030	REP	89-11-091	132Y-320-070	NEW	89-12-057	137-56-090	AMD-P	89-02-058
132I-136-040	REP-P	89-08-015	132Y-320-080	NEW-P	89-08-022	137-56-090	AMD-C	89-07-083
132I-136-040	REP	89-11-091	132Y-320-080	NEW	89-12-057	137-56-095	AMD-P	89-02-058
132I-136-050	REP-P	89-08-015	132Y-320-090	NEW-P	89-08-022	137-56-095	AMD-C	89-07-083
132I-136-050	REP	89-11-091	132Y-320-090	NEW	89-12-057	137-56-100	AMD-P	89-02-058
132I-136-060	REP-P	89-08-015	132Y-320-100	NEW-P	89-08-022	137-56-100	AMD-C	89-07-083
132I-136-060	REP	89-11-091	132Y-320-100	NEW	89-12-057	137-56-110	AMD-P	89-02-058
132I-136-070	REP-P	89-08-015	132Y-320-110	NEW-P	89-08-022	137-56-110	AMD-C	89-07-083
132I-136-070	REP	89-11-091	132Y-320-110	NEW	89-12-057	137-56-120	AMD-P	89-02-058
132I-136-080	REP-P	89-08-015	132Y-320-120	NEW-P	89-08-022	137-56-120	AMD-C	89-07-083
132I-136-080	REP	89-11-091	132Y-320-120	NEW	89-12-057	137-56-140	AMD-P	89-02-058
132I-136-100	NEW-P	89-08-015	132Y-320-130	NEW-P	89-08-022	137-56-140	AMD-C	89-07-083
132I-136-100	NEW	89-11-091	132Y-320-130	NEW	89-12-057	137-56-150	AMD-P	89-02-058
132I-136-110	NEW-P	89-08-015	132Y-320-990	NEW-P	89-08-022	137-56-150	AMD-C	89-07-083
132I-136-110	NEW	89-11-091	132Y-320-990	NEW	89-12-057	137-56-160	AMD-P	89-02-058
132I-136-120	NEW-P	89-08-015	137-25-010	NEW-P	89-04-031	137-56-160	AMD-C	89-07-083
132I-136-120	NEW	89-11-091	137-25-010	NEW-E	89-06-010	137-56-170	AMD-P	89-02-058
132I-136-130	NEW-P	89-08-015	137-25-020	NEW-P	89-04-031	137-56-170	AMD-C	89-07-083
132I-136-130	NEW	89-11-091	137-25-020	NEW-E	89-06-010	137-56-180	AMD-P	89-02-058
132I-136-140	NEW-P	89-08-015	137-25-030	NEW-P	89-04-031	137-56-180	AMD-C	89-07-083
132I-136-140	NEW	89-11-091	137-25-030	NEW-E	89-06-010	137-56-190	AMD-P	89-02-058
132I-136-150	NEW-P	89-08-015	137-25-040	NEW-P	89-04-031	137-56-190	AMD-C	89-07-083
132I-136-150	NEW	89-11-091	137-25-040	NEW-E	89-06-010	137-56-200	AMD-P	89-02-058
132I-136-160	NEW-P	89-08-015	137-28-006	AMD	89-04-032	137-56-200	AMD-C	89-07-083
132I-136-160	NEW	89-11-091	137-28-025	AMD	89-04-032	137-56-210	AMD-P	89-02-058
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137-56-230	AMD-P	89-02-058	154-12-087	NEW	89-11-010	173-50-040	NEW-P	89-04-052
137-56-230	AMD-C	89-07-083	154-12-090	AMD-P	89-07-090	173-50-040	NEW	89-10-001
137-56-240	AMD-P	89-02-058	154-12-090	AMD-E	89-11-008	173-50-050	NEW-P	89-04-052
137-56-240	AMD-C	89-07-083	154-12-090	AMD	89-11-010	173-50-050	NEW	89-10-001
137-56-250	AMD-P	89-02-058	154-12-100	REP-P	89-07-090	173-50-060	NEW-P	89-04-052
137-56-250	AMD-C	89-07-083	154-12-100	REP-E	89-11-008	173-50-060	NEW	89-10-001
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137-78-010	NEW	89-15-059	154-12-107	NEW	89-11-010	173-50-080	NEW	89-10-001
137-78-020	NEW-P	89-11-108	154-12-110	AMD-P	89-07-090	173-50-090	NEW-P	89-04-052
137-78-020	NEW	89-15-059	154-12-110	AMD-E	89-11-008	173-50-090	NEW	89-10-001
137-78-030	NEW-P	89-11-108	154-12-110	AMD	89-11-010	173-50-100	NEW-P	89-04-052
137-78-030	NEW	89-15-059	154-16-010	REP-P	89-07-090	173-50-100	NEW	89-10-001
137-78-040	NEW-P	89-11-108	154-16-010	REP-E	89-11-008	173-50-110	NEW-P	89-04-052
137-78-040	NEW	89-15-059	154-16-010	REP	89-11-010	173-50-110	NEW	89-10-001
137-78-050	NEW-P	89-11-108	154-16-020	REP-P	89-07-090	173-50-120	NEW-P	89-04-052
137-78-050	NEW	89-15-059	154-16-020	REP-E	89-11-008	173-50-120	NEW	89-10-001
137-78-060	NEW-P	89-11-108	154-16-020	REP	89-11-010	173-50-130	NEW-P	89-04-052
137-78-060	NEW	89-15-059	154-20-010	REP-P	89-07-090	173-50-130	NEW	89-10-001
137-78-070	NEW-P	89-11-108	154-20-010	REP-E	89-11-008	173-50-140	NEW-P	89-04-052
137-78-070	NEW	89-15-059	154-20-010	REP	89-11-010	173-50-140	NEW	89-10-001
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139-05-200	AMD-E	89-07-050	154-20-020	REP-E	89-11-008	173-50-150	NEW	89-10-001
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154-04-040	REP-E	89-11-008	154-32-010	AMD-E	89-11-008	173-50-180	NEW	89-10-001
154-04-040	REP	89-11-010	154-32-010	AMD	89-11-010	173-50-190	NEW-P	89-04-052
154-04-060	REP-P	89-07-090	154-32-020	AMD-P	89-07-090	173-50-190	NEW	89-10-001
154-04-060	REP-E	89-11-008	154-32-020	AMD-E	89-11-008	173-50-200	NEW-P	89-04-052
154-04-060	REP	89-11-010	154-32-020	AMD	89-11-010	173-50-200	NEW	89-10-001
154-04-065	NEW-P	89-07-090	154-68-020	AMD-P	89-07-090	173-50-210	NEW-P	89-04-052
154-04-065	NEW-E	89-11-008	154-68-020	AMD-E	89-11-008	173-50-210	NEW	89-10-001
154-04-065	NEW	89-11-010	154-68-020	AMD	89-11-010	173-98-010	NEW-P	89-11-082
154-04-090	REP-P	89-07-090	154-120-015	AMD-P	89-07-089	173-98-020	NEW-P	89-11-082
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154-12-060	REP-E	89-11-008	173-19-2519	AMD-W	89-12-071	173-220-210	AMD-W	89-09-015
154-12-060	REP	89-11-010	173-19-3503	AMD-P	89-15-044	173-223	REP-C	89-12-016
154-12-070	AMD-P	89-07-090	173-19-360	AMD	89-09-077	173-223-015	AMD	89-05-026
154-12-070	AMD-E	89-11-008	173-19-390	AMD	89-07-026	173-223-015	AMD-E	89-06-053
154-12-070	AMD	89-11-010	173-19-390	AMD-P	89-08-114	173-223-015	REP-P	89-07-088
154-12-075	NEW-P	89-07-090	173-19-390	AMD	89-14-130	173-223-015	REP	89-12-027
154-12-075	NEW-E	89-11-008	173-19-3910	AMD-P	89-08-115	173-223-020	REP-P	89-07-088
154-12-075	NEW	89-11-010	173-19-3910	AMD	89-14-131	173-223-020	REP	89-12-027
154-12-080	AMD-P	89-07-090	173-19-4501	AMD-P	89-08-113	173-223-030	AMD	89-05-026
154-12-080	AMD-E	89-11-008	173-19-4501	AMD-C	89-14-129	173-223-030	AMD-E	89-06-053
154-12-080	AMD	89-11-010	173-19-4507	AMD	89-03-010	173-223-030	REP-P	89-07-088
154-12-085	NEW-P	89-07-090	173-20-700	AMD-W	89-07-025	173-223-030	REP	89-12-027
154-12-085	NEW-E	89-11-008	173-50	NEW-C	89-07-032	173-223-040	AMD	89-05-026
154-12-085	NEW	89-11-010	173-50-010	NEW-P	89-04-052	173-223-040	AMD-E	89-06-053
154-12-086	NEW-P	89-07-090	173-50-020	NEW	89-10-001	173-223-040	REP-P	89-07-088
154-12-086	NEW-E	89-11-008	173-50-020	NEW-P	89-04-052	173-223-040	REP	89-12-027
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173-223-050	REP-P	89-07-088	173-313-040	NEW-P	89-11-086	173-425-095	AMD	89-02-055
173-223-050	REP	89-12-027	173-313-040	NEW-E	89-12-021	173-425-130	AMD	89-02-055
173-223-060	REP-P	89-07-088	173-313-050	NEW-E	89-06-060	173-433-030	AMD	89-02-054
173-223-060	REP	89-12-027	173-313-050	NEW-P	89-11-086	173-433-100	AMD	89-02-054
173-223-070	AMD	89-05-026	173-313-050	NEW-E	89-12-021	173-433-120	AMD	89-02-054
173-223-070	AMD-E	89-06-053	173-314-010	NEW	89-03-047	173-433-130	NEW	89-02-054
173-223-070	REP-P	89-07-088	173-314-100	NEW	89-03-047	173-433-170	NEW	89-02-054
173-223-070	REP	89-12-027	173-314-200	NEW	89-03-047	173-434-050	AMD	89-02-055
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173-223-080	REP	89-12-027	173-314-220	NEW	89-03-047	173-435-010	AMD	89-02-055
173-223-090	AMD	89-05-026	173-314-300	NEW	89-03-047	173-435-015	NEW	89-02-055
173-223-090	AMD-E	89-06-053	173-314-310	NEW	89-03-047	173-435-020	AMD	89-02-055
