Register State Washington

MARCH 7, 1990

OLYMPIA, WASHINGTON

ISSUE 90-05



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CITATION

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

PUBLIC INSPECTION OF DOCUMENTS

A copy of each document filed with the code reviser's office, pursuant to chapter 34.05 RCW, is available for public inspection during normal office hours. The code reviser's office is located on the ground floor of the Legislative Building in Olympia. Office hours are from 8 a.m. to 5 p.m. Monday through Friday, except legal holidays. Telephone inquiries concerning material in the Register or the Washington Administrative Code (WAC) may be made by calling (206) 753-7470 (SCAN 234-7470).

REPUBLICATION OF OFFICIAL DOCUMENTS

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

CERTIFICATE

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

DENNIS W. COOPER Code Reviser

STATE MAXIMUM INTEREST RATE

The maximum allowable interest rate applicable for the month of March 1990 pursuant to RCW 19.52.020 is twelve point one five percent (12.15%).

NOTICE: FEDERAL LAW PERMITS FEDERALLY INSURED FINANCIAL INSTITUTIONS IN THE STATE TO CHARGE THE HIGH-EST RATE OF INTEREST THAT MAY BE CHARGED BY ANY FINANCIAL INSTITUTION IN THE STATE. THE MAXI-MUM 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 1990 pursuant to RCW 63.14.130(1)(a) is fourteen and one-half percent (14.50%).

The maximum allowable retail installment contract service charge for the purchase of a motor vehicle pursuant to RCW 63.14.130(2)(a) is thirteen point seven five percent (13.75%) for the first calendar quarter of 1990.

The maximum allowable retail installment contract service charge for the purchase of a vessel pursuant to RCW 63.14.130(3)(a) is fourteen percent (14.00%) for the first calendar quarter of 1990.

WASHINGTON STATE REGISTER

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

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

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

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

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STYLE AND FORMAT OF THE WASHINGTON STATE REGISTER

1. ARRANGEMENT OF THE REGISTER

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 ¹			Distribution Date	First Agency <u>Hearing Date³</u>
			OTS ² or p. max.		
For			on-OTS	Count 20	For hearing
Inclusion in—	File	no later than—		days from—	on or after
89–14	Jun 7	Jun 21	Jul 5	Jul 19	Aug 8
89-15	Jun 21	Jul 5	Jul 19	Aug 2	Aug 22
89-16	Jul 5	Jul 19	Aug 2	Aug 16	Sep 5
89–17	Jul