173-223-090	REP-P	89-07-088	173-314-320	NEW	89-03-047	173-435-030	AMD	89-02-055
173-223-090	REP	89-12-027	173-314-330	NEW	89-03-047	173-435-040	AMD	89-02-055
173-223-100	REP-P	89-07-088	173-314-340	NEW	89-03-047	173-435-050	AMD	89-02-055
173-223-100	REP	89-12-027	173-315-010	NEW-E	89-06-061	173-435-060	AMD	89-02-055
173-223-110	REP-P	89-07-088	173-315-010	NEW-P	89-11-087	173-435-070	AMD	89-02-055
173-223-110	REP	89-12-027	173-315-010	NEW-E	89-12-020	173-470-030	AMD	89-02-055
173-224	NEW-C	89-12-016	173-315-020	NEW-E	89-06-061	173-470-100	AMD	89-02-055
173-224-015	NEW-P	89-07-088	173-315-020	NEW-P	89-11-087	173-802-050	AMD-P	89-08-078
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173-224-020	NEW	89-12-027	173-315-030	NEW-P	89-11-087	180-08-003	RE-AD-E	89-16-076
173-224-030	NEW-P	89-07-088	173-315-030	NEW-E	89-12-020	180-08-005	RE-AD-E	89-16-076
173-224-030	NEW	89-12-027	173-315-040	NEW-E	89-06-061	180-24-205	NEW-E	89-16-039
173-224-040	NEW-P	89-07-088	173-315-040	NEW-P	89-11-087	180-25-300	NEW-P	89-05-066
173-224-040	NEW	89-12-027	173-315-040	NEW-E	89-12-020	180-25-300	NEW-E	89-06-018
173-224-050	NEW-P	89-07-088	173-315-050	NEW-E	89-06-061	180-25-300	NEW	89-08-086
173-224-050	NEW	89-12-027	173-315-050	NEW-P	89-11-087	180-25-300	AMD-E	89-13-011
173-224-060	NEW-P	89-07-088	173-315-050	NEW-E	89-12-020	180-25-300	AMD-E	89-16-040
173-224-060	NEW	89-12-027	173-315-060	NEW-E	89-06-061	180-26-055	AMD-P	89-05-065
173-224-070	NEW-P	89-07-088	173-315-060	NEW-P	89-11-087	180-26-055	AMD-E	89-06-017
173-224-070	NEW	89-12-027	173-315-060	NEW-E	89-12-020	180-26-055	AMD	89-08-085
173-224-080	NEW-P	89-07-088	173-315-070	NEW-E	89-06-061	180-27-057	AMD-E	89-13-015
173-224-080	NEW	89-12-027	173-315-070	NEW-P	89-11-087	180-27-057	AMD-E	89-16-041
173-224-090	NEW-P	89-07-088	173-315-070	NEW-E	89-12-020	180-29-108	AMD-E	89-16-042
173-224-090	NEW	89-12-027	173-315-080	NEW-E	89-06-061	180-29-300	NEW-P	89-05-067
173-224-100	NEW-P	89-07-088	173-315-090	NEW-E	89-06-061	180-29-300	NEW-E	89-06-019
173-224-100	NEW	89-12-027	173-318	NEW-C	89-16-102	180-29-300	NEW	89-08-087
173-224-110	NEW-P	89-07-088	173-318-010	NEW-E	89-09-005	180-29-300	AMD-E	89-13-014
173-224-110	NEW	89-12-027	173-318-010	NEW-P	89-12-065	180-29-300	AMD-E	89-16-043
173-224-120	NEW-P	89-07-088	173-318-020	NEW-E	89-09-005	180-51-025	AMD-P	89-05-060
173-224-120	NEW	89-12-027	173-318-020	NEW-P	89-12-065	180-51-025	AMD-C	89-08-080
173-303-040	AMD	89-02-059	173-318-030	NEW-E	89-09-005	180-51-025	AMD	89-12-061
173-303-045	AMD	89-02-059	173-318-030	NEW-P	89-12-065	180-59	NEW-C	89-05-061
173-303-070	AMD	89-02-059	173-318-040	NEW-E	89-09-005	180-59-005	NEW	89-09-044
173-303-071	AMD	89-02-059	173-318-040	NEW-P	89-12-065	180-59-010	NEW	89-09-044
173-303-080	AMD	89-02-059	173-318-050	NEW-E	89-09-005	180-59-015	NEW	89-09-044
173-303-110	AMD	89-02-059	173-318-050	NEW-P	89-12-065	180-59-020	NEW	89-09-044
173-303-161	AMD	89-02-059	173-318-060	NEW-E	89-09-005	180-59-025	NEW	89-09-044
173-303-200	AMD	89-02-059	173-318-060	NEW-P	89-12-065	180-59-030	NEW	89-09-044
173-303-202	NEW	89-02-059	173-318-070	NEW-E	89-09-005	180-59-032	NEW	89-09-044
173-303-400	AMD	89-02-059	173-318-070	NEW-P	89-12-065	180-59-035	NEW	89-09-044
173-303-505	AMD	89-02-059	173-318-080	NEW-E	89-09-005	180-59-037	NEW	89-09-044
173-303-515	AMD	89-02-059	173-318-080	NEW-P	89-12-065	180-59-040	NEW	89-09-044
173-303-550	AMD	89-02-059	173-321-010	NEW-P	89-15-046	180-59-045	NEW	89-09-044
173-303-610	AMD	89-02-059	173-321-020	NEW-P	89-15-046	180-59-047	NEW	89-09-044
173-303-620	AMD	89-02-059	173-321-030	NEW-P	89-15-046	180-59-050	NEW	89-09-044
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173-303-805	AMD	89-02-059	173-321-060	NEW-P	89-15-046	180-59-065	NEW	89-09-044
173-303-806	AMD	89-02-059	173-321-070	NEW-P	89-15-046	180-59-070	NEW	89-09-044
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173-303-902	NEW-P	89-15-047	173-400-120	AMD	89-02-055	180-59-080	NEW	89-09-044
173-303-9903	AMD	89-02-059	173-403-030	AMD	89-02-055	180-59-090	NEW	89-09-044
173-303-9904	AMD	89-02-059	173-403-050	AMD	89-02-055	180-59-095	NEW	89-09-044
173-303-9905	AMD	89-02-059	173-403-080	AMD	89-02-055	180-59-100	NEW	89-09-044
173-313-010	NEW-E	89-06-060	173-405-078	AMD	89-02-055	180-59-105	NEW	89-09-044
173-313-010	NEW-P	89-11-086	173-410-071	AMD	89-02-055	180-59-110	NEW	89-09-044
173-313-010	NEW-E	89-12-021	173-415-080	AMD	89-02-055	180-59-115	NEW	89-09-044
173-313-020	NEW-E	89-06-060	173-425-030	AMD	89-02-055	180-59-120	NEW	89-09-044
173-313-020	NEW-P	89-11-086	173-425-035	REP	89-02-055	180-59-125	NEW	89-09-044
173-313-020	NEW-E	89-12-021	173-425-036	NEW-E	89-02-055	180-59-130	NEW	89-09-044
173-313-030	NEW-E	89-06-060	173-425-045	AMD	89-02-055	180-59-135	NEW	89-09-044
173-313-030	NEW-P	89-11-086	173-425-065	AMD	89-02-055	180-59-140	NEW	89-09-044
173-313-030	NEW-E	89-12-021	173-425-075	AMD	89-02-055	180-59-145	NEW	89-09-044

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180-59-155	NEW	89-09-044	182-12-210	AMD	89-12-045	204-91-190	REP-P	89-10-029
180-59-160	NEW	89-09-044	192-09-030	AMD	89-03-070	204-91-190	REP	89-14-015
180-59-165	NEW	89-09-044	192-09-063	AMD	89-03-070	204-91-200	REP-P	89-10-029
180-75-003	RE-AD-E	89-16-076	192-09-315	AMD	89-03-070	204-91-200	REP	89-14-015
180-75-005	RE-AD-E	89-16-076	192-12-025	AMD	89-03-068	204-91A-010	NEW-P	89-10-029
180-75-017	RE-AD-E	89-16-076	192-12-180	AMD	89-03-069	204-91A-010	NEW	89-14-015
180-75-018	RE-AD-E	89-16-076	192-12-182	AMD	89-03-069	204-91A-020	NEW-P	89-10-029
180-75-019	RE-AD-E	89-16-076	192-28-135	NEW-P	89-12-084	204-91A-020	NEW	89-14-015
180-75-020	RE-AD-E	89-16-076	194-18-010	NEW-P	89-11-083	204-91A-030	NEW-P	89-10-029
180-75-025	RE-AD-E	89-16-076	194-18-010	NEW	89-15-013	204-91A-030	NEW	89-14-015
180-75-026	RE-AD-E	89-16-076	194-18-020	NEW-P	89-11-083	204-91A-040	NEW-P	89-10-029
180-75-027	RE-AD-E	89-16-076	194-18-020	NEW	89-15-013	204-91A-040	NEW	89-14-015
180-75-030	RE-AD-E	89-16-076	194-18-030	NEW-P	89-11-083	204-91A-050	NEW-P	89-10-029
180-75-033	RE-AD-E	89-16-076	194-18-030	NEW	89-15-013	204-91A-050	NEW	89-14-015
180-75-034	RE-AD-E	89-16-076	196-16-007	AMD	89-05-021	204-91A-060	NEW-P	89-10-029
180-75-035	RE-AD-E	89-16-076	196-16-020	AMD	89-05-021	204-91A-060	NEW	89-14-015
180-75-037	RE-AD-E	89-16-076	196-16-031	AMD	89-05-021	204-91A-070	NEW-P	89-10-029
180-75-038	RE-AD-E	89-16-076	196-24-080	AMD	89-05-021	204-91A-070	NEW	89-14-015
180-75-039	RE-AD-E	89-16-076	196-24-085	AMD	89-05-021	204-91A-080	NEW-P	89-10-029
180-75-040	RE-AD-E	89-16-076	204-29-010	NEW-E	89-10-007	204-91A-080	NEW	89-14-015
180-75-042	RE-AD-E	89-16-076	204-29-010	NEW	89-10-016	204-91A-090	NEW-P	89-10-029
180-75-043	RE-AD-E	89-16-076	204-65-010	AMD-E	89-09-023	204-91A-090	NEW	89-14-015
180-75-044	RE-AD-E	89-16-076	204-65-010	AMD-P	89-09-024	204-91A-100	NEW-P	89-10-029
180-75-045	RE-AD-E	89-16-076	204-65-010	AMD	89-12-018	204-91A-100	NEW	89-14-015
180-75-047	RE-AD-E	89-16-076	204-65-020	AMD-E	89-09-023	204-91A-110	NEW-P	89-10-029
180-75-048	RE-AD-E	89-16-076	204-65-020	AMD-P	89-09-024	204-91A-110	NEW	89-14-015
180-75-050	RE-AD-E	89-16-076	204-65-020	AMD	89-12-018	204-91A-120	NEW-P	89-10-029
180-75-055	RE-AD-E	89-16-076	204-65-030	AMD-E	89-09-023	204-91A-120	NEW	89-14-015
180-75-060	RE-AD-E	89-16-076	204-65-030	AMD-P	89-09-024	204-91A-130	NEW-P	89-10-029
180-75-061	RE-AD-E	89-16-076	204-65-030	AMD	89-12-018	204-91A-130	NEW	89-14-015
180-75-065	RE-AD-E	89-16-076	204-65-040	AMD-E	89-09-023	204-91A-140	NEW-P	89-10-029
180-75-070	RE-AD-E	89-16-076	204-65-040	AMD-P	89-09-024	204-91A-140	NEW	89-14-015
180-75-080	RE-AD-E	89-16-076	204-65-040	AMD	89-12-018	204-91A-150	NEW-P	89-10-029
180-75-081	RE-AD-E	89-16-076	204-65-050	AMD-E	89-09-023	204-91A-150	NEW	89-14-015
180-75-082	RE-AD-E	89-16-076	204-65-050	AMD-P	89-09-024	204-91A-160	NEW-P	89-10-029
180-75-083	RE-AD-E	89-16-076	204-65-050	AMD	89-12-018	204-91A-160	NEW	89-14-015
180-75-084	RE-AD-E	89-16-076	204-65-060	AMD-E	89-09-023	204-91A-170	NEW-P	89-10-029
180-75-085	AMD-P	89-08-082	204-65-060	AMD-P	89-09-024	204-91A-170	NEW	89-14-015
180-75-085	AMD-E	89-08-084	204-65-060	AMD	89-12-018	204-91A-180	NEW-P	89-10-029
180-75-085	AMD	89-12-025	204-76-99001	AMD-P	89-09-025	204-91A-180	NEW	89-14-015
180-75-085	RE-AD-E	89-16-076	204-76-99001	AMD	89-12-019	212-17-140	AMD-P	89-13-019
180-75-086	RE-AD-E	89-16-076	204-76-99002	AMD-P	89-09-025	212-17-140	AMD-E	89-13-020
180-75-087	RE-AD-E	89-16-076	204-76-99002	AMD	89-12-019	212-17-195	AMD-P	89-13-019
180-75-088	RE-AD-E	89-16-076	204-91-010	REP-P	89-10-029	212-17-195	AMD-E	89-13-020
180-75-090	RE-AD-E	89-16-076	204-91-010	REP	89-14-015	220-12-010	AMD-P	89-10-068
180-75-091	RE-AD-E	89-16-076	204-91-020	REP-P	89-10-029	220-12-010	AMD	89-14-010
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180-79-230	AMD-P	89-08-081	204-91-040	REP-P	89-10-029	220-20-017	AMD-P	89-09-080
180-79-230	AMD-E	89-08-083	204-91-040	REP	89-14-015	220-20-017	AMD	89-13-004
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180-115-020	AMD-E	89-16-044	204-91-060	REP-P	89-10-029	220-22-030	AMD-P	89-09-080
180-115-035	AMD-E	89-16-044	204-91-060	REP	89-14-015	220-22-030	AMD	89-13-004
180-115-045	AMD-E	89-16-044	204-91-070	REP-P	89-10-029	220-24-02000D	NEW-E	89-09-073
180-115-060	AMD-E	89-16-044	204-91-070	REP	89-14-015	220-24-02000D	REP-E	89-12-086
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182-08-190	AMD-P	89-08-005	204-91-120	REP	89-14-015	220-32-05100P	NEW-E	89-04-046
182-08-190	AMD-W	89-09-053	204-91-130	REP-P	89-10-029	220-32-05100P	REP-E	89-07-080
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182-12-115	AMD	89-12-045	204-91-140	REP-P	89-10-029	220-32-05700C	REP-E	89-07-080
182-12-127	AMD-P	89-08-005	204-91-140	REP	89-14-015	220-32-05700D	NEW-E	89-07-080
182-12-127	AMD-W	89-09-053	204-91-150	REP-P	89-10-029	220-32-05900P	NEW-E	89-10-009
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220-57A-030	AMD	89-07-060	230-04-061	REP	89-09-047	230-50-240	RE-AD-E	89-15-037
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248-08-810	REP-E	89-14-096	248-17-060	AMD-E	89-14-095	248-27-125	NEW-P	89-07-023
248-08-815	REP-E	89-14-096	248-17-213	AMD-P	89-10-069	248-27-125	NEW	89-12-077
248-08-820	REP-E	89-14-096	248-17-213	AMD-E	89-10-071	248-27-135	NEW-P	89-07-023
248-08-825	REP-E	89-14-096	248-17-213	AMD-E	89-16-070	248-27-135	NEW	89-12-077
248-08-830	REP-E	89-14-096	248-17-230	AMD-E	89-14-095	248-27-145	NEW-P	89-07-023
248-08-835	REP-E	89-14-096	248-17-260	AMD-P	89-10-069	248-27-145	NEW	89-12-077
248-08-840	REP-E	89-14-096	248-17-260	AMD-E	89-10-071	248-27-155	NEW-P	89-07-023
248-08-845	REP-E	89-14-096	248-17-260	AMD-E	89-16-070	248-27-155	NEW	89-12-077
248-14-001	AMD-P	89-04-054	248-17-261	NEW-E	89-16-070	248-27-165	NEW-P	89-07-023
248-14-001	AMD	89-08-054	248-18-015	AMD-E	89-14-095	248-27-165	NEW	89-12-077
248-14-010	AMD-P	89-15-051	248-19-220	AMD-P	89-14-077	248-27-175	NEW-P	89-07-023
248-14-070	AMD-E	89-14-098	248-19-230	REP-P	89-14-077	248-27-175	NEW	89-12-077
248-14-090	AMD-P	89-04-054	248-19-230	REP-E	89-14-087	248-27-185	NEW-P	89-07-023
248-14-090	AMD	89-08-054	248-19-231	NEW-P	89-14-077	248-27-185	NEW	89-12-077
248-14-235	AMD-P	89-04-054	248-19-231	NEW-E	89-14-087	248-29-020	AMD-E	89-14-095
248-14-235	AMD	89-08-054	248-19-480	AMD-E	89-14-095	248-31	AMD-P	89-07-023
248-14-247	AMD-P	89-04-054	248-21-005	AMD-E	89-14-097	248-31	AMD	89-12-077
248-14-247	AMD	89-08-054	248-22-005	AMD-E	89-14-095	248-31-001	REP-P	89-07-023
248-14-270	AMD	89-06-050	248-23-010	AMD-E	89-14-095	248-31-001	REP	89-12-077
248-14-285	AMD-P	89-04-054	248-25-010	AMD-E	89-14-095	248-31-002	REP-P	89-07-023
248-14-285	AMD	89-08-054	248-26-020	AMD-E	89-14-095	248-31-002	REP	89-12-077
248-14-297	REP-P	89-15-052	248-27	AMD-P	89-07-023	248-31-005	NEW-P	89-07-023
248-14-298	NEW-P	89-15-052	248-27	AMD	89-12-077	248-31-005	NEW	89-12-077
248-14-300	AMD-P	89-04-054	248-27-001	REP-P	89-07-023	248-31-010	REP-P	89-07-023
248-14-300	AMD	89-08-054	248-27-001	REP	89-12-077	248-31-010	REP	89-12-077
248-15-040	AMD	89-06-003	248-27-002	REP-P	89-07-023	248-31-015	NEW-P	89-07-023
248-15-050	AMD	89-06-003	248-27-002	REP	89-12-077	248-31-015	NEW	89-12-077
248-15-110	AMD-E	89-14-095	248-27-005	NEW-P	89-07-023	248-31-020	REP-P	89-07-023
248-16-001	AMD	89-09-034	248-27-005	NEW	89-12-077	248-31-020	REP	89-12-077
248-16-030	REP	89-09-034	248-27-010	REP-P	89-07-023	248-31-025	NEW-P	89-07-023
248-16-031	NEW	89-09-034	248-27-010	REP	89-12-077	248-31-025	NEW	89-12-077
248-16-031	AMD-E	89-14-095	248-27-015	NEW-P	89-07-023	248-31-025	AMD-E	89-15-057
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248-16-035	REP	89-09-034	248-27-020	REP-P	89-07-023	248-31-030	REP	89-12-077
248-16-036	NEW	89-09-034	248-27-020	REP	89-12-077	248-31-035	NEW-P	89-07-023
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248-16-045	REP	89-09-034	248-27-025	NEW	89-12-077	248-31-035	AMD-E	89-15-057
248-16-046	NEW	89-09-034	248-27-025	AMD-E	89-15-057	248-31-040	REP-P	89-07-023
248-16-050	REP	89-09-034	248-27-030	REP-P	89-07-023	248-31-040	REP	89-12-077
248-16-055	REP	89-09-034	248-27-030	REP	89-12-077	248-31-045	NEW-P	89-07-023
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248-16-057	NEW	89-09-034	248-27-035	NEW	89-12-077	248-31-045	AMD-E	89-15-057
248-16-060	AMD	89-09-034	248-27-035	AMD-E	89-15-057	248-31-050	REP-P	89-07-023
248-16-070	AMD	89-09-034	248-27-040	REP-P	89-07-023	248-31-050	REP	89-12-077
248-16-080	AMD	89-09-034	248-27-040	REP	89-12-077	248-31-055	NEW-P	89-07-023
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248-16-105	AMD	89-09-034	248-27-045	NEW	89-12-077	248-31-055	AMD-E	89-15-057
248-16-110	AMD	89-09-034	248-27-045	AMD-E	89-15-057	248-31-060	REP-P	89-07-023
248-16-115	AMD	89-09-034	248-27-050	REP-P	89-07-023	248-31-060	REP	89-12-077
248-16-120	REP	89-09-034	248-27-050	REP	89-12-077	248-31-065	NEW-P	89-07-023
248-16-121	NEW	89-09-034	248-27-055	NEW-P	89-07-023	248-31-065	NEW	89-12-077
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248-16-131	NEW	89-09-034	248-27-055	AMD-E	89-15-057	248-31-070	REP	89-12-077
248-16-140	REP	89-09-034	248-27-060	REP-P	89-07-023	248-31-075	REP-P	89-07-023
248-16-141	NEW	89-09-034	248-27-060	REP	89-12-077	248-31-075	REP	89-12-077
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248-16-160	AMD	89-09-034	248-27-065	NEW	89-12-077	248-31-077	NEW	89-12-077
248-16-170	AMD	89-09-034	248-27-070	REP-P	89-07-023	248-31-080	REP-P	89-07-023
248-16-180	AMD	89-09-034	248-27-070	REP	89-12-077	248-31-080	REP	89-12-077
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248-16-202	AMD	89-09-034	248-27-077	NEW	89-12-077	248-31-085	NEW	89-12-077
248-16-213	AMD	89-09-034	248-27-080	REP-P	89-07-023	248-31-090	REP-P	89-07-023
248-16-215	AMD	89-09-034	248-27-080	REP	89-12-077	248-31-090	REP	89-12-077
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248-16-222	AMD	89-09-034	248-27-085	NEW	89-12-077	248-31-095	NEW	89-12-077
248-16-223	AMD	89-09-034	248-27-090	REP-P	89-07-023	248-31-100	REP-P	89-07-023
248-16-226	AMD	89-09-034	248-27-090	REP	89-12-077	248-31-100	REP	89-12-077
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248-31-115	NEW	89-12-077	248-54-086	AMD-P	89-14-079	248-144-030	REP	89-11-058
248-31-120	REP-P	89-07-023	248-54-097	AMD-P	89-14-079	248-144-031	NEW-P	89-08-098
248-31-120	REP	89-12-077	248-54-098	NEW-P	89-14-079	248-144-031	NEW	89-11-058
248-31-125	NEW-P	89-07-023	248-54-165	AMD-P	89-14-079	248-144-031	AMD-E	89-14-097
248-31-125	NEW	89-12-077	248-54-175	AMD-P	89-14-079	248-144-035	REP-P	89-08-098
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248-31-130	REP	89-12-077	248-54-187	NEW-P	89-14-079	248-144-040	REP-P	89-08-098
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248-31-155	NEW-P	89-07-023	248-55-230	REP-E	89-14-095	248-144-051	NEW	89-11-058
248-31-155	NEW	89-12-077	248-55-235	NEW-E	89-14-095	248-144-060	REP-P	89-08-098
248-31-160	REP-P	89-07-023	248-55-240	AMD-E	89-14-095	248-144-060	REP	89-11-058
248-31-160	REP	89-12-077	248-55-250	AMD-E	89-14-095	248-144-061	NEW-P	89-08-098
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248-33-060	REP-P	89-14-097	248-59-030	AMD-E	89-14-095	248-144-081	NEW-P	89-08-098
248-33-080	REP-P	89-14-097	248-59-040	REP-E	89-14-095	248-144-081	NEW	89-11-058
248-36-005	NEW-P	89-07-023	248-59-050	REP-E	89-14-095	248-144-081	REP-P	89-08-098
248-36-005	NEW	89-12-077	248-59-060	REP-E	89-14-095	248-144-090	REP-P	89-08-098
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248-36-025	NEW	89-12-077	248-64-320	AMD-P	89-16-104	248-144-100	REP-P	89-08-098
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248-36-045	NEW	89-12-077	248-96-110	AMD-P	89-14-126	248-144-111	NEW-P	89-08-098
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248-36-055	NEW	89-12-077	248-97-130	AMD-E	89-14-097	248-144-120	REP	89-11-058
248-36-055	AMD-E	89-15-057	248-97-135	NEW-E	89-14-097	248-144-121	NEW-P	89-08-098
248-36-065	NEW-P	89-07-023	248-100-011	AMD-P	89-04-055	248-144-121	NEW	89-11-058
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248-36-077	NEW-P	89-07-023	248-100-206	AMD-P	89-04-055	248-144-130	REP	89-11-058
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248-36-085	NEW-P	89-07-023	248-100-207	AMD-P	89-10-021	248-144-131	NEW	89-11-058
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248-36-105	NEW-P	89-07-023	248-100-207	AMD-P	89-16-059	248-144-141	NEW	89-11-058
248-36-105	NEW	89-12-077	248-105-010	AMD-P	89-13-079	248-144-150	REP-P	89-08-098
248-36-115	NEW-P	89-07-023	248-105-020	AMD-P	89-13-079	248-144-150	REP	89-11-058
248-36-115	NEW	89-12-077	248-105-030	AMD-P	89-13-079	248-144-151	NEW-P	89-08-098
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248-36-125	NEW	89-12-077	248-105-050	REP-P	89-13-079	248-144-160	REP-P	89-08-098
248-36-135	NEW-P	89-07-023	248-105-060	REP-P	89-13-079	248-144-160	REP	89-11-058
248-36-135	NEW	89-12-077	248-105-070	AMD-P	89-13-079	248-144-161	NEW-P	89-08-098
248-36-165	NEW-P	89-07-023	248-105-080	AMD-P	89-13-079	248-144-161	NEW	89-11-058
248-36-165	NEW	89-12-077	248-105-090	AMD-P	89-13-079	248-144-170	REP-P	89-08-098
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248-52-010	NEW-P	89-16-103	248-124-99001	REP	89-10-023	248-144-171	NEW	89-11-058
248-52-020	NEW-P	89-16-103	248-124-99001	REP-P	89-06-047	248-144-180	REP-P	89-08-098
248-52-030	NEW-P	89-16-103	248-124-99001	REP	89-10-023	248-144-180	REP	89-11-058
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248-52-050	NEW-P	89-16-103	248-124-99002	REP	89-10-023	248-144-181	NEW	89-11-058
248-52-060	NEW-P	89-16-103	248-124-99003	REP-P	89-06-047	248-144-190	REP-P	89-08-098
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248-144-211	NEW-P	89-08-098	251-12-097	AMD-P	89-09-063	260-34-030	AMD	89-13-006
248-144-211	NEW	89-11-058	251-12-097	AMD	89-12-059	260-34-040	AMD-P	89-04-060
248-144-220	REP-P	89-08-098	251-12-600	AMD-P	89-06-044	260-34-040	AMD-W	89-07-027
248-144-220	REP	89-11-058	251-12-600	AMD-P	89-06-045	260-34-040	AMD-P	89-08-090
248-144-230	REP-P	89-08-098	251-12-600	AMD-W	89-09-060	260-34-040	AMD	89-13-006
248-144-230	REP	89-11-058	251-12-600	AMD-C	89-09-061	260-34-050	AMD-P	89-04-060
248-144-240	REP-P	89-08-098	251-12-600	AMD-P	89-09-063	260-34-050	AMD-W	89-07-027
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248-320-360	NEW-E	89-14-096	251-17-090	AMD-C	89-05-043	260-34-060	AMD-W	89-07-027
248-320-370	NEW-E	89-14-096	251-17-090	AMD	89-08-003	260-34-060	AMD-P	89-08-090
248-320-400	NEW-E	89-14-096	251-18-180	AMD-C	89-05-043	260-34-060	AMD	89-13-006
248-320-410	NEW-E	89-14-096	251-18-180	AMD	89-08-003	260-34-070	AMD-P	89-04-060
248-320-500	NEW-E	89-14-096	251-19-030	REP-P	89-06-044	260-34-070	AMD-W	89-07-027
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250-44-050	AMD	89-08-056	251-19-030	REP-C	89-09-061	260-34-080	AMD-P	89-04-060
250-44-050	AMD-E	89-08-057	251-19-030	REP	89-13-074	260-34-080	AMD-W	89-07-027
250-44-110	AMD-P	89-04-048	251-19-040	REP-P	89-06-044	260-34-080	AMD-P	89-08-090
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251-01-077	NEW-C	89-09-061	251-19-122	NEW	89-13-074	260-34-190	NEW	89-13-006
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296-126-020	AMD-C	89-08-058	296-155-689	NEW	89-11-035	308-26-105	NEW	89-14-092
296-126-020	AMD-C	89-09-007	296-155-690	AMD-P	89-06-058	308-26-115	NEW-P	89-10-077
296-126-020	AMD	89-10-014	296-155-690	AMD	89-11-035	308-26-115	NEW	89-14-092
296-126-023	AMD-P	89-16-089	296-155-691	NEW-P	89-06-058	308-26-125	NEW-P	89-10-077
296-126-050	AMD-P	89-16-089	296-155-691	NEW	89-11-035	308-26-125	NEW	89-14-092
296-127-010	AMD-P	89-12-051	296-155-692	NEW-P	89-06-058	308-26-135	NEW-P	89-10-077
296-127-011	AMD-P	89-12-051	296-155-692	NEW	89-11-035	308-26-135	NEW	89-14-092
296-127-013	RE-AD-P	89-12-051	296-155-694	NEW-P	89-06-058	308-31-055	AMD-E	89-13-091
296-127-014	RE-AD-P	89-12-051	296-155-695	NEW	89-11-035	308-31-055	AMD-P	89-14-103
296-127-015	RE-AD-P	89-12-051	296-155-695	AMD-P	89-06-058	308-34-010	REP	89-02-051
296-127-016	REP-P	89-12-051	296-155-695	AMD	89-11-035	308-34-020	REP	89-02-051
296-127-018	NEW-P	89-12-051	296-155-697	NEW-P	89-06-058	308-34-030	REP	89-02-051
296-127-019	AMD-P	89-12-051	296-155-697	NEW	89-11-035	308-34-040	REP	89-02-051
296-127-020	AMD-P	89-12-051	296-155-699	NEW-P	89-06-058	308-34-050	REP	89-02-051
296-127-023	RE-AD-P	89-12-051	296-155-699	NEW	89-11-035	308-34-060	REP	89-02-051
296-127-025	RE-AD-P	89-12-051	296-155-750	REP-P	89-06-058	308-34-070	REP	89-02-051
296-127-026	RE-AD-P	89-12-051	296-155-750	REP	89-11-035	308-34-080	REP	89-02-051
296-127-040	AMD-P	89-12-051	296-303-02007	AMD-P	89-06-058	308-34-090	REP	89-02-051
296-127-045	AMD-P	89-12-051	296-303-02007	AMD	89-11-035	308-34-310	NEW	89-02-051
296-128-011	NEW-P	89-15-060	296-303-040	AMD-P	89-06-058	308-34-320	NEW	89-02-051
296-128-011	NEW-E	89-16-085	296-303-040	AMD	89-11-035	308-34-330	NEW	89-02-051
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296-128-012	NEW-E	89-16-085	296-304-010	AMD	89-11-035	308-34-420	NEW	89-02-051
296-128-025	AMD-P	89-16-089	296-305-025	AMD-P	89-06-058	308-34-430	NEW	89-02-051
296-128-035	NEW-P	89-16-089	296-305-025	AMD	89-11-035	308-34-440	NEW	89-02-051
296-131-001	NEW-E	89-16-022	296-306	AMD-P	89-06-058	308-34-450	NEW	89-02-051
296-131-001	NEW-P	89-16-088	296-306	AMD	89-11-035	308-34-460	NEW	89-02-051
296-131-010	NEW-E	89-16-022	296-306-010	AMD-P	89-06-058	308-34-470	NEW	89-02-051
296-131-010	NEW-P	89-16-088	296-306-010	AMD	89-11-035	308-34-480	NEW	89-02-051
296-131-015	NEW-E	89-16-022	296-306-165	AMD-P	89-06-058	308-37-190	AMD-P	89-02-064

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308-37-190	REP-P	89-07-092	308-53-125	AMD	89-10-030	308-56A-690	NEW	89-16-074
308-37-190	AMD	89-08-095	308-53-130	REP-P	89-06-070	308-56A-690	NEW-E	89-16-075
308-40-102	AMD	89-06-075	308-53-130	REP	89-10-030	308-77-030	AMD	89-03-005
308-40-105	AMD-P	89-10-072	308-53-135	AMD-P	89-06-070	308-77-034	AMD	89-03-005
308-40-105	AMD-E	89-10-074	308-53-135	AMD	89-10-030	308-77-040	AMD	89-03-005
308-40-105	AMD	89-13-052	308-53-145	AMD-P	89-06-070	308-77-042	NEW	89-03-034
308-40-106	NEW-P	89-10-072	308-53-145	AMD	89-10-030	308-77-044	NEW	89-03-034
308-40-106	NEW-E	89-10-074	308-53-146	AMD-P	89-06-070	308-77-060	AMD	89-03-005
308-40-106	NEW	89-13-052	308-53-146	AMD	89-10-030	308-89-040	AMD-P	89-08-091
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308-40-140	NEW	89-11-053	308-53-150	AMD	89-10-030	308-90-080	AMD-E	89-14-091
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308-42-010	AMD-C	89-10-073	308-53-151	AMD	89-10-030	308-91	AMD-P	89-02-063
308-42-121	NEW-P	89-09-066	308-53-165	AMD-P	89-06-070	308-91	AMD	89-07-035
308-42-145	AMD-P	89-09-066	308-53-165	AMD	89-10-030	308-91-030	AMD-P	89-02-062
308-48-350	NEW	89-04-002	308-53-170	AMD-P	89-06-070	308-91-030	AMD	89-07-036
308-50-010	AMD-P	89-05-055	308-53-170	AMD	89-10-030	308-91-040	AMD-P	89-02-063
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308-50-035	AMD	89-04-017	308-53-180	AMD-P	89-06-070	308-91-050	AMD	89-07-035
308-50-035	AMD-P	89-09-026	308-53-180	AMD	89-10-030	308-91-140	AMD-P	89-02-063
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308-50-350	AMD	89-04-017	308-53-400	NEW-C	89-06-066	308-96A-260	AMD-E	89-08-094
308-50-420	AMD	89-04-017	308-53-400	NEW	89-09-027	308-100-010	AMD-P	89-15-040
308-51-230	NEW-P	89-10-077	308-55-035	NEW-P	89-10-077	308-100-020	AMD-P	89-15-040
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308-51-300	NEW	89-14-092	308-55-105	NEW	89-14-092	308-100-200	NEW-P	89-15-040
308-51-310	NEW-P	89-10-077	308-55-115	NEW-P	89-10-077	308-104-025	AMD-P	89-15-040
308-51-310	NEW	89-14-092	308-55-115	NEW	89-14-092	308-104-035	NEW-P	89-15-040
308-52-139	AMD	89-06-077	308-56A-610	NEW-E	89-10-045	308-104-100	AMD-P	89-15-040
308-52-165	NEW-P	89-16-097	308-56A-610	NEW-P	89-11-019	308-104-105	AMD-P	89-15-040
308-52-190	NEW-P	89-05-056	308-56A-610	NEW	89-16-074	308-115-065	NEW	89-16-037
308-52-190	NEW	89-08-063	308-56A-610	NEW-E	89-16-075	308-115-260	NEW-P	89-10-077
308-52-255	AMD-P	89-09-067	308-56A-620	NEW-E	89-10-045	308-115-260	NEW	89-14-092
308-52-255	AMD	89-12-053	308-56A-620	NEW-P	89-11-019	308-115-270	NEW-P	89-10-077
308-52-260	AMD	89-06-077	308-56A-620	NEW	89-16-074	308-115-270	NEW	89-14-092
308-52-265	NEW-P	89-09-067	308-56A-620	NEW-E	89-16-075	308-115-280	NEW-P	89-10-077
308-52-265	NEW	89-12-053	308-56A-630	NEW-E	89-10-045	308-115-280	NEW	89-14-092
308-52-405	AMD-P	89-09-067	308-56A-630	NEW-P	89-11-019	308-115-290	NEW-P	89-10-077
308-52-405	AMD	89-12-053	308-56A-630	NEW	89-16-074	308-115-290	NEW	89-14-092
308-52-415	AMD-P	89-09-067	308-56A-640	NEW-E	89-16-075	308-115-310	NEW-P	89-10-077
308-52-415	AMD	89-12-053	308-56A-640	NEW-E	89-10-045	308-115-310	NEW	89-14-092
308-52-590	AMD-E	89-14-008	308-56A-640	NEW-P	89-11-019	308-115-320	NEW-P	89-10-077
308-52-590	AMD-P	89-14-030	308-56A-640	NEW	89-16-074	308-115-320	NEW	89-14-092
308-52-620	NEW	89-06-076	308-56A-640	NEW-E	89-16-075	308-115-330	NEW-P	89-10-077
308-52-630	NEW-P	89-09-067	308-56A-650	NEW-E	89-10-045	308-115-330	NEW	89-14-092
308-52-630	NEW	89-13-002	308-56A-650	NEW-P	89-11-019	308-115-340	NEW-P	89-10-077
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308-52-660	NEW-P	89-09-067	308-56A-660	NEW	89-16-074	308-115-405	AMD	89-08-008
308-52-660	NEW	89-13-002	308-56A-660	NEW-E	89-16-075	308-117-080	AMD-P	89-06-071
308-52-670	NEW-P	89-09-067	308-56A-670	NEW-E	89-10-045	308-117-080	AMD	89-10-075
308-52-670	NEW	89-13-002	308-56A-670	NEW-P	89-11-019	308-117-450	NEW-P	89-02-065
308-52-670	REP-P	89-16-097	308-56A-670	NEW	89-16-074	308-117-460	NEW-P	89-02-065
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308-52-690	NEW-P	89-16-097	308-56A-680	NEW-E	89-10-045	308-117-470	NEW-P	89-02-065
308-53-120	AMD-P	89-06-070	308-56A-680	NEW-P	89-11-019	308-117-470	NEW	89-07-005
308-53-120	AMD	89-10-030	308-56A-680	NEW	89-16-074	308-117-480	NEW-P	89-02-065
308-53-123	NEW-P	89-06-070	308-56A-680	NEW-E	89-16-075	308-117-480	NEW	89-07-005
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308-120-170	AMD	89-12-033	308-173-080	NEW-P	89-10-077	308-190-030	AMD-P	89-07-081
308-120-305	AMD-P	89-06-072	308-173-080	NEW	89-14-092	308-190-030	AMD	89-14-070
308-120-305	AMD	89-12-033	308-173-090	NEW-P	89-10-077	308-190-040	AMD-P	89-07-081
308-120-810	NEW-P	89-06-072	308-173-090	NEW	89-14-092	308-190-040	AMD	89-14-070
308-120-810	NEW	89-12-033	308-177-010	NEW-P	89-10-077	308-190-041	NEW-P	89-07-081
308-122-211	NEW-P	89-08-092	308-177-010	NEW	89-14-092	308-190-041	NEW	89-14-070
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308-122-360	AMD-P	89-14-090	308-177-020	NEW	89-14-092	308-190-042	NEW	89-14-070
308-122-370	AMD-P	89-14-090	308-177-030	NEW-P	89-10-077	308-190-060	NEW-P	89-10-077
308-122-380	AMD-P	89-14-090	308-177-030	NEW	89-14-092	308-190-060	NEW	89-14-092
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308-122-440	AMD-P	89-14-090	308-177-060	NEW	89-14-092	308-190-090	NEW	89-14-092
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308-122-565	NEW-P	89-14-090	308-177-110	NEW	89-03-035	308-190-130	NEW-P	89-10-077
308-122-570	NEW-P	89-14-090	308-177-110	AMD-E	89-14-009	308-190-130	NEW	89-14-092
308-122-575	NEW-P	89-14-090	308-177-110	AMD-P	89-14-104	308-190-140	NEW-P	89-10-077
308-122-580	NEW-P	89-14-090	308-177-115	NEW-E	89-14-009	308-190-140	NEW	89-14-092
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308-124A-025	AMD-E	89-07-004	308-177-120	NEW	89-03-035	308-195-030	AMD	89-09-006
308-124A-025	AMD	89-08-009	308-177-120	AMD-E	89-14-009	308-195-120	NEW-P	89-10-077
308-124A-460	AMD-P	89-05-057	308-177-120	AMD-P	89-14-104	308-195-120	NEW	89-14-092
308-124A-460	AMD-E	89-07-004	308-177-130	NEW	89-03-035	308-195-130	NEW-P	89-10-077
308-124A-460	AMD	89-08-009	308-177-130	AMD-E	89-14-009	308-195-130	NEW	89-14-092
308-124D-060	REP-P	89-07-091	308-177-130	AMD-P	89-14-104	308-195-140	NEW-P	89-10-077
308-124D-060	REP	89-11-032	308-177-140	NEW	89-03-035	308-195-140	NEW	89-14-092
308-124D-065	REP-P	89-07-091	308-177-150	NEW	89-03-035	308-195-150	NEW-P	89-10-077
308-124D-065	REP	89-11-032	308-177-150	REP-E	89-14-009	308-195-150	NEW	89-14-092
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308-124H-030	AMD	89-11-032	308-177-160	NEW-E	89-14-009	308-195-160	NEW	89-14-092
308-126A-030	AMD-P	89-15-058	308-177-160	NEW-P	89-14-104	308-195-170	NEW-P	89-10-077
308-128E-010	REP-P	89-04-001	308-177-180	NEW-E	89-14-009	308-195-170	NEW	89-14-092
308-128E-010	REP	89-07-077	308-177-180	NEW-P	89-14-104	308-195-180	NEW-P	89-10-077
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308-130-380	NEW-P	89-10-077	308-180-350	NEW-P	89-10-077	308-210-040	AMD	89-14-071
308-130-380	NEW	89-14-092	308-180-350	NEW	89-14-092	308-210-045	NEW-P	89-07-082
308-130-390	NEW-P	89-10-077	308-180-360	NEW-P	89-10-077	308-210-045	NEW	89-14-071
308-130-390	NEW	89-14-092	308-180-360	NEW	89-14-092	308-210-046	NEW-P	89-07-082
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419-64-050	NEW 89-04-050	456-08-005	REP-P 89-06-062	456-08-420	REP 89-10-055
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419-64-090	NEW 89-04-050	456-08-007	REP-P 89-06-062	456-08-510	REP 89-10-055
419-70-010	NEW-P 89-11-094	456-08-007	REP 89-10-055	456-08-520	REP-P 89-06-062
419-70-010	NEW 89-16-083	456-08-010	REP-P 89-06-062	456-08-520	REP 89-10-055
419-70-020	NEW-P 89-11-094	456-08-010	REP 89-10-055	456-08-532	REP-P 89-06-062
419-70-020	NEW 89-16-083	456-08-040	REP-P 89-06-062	456-08-532	REP 89-10-055
419-70-030	NEW-P 89-11-094	456-08-040	REP 89-10-055	456-08-535	REP-P 89-06-062
419-70-030	NEW 89-16-083	456-08-045	REP-P 89-06-062	456-08-535	REP 89-10-055
419-70-040	NEW-P 89-11-094	456-08-045	REP 89-10-055	456-08-540	REP-P 89-06-062
419-70-040	NEW 89-16-083	456-08-070	REP-P 89-06-062	456-08-540	REP 89-10-055
419-70-050	NEW-P 89-11-094	456-08-070	REP 89-10-055	456-08-600	REP-P 89-06-062
419-70-050	NEW 89-16-083	456-08-080	REP-P 89-06-062	456-08-600	REP 89-10-055
419-72	NEW-C 89-16-084	456-08-080	REP 89-10-055	456-08-610	REP-P 89-06-062
419-72-010	NEW-P 89-11-095	456-08-090	REP-P 89-06-062	456-08-610	REP 89-10-055
419-72-015	NEW-P 89-11-095	456-08-090	REP 89-10-055	456-08-620	REP-P 89-06-062
419-72-020	NEW-P 89-11-095	456-08-092	REP-P 89-06-062	456-08-620	REP 89-10-055
419-72-025	NEW-P 89-11-095	456-08-092	REP 89-10-055	456-08-630	REP-P 89-06-062
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419-72-040	NEW-P 89-11-095	456-08-160	REP-P 89-06-062	456-08-635	REP 89-10-055
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419-72-060	NEW-P 89-11-095	456-08-180	REP-P 89-06-062	456-08-650	REP 89-10-055
419-72-065	NEW-P 89-11-095	456-08-180	REP 89-10-055	456-08-660	REP-P 89-06-062
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434-04-090	NEW-P 89-15-036	456-08-280	REP-P 89-06-062	456-08-730	REP 89-10-055
440-44-023	AMD-P 89-12-076	456-08-280	REP 89-10-055	456-08-735	REP-P 89-06-062
440-44-023	AMD-E 89-14-061	456-08-290	REP-P 89-06-062	456-08-735	REP 89-10-055
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440-44-040	AMD 89-16-064	456-08-310	REP-P 89-06-062	456-09-010	NEW 89-10-056
440-44-041	NEW-P 89-12-076	456-08-310	REP 89-10-055	456-09-110	NEW-P 89-06-063
440-44-041	NEW-E 89-14-061	456-08-320	REP-P 89-06-062	456-09-110	NEW 89-10-056
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440-44-050	AMD-E 89-14-061	456-08-360	REP-P 89-06-062	456-09-150	NEW 89-10-056
440-44-050	AMD 89-16-064	456-08-360	REP 89-10-055	456-09-160	NEW-P 89-06-063
446-20-285	AMD-E 89-14-038	456-08-365	REP-P 89-06-062	456-09-160	NEW 89-10-056
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446-40-025	NEW-E 89-10-011	456-08-370	REP 89-10-055	456-09-210	NEW-P 89-06-063
446-40-025	NEW 89-10-015	456-08-380	REP-P 89-06-062	456-09-210	NEW 89-10-056



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456-12-050	NEW-P	89-06-065	458-20-105	AMD-P	89-13-043	460-46A-060	REP	89-07-042
456-12-050	NEW	89-10-058	458-20-105	AMD	89-16-080	460-46A-070	REP-P	89-03-044
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456-12-060	NEW	89-10-058	458-20-193B	AMD	89-06-015	460-46A-080	REP-P	89-03-044
456-12-070	NEW-P	89-06-065	458-20-221	AMD-C	89-02-052	460-46A-080	REP	89-07-042
456-12-070	NEW	89-10-058	458-20-221	AMD	89-06-016	460-46A-085	REP-P	89-03-044
456-12-080	NEW-P	89-06-065	458-20-250	AMD-P	89-13-087	460-46A-085	REP	89-07-042
456-12-080	NEW	89-10-058	458-20-250	AMD-E	89-13-089	460-46A-090	AMD-P	89-03-044
456-12-090	NEW-P	89-06-065	458-20-250	AMD	89-16-090	460-46A-090	AMD	89-07-042
456-12-090	NEW	89-10-058	458-20-252	AMD-C	89-04-042	460-46A-092	NEW-P	89-03-044
456-12-100	NEW-P	89-06-065	458-20-252	AMD-E	89-06-005	460-46A-092	NEW	89-07-042
456-12-100	NEW	89-10-058	458-20-252	AMD-W	89-07-084	460-46A-095	AMD-P	89-03-044
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456-12-110	NEW	89-10-058	458-20-252	AMD	89-10-051	460-46A-105	AMD-P	89-03-044
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456-12-130	NEW-P	89-06-065	458-20-252	AMD-E	89-13-088	460-46A-110	AMD	89-07-042
456-12-130	NEW	89-10-058	458-20-252	AMD	89-16-091	460-46A-120	REP-P	89-03-044
456-12-140	NEW-P	89-06-065	458-20-254	NEW-P	89-08-089	460-46A-120	REP	89-07-042
456-12-140	NEW	89-10-058	458-20-254	NEW	89-11-040	460-46A-145	AMD-P	89-03-044
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458-14-009	NEW-P	89-07-087	458-20-255	NEW-E	89-13-042	460-46A-150	AMD-P	89-03-044
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458-14-015	NEW-P	89-07-087	458-30-590	AMD	89-05-010	460-46A-155	AMD	89-07-042
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458-14-019	NEW-P	89-07-087	458-40-660	AMD	89-14-051	468-06-040	AMD-P	89-14-019
458-14-020	REP-P	89-07-087	458-40-670	AMD-P	89-10-061	468-06-050	AMD-P	89-14-019
458-14-021	NEW-P	89-07-087	458-40-670	AMD-E	89-14-050	468-10	REVIEW	89-06-038
458-14-023	NEW-P	89-07-087	458-40-670	AMD	89-14-051	468-12	REVIEW	89-06-038
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458-14-031	NEW-P	89-07-087	458-53-070	AMD-P	89-05-053	468-16-020	NEW-P	89-07-034
458-14-040	REP-P	89-07-087	458-53-070	AMD	89-09-021	468-16-020	NEW-W	89-08-064
458-14-042	NEW-P	89-07-087	458-53-100	AMD-P	89-05-053	468-16-020	NEW-P	89-16-086
458-14-045	REP-P	89-07-087	458-53-100	AMD	89-09-021	468-16-030	NEW-P	89-07-034
458-14-050	REP-P	89-07-087	458-53-110	AMD-P	89-05-053	468-16-030	NEW-W	89-08-064
458-14-052	REP-P	89-07-087	458-53-110	AMD	89-09-021	468-16-030	NEW-P	89-16-086
458-14-055	REP-P	89-07-087	458-53-150	AMD-P	89-05-053	468-16-040	NEW-P	89-07-034
458-14-060	REP-P	89-07-087	458-53-150	AMD	89-09-021	468-16-040	NEW-W	89-08-064
458-14-062	REP-P	89-07-087	458-53-163	AMD-P	89-05-053	468-16-040	NEW-P	89-16-086
458-14-065	REP-P	89-07-087	458-53-163	AMD	89-09-021	468-16-050	NEW-P	89-07-034
458-14-070	REP-P	89-07-087	460-10A-160	AMD-P	89-13-066	468-16-050	NEW-W	89-08-064
458-14-075	REP-P	89-07-087	460-20A-008	NEW-P	89-13-066	468-16-050	NEW-P	89-16-086
458-14-080	REP-P	89-07-087	460-20A-220	AMD-P	89-13-067	468-16-060	NEW-P	89-07-034
458-14-085	REP-P	89-07-087	460-20A-220	AMD-P	89-13-068	468-16-060	NEW-W	89-08-064
458-14-086	REP-P	89-07-087	460-20A-230	AMD-P	89-13-068	468-16-060	NEW-P	89-16-086
458-14-090	REP-P	89-07-087	460-20A-420	AMD-P	89-13-066	468-16-070	NEW-P	89-07-034
458-14-091	REP-P	89-07-087	460-20A-425	AMD-P	89-13-066	468-16-070	NEW-W	89-08-064
458-14-092	REP-P	89-07-087	460-24A-050	AMD-P	89-13-067	468-16-070	NEW-P	89-16-086
458-14-094	REP-P	89-07-087	460-33A-010	AMD-P	89-13-068	468-16-080	NEW-P	89-07-034
458-14-098	REP-P	89-07-087	460-33A-015	AMD-P	89-13-068	468-16-080	NEW-W	89-08-064
458-14-100	REP-P	89-07-087	460-33A-017	AMD-P	89-13-068	468-16-080	NEW-P	89-16-086
458-14-110	REP-P	89-07-087	460-33A-031	AMD-P	89-13-068	468-16-090	NEW-P	89-07-034
458-14-115	REP-P	89-07-087	460-33A-055	AMD-P	89-13-068	468-16-090	NEW-W	89-08-064
458-14-120	REP-P	89-07-087	460-33A-065	AMD-P	89-13-068	468-16-090	NEW-P	89-16-086
458-14-121	REP-P	89-07-087	460-33A-080	AMD-P	89-13-068	468-16-100	NEW-P	89-07-034
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458-14-125	REP-P	89-07-087	460-33A-105	AMD-P	89-13-068	468-16-100	NEW-P	89-16-086
458-14-126	REP-P	89-07-087	460-42A-020	REP-P	89-13-069	468-16-110	NEW-P	89-07-034
458-14-130	REP-P	89-07-087	460-42A-030	NEW-P	89-13-069	468-16-110	NEW-W	89-08-064
458-14-135	REP-P	89-07-087	460-42A-081	AMD-P	89-13-066	468-16-110	NEW-P	89-16-086
458-14-140	REP-P	89-07-087	460-44A-500	AMD-P	89-13-070	468-16-120	NEW-P	89-07-034
458-14-145	REP-P	89-07-087	460-44A-501	AMD-P	89-13-070	468-16-120	NEW-W	89-08-064
458-14-150	REP-P	89-07-087	460-44A-502	AMD-P	89-13-070	468-16-120	NEW-P	89-16-086
458-14-152	REP-P	89-07-087	460-44A-503	AMD-P	89-13-070	468-16-130	NEW-P	89-07-034
458-14-155	REP-P	89-07-087	460-44A-505	AMD-P	89-13-070	468-16-130	NEW-W	89-08-064
458-14-160	NEW-P	89-07-087	460-44A-506	AMD-P	89-13-070	468-16-130	NEW-P	89-16-086
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468-16-160	NEW-W 89-08-064	468-100-502	NEW-P 89-14-039	478-116-515	NEW-P 89-09-043
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468-30	REVIEW 89-08-061	468-300-040	AMD 89-14-052	479-112-008	NEW 89-14-005
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468-34-220	AMD 89-05-022	478-116-060	AMD-P 89-09-043	479-112-020	NEW-P 89-10-053
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468-38	REVIEW 89-13-027	478-116-110	AMD 89-15-023	479-113-011	NEW-E 89-10-054
468-46	REVIEW 89-13-027	478-116-210	AMD-P 89-09-043	479-113-011	NEW 89-14-005
468-54	REVIEW 89-08-061	478-116-210	AMD 89-15-023	479-113-029	NEW-P 89-10-053
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468-100-001	NEW-P 89-14-039	478-116-250	AMD-P 89-09-043	479-113-031	NEW-P 89-10-053
468-100-002	NEW-P 89-14-039	478-116-250	AMD 89-15-023	479-113-031	NEW-E 89-10-054
468-100-003	NEW-P 89-14-039	478-116-270	AMD-P 89-09-043	479-113-031	NEW 89-14-005
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468-100-306	NEW-P 89-14-039	478-116-500	AMD-P 89-09-043	479-116-045	NEW 89-14-005
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479-116-060	NEW-P	89-10-053	480-80-070	AMD-P	89-12-072	480-105-070	REP-P	89-08-111
479-116-060	NEW-E	89-10-054	480-80-070	AMD	89-15-042	480-105-070	REP-W	89-12-067
479-116-060	NEW	89-14-005	480-80-330	AMD-P	89-08-110	480-105-070	REP-P	89-12-068
479-120-020	NEW-P	89-10-053	480-80-330	AMD	89-12-038	480-105-070	REP	89-15-043
479-120-020	NEW-E	89-10-054	480-80-390	NEW-P	89-12-069	480-105-080	REP-P	89-08-111
479-120-020	NEW	89-14-005	480-90-031	AMD-P	89-09-070	480-105-080	REP-W	89-12-067
479-120-033	NEW-P	89-10-053	480-90-031	AMD-C	89-11-084	480-105-080	REP-P	89-12-068
479-120-033	NEW-E	89-10-054	480-90-031	AMD	89-12-070	480-105-080	REP	89-15-043
479-120-033	NEW	89-14-005	480-90-071	AMD-P	89-13-071	480-107-001	NEW-P	89-08-111
480-08-208	NEW-E	89-08-004	480-90-071	AMD-C	89-16-047	480-107-001	NEW-W	89-12-067
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480-08-208	REP-E	89-11-006	480-90-201	REP	89-08-030	480-107-001	NEW	89-15-043
480-08-208	NEW-C	89-11-085	480-90-206	REP-P	89-05-042	480-107-005	NEW-P	89-08-111
480-08-208	NEW-C	89-13-028	480-90-206	REP	89-08-030	480-107-005	NEW-W	89-12-067
480-08-208	NEW-P	89-15-041	480-90-216	REP-P	89-05-042	480-107-005	NEW-P	89-12-068
480-09	NEW-C	89-16-048	480-90-216	REP	89-08-030	480-107-005	NEW	89-15-043
480-09-010	NEW-P	89-13-090	480-90-221	REP-P	89-05-042	480-107-010	NEW-P	89-08-111
480-09-100	NEW-P	89-13-090	480-90-221	REP	89-08-030	480-107-010	NEW-W	89-12-067
480-09-110	NEW-P	89-13-090	480-90-226	REP-P	89-05-042	480-107-010	NEW-P	89-12-068
480-09-120	NEW-P	89-13-090	480-90-226	REP	89-08-030	480-107-010	NEW	89-15-043
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480-09-140	NEW-P	89-13-090	480-90-231	REP	89-08-030	480-107-020	NEW-W	89-12-067
480-09-150	NEW-P	89-13-090	480-90-241	REP-P	89-05-042	480-107-020	NEW-P	89-12-068
480-09-200	NEW-P	89-13-090	480-90-241	REP	89-08-030	480-107-020	NEW	89-15-043
480-09-210	NEW-P	89-13-090	480-90-246	REP-P	89-05-042	480-107-030	NEW-P	89-08-111
480-09-220	NEW-P	89-13-090	480-90-246	REP	89-08-030	480-107-030	NEW-W	89-12-067
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480-09-330	NEW-P	89-13-090	480-90-256	REP	89-08-030	480-107-040	NEW-W	89-12-067
480-09-340	NEW-P	89-13-090	480-90-261	REP-P	89-05-042	480-107-040	NEW-P	89-12-068
480-09-400	NEW-P	89-13-090	480-90-261	REP	89-08-030	480-107-040	NEW	89-15-043
480-09-410	NEW-P	89-13-090	480-90-266	REP-P	89-05-042	480-107-050	NEW-P	89-08-111
480-09-420	NEW-P	89-13-090	480-90-266	REP	89-08-030	480-107-050	NEW-W	89-12-067
480-09-425	NEW-P	89-13-090	480-90-271	REP-P	89-05-042	480-107-050	NEW-P	89-12-068
480-09-430	NEW-P	89-13-090	480-90-271	REP	89-08-030	480-107-050	NEW	89-15-043
480-09-440	NEW-P	89-13-090	480-90-276	REP-P	89-05-042	480-107-060	NEW-P	89-08-111
480-09-450	NEW-P	89-13-090	480-90-276	REP	89-08-030	480-107-060	NEW-W	89-12-067
480-09-460	NEW-P	89-13-090	480-90-281	REP-P	89-05-042	480-107-060	NEW-P	89-12-068
480-09-465	NEW-P	89-13-090	480-90-281	REP	89-08-030	480-107-060	NEW	89-15-043
480-09-470	NEW-P	89-13-090	480-90-286	REP-P	89-05-042	480-107-070	NEW-P	89-08-111
480-09-475	NEW-P	89-13-090	480-90-286	REP	89-08-030	480-107-070	NEW-W	89-12-067
480-09-480	NEW-P	89-13-090	480-100-031	AMD-P	89-09-070	480-107-070	NEW-P	89-12-068
480-09-500	NEW-P	89-13-090	480-100-031	AMD-C	89-11-084	480-107-070	NEW	89-15-043
480-09-510	NEW-P	89-13-090	480-100-031	AMD	89-12-070	480-107-080	NEW-P	89-08-111
480-09-600	NEW-P	89-13-090	480-105-001	REP-P	89-08-111	480-107-080	NEW-W	89-12-067
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480-09-620	NEW-P	89-13-090	480-105-001	REP-P	89-12-068	480-107-080	NEW	89-15-043
480-09-700	NEW-P	89-13-090	480-105-001	REP	89-15-043	480-107-090	NEW-P	89-08-111
480-09-705	NEW-P	89-13-090	480-105-005	REP-P	89-08-111	480-107-090	NEW-W	89-12-067
480-09-710	NEW-P	89-13-090	480-105-005	REP-W	89-12-067	480-107-090	NEW-P	89-12-068
480-09-720	NEW-P	89-13-090	480-105-005	REP-P	89-12-068	480-107-090	NEW	89-15-043
480-09-730	NEW-P	89-13-090	480-105-005	REP	89-15-043	480-107-100	NEW-P	89-08-111
480-09-735	NEW-P	89-13-090	480-105-010	REP-P	89-08-111	480-107-100	NEW-W	89-12-067
480-09-736	NEW-P	89-13-090	480-105-010	REP-W	89-12-067	480-107-100	NEW-P	89-12-068
480-09-740	NEW-P	89-13-090	480-105-010	REP-P	89-12-068	480-107-100	NEW	89-15-043
480-09-745	NEW-P	89-13-090	480-105-010	REP	89-15-043	480-107-110	NEW-P	89-08-111
480-09-750	NEW-P	89-13-090	480-105-020	REP-P	89-08-111	480-107-110	NEW-W	89-12-067
480-09-760	NEW-P	89-13-090	480-105-020	REP-W	89-12-067	480-107-110	NEW-P	89-12-068
480-09-770	NEW-P	89-13-090	480-105-020	REP-P	89-12-068	480-107-110	NEW	89-15-043
480-09-780	NEW-P	89-13-090	480-105-020	REP	89-15-043	480-107-120	NEW-P	89-08-111
480-09-800	NEW-P	89-13-090	480-105-030	REP-P	89-08-111	480-107-120	NEW-W	89-12-067
480-09-810	NEW-P	89-13-090	480-105-030	REP-W	89-12-067	480-107-120	NEW-P	89-12-068
480-09-815	NEW-P	89-13-090	480-105-030	REP-P	89-12-068	480-107-120	NEW	89-15-043
480-09-820	NEW-P	89-13-090	480-105-030	REP	89-15-043	480-107-130	NEW-P	89-08-111
480-09-830	NEW-P	89-13-090	480-105-040	REP-P	89-08-111	480-107-130	NEW-W	89-12-067
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480-12-190	AMD	89-06-021	480-105-040	REP-P	89-12-068	480-107-130	NEW	89-15-043
480-12-195	AMD	89-06-021	480-105-040	REP	89-15-043	480-107-140	NEW-P	89-08-111
480-12-285	AMD	89-04-045	480-105-050	REP-P	89-08-111	480-107-140	NEW-W	89-12-067
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480-12-445	AMD	89-09-071	480-105-050	REP-P	89-12-068	480-107-140	NEW	89-15-043
480-30-095	AMD	89-06-021	480-105-050	REP	89-15-043	480-107-150	NEW-P	89-08-111
480-30-100	AMD	89-06-021	480-105-060	REP-P	89-08-111	480-107-150	NEW-W	89-12-067
480-70-330	AMD	89-06-021	480-105-060	REP-W	89-12-067	480-107-150	NEW-P	89-12-068

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480-107-160	NEW-W	89-12-067	504-25-105	NEW	89-11-065
480-107-160	NEW-P	89-12-068	504-25-110	NEW-P	89-05-036
480-107-160	NEW	89-15-043	504-25-110	NEW	89-11-065
480-107-170	NEW-P	89-08-111	504-25-115	NEW-P	89-05-036
480-107-170	NEW-W	89-12-067	504-25-115	NEW	89-11-065
480-107-170	NEW-P	89-12-068	504-25-120	NEW-P	89-05-036
480-107-170	NEW	89-15-043	504-25-120	NEW	89-11-065
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480-120-027	AMD-P	89-08-110	504-25-125	NEW	89-11-065
480-120-027	AMD	89-12-038	504-25-130	NEW-P	89-05-036
480-120-031	AMD-P	89-15-050	504-25-130	NEW	89-11-065
480-120-041	AMD	89-04-044	504-25-135	NEW-P	89-05-036
480-120-106	AMD	89-04-044	504-25-135	NEW	89-11-065
480-120-138	AMD-P	89-16-108	504-25-140	NEW-P	89-05-036
480-120-141	NEW	89-04-044	504-25-140	NEW	89-11-065
480-122-060	AMD-P	89-08-024	504-25-200	NEW-P	89-05-036
480-122-060	AMD-E	89-08-025	504-25-200	NEW	89-11-065
480-122-060	AMD	89-11-020	504-25-205	NEW-P	89-05-036
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504-20-005	REP	89-11-065	504-25-210	NEW-P	89-05-036
504-20-010	REP-P	89-05-036	504-25-210	NEW	89-11-065
504-20-010	REP	89-11-065	504-25-215	NEW-P	89-05-036
504-20-020	REP-P	89-05-036	504-25-215	NEW	89-11-065
504-20-020	REP	89-11-065	504-25-220	NEW-P	89-05-036
504-20-025	REP-P	89-05-036	504-25-220	NEW	89-11-065
504-20-025	REP	89-11-065	504-25-225	NEW-P	89-05-036
504-20-030	REP-P	89-05-036	504-25-225	NEW	89-11-065
504-20-030	REP	89-11-065	504-25-230	NEW-P	89-05-036
504-20-040	REP-P	89-05-036	504-25-230	NEW	89-11-065
504-20-040	REP	89-11-065	504-25-235	NEW-P	89-05-036
504-21-060	REP-P	89-05-036	504-25-235	NEW	89-11-065
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504-24-010	REP-P	89-05-036	504-25-240	NEW	89-11-065
504-24-010	REP	89-11-065	504-25-245	NEW-P	89-05-036
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504-25-005	NEW	89-11-065	516-22-035	NEW	89-11-039
504-25-010	NEW-P	89-05-036	516-22-040	NEW-P	89-05-049
504-25-010	NEW	89-11-065	516-22-040	NEW	89-11-039
504-25-015	NEW-P	89-05-036	516-22-138	AMD-P	89-05-049
504-25-015	NEW	89-11-065	516-22-138	AMD	89-11-039
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504-25-030	NEW-P	89-05-036	516-22-250	REP-P	89-05-049
504-25-030	NEW	89-11-065	516-22-250	REP	89-11-039
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504-25-035	NEW	89-11-065	516-28-010	NEW-P	89-05-049
504-25-040	NEW-P	89-05-036	516-28-010	NEW	89-11-039
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504-25-050	NEW-P	89-05-036	516-28-020	NEW	89-11-039
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504-25-055	NEW-P	89-05-036	516-28-025	NEW	89-11-039
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504-25-060	NEW-P	89-05-036	516-28-030	NEW	89-11-039
504-25-060	NEW	89-11-065	516-28-035	NEW-P	89-05-049
504-25-065	NEW-P	89-05-036	516-28-035	NEW	89-11-039
504-25-065	NEW	89-11-065	516-28-040	NEW-P	89-05-049
504-25-070	NEW-P	89-05-036	516-28-040	NEW	89-11-039
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504-25-075	NEW-P	89-05-036	516-28-045	NEW	89-11-039
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504-25-080	NEW-P	89-05-036	516-28-050	NEW	89-11-039
504-25-080	NEW	89-11-065	516-28-060	NEW-P	89-05-049
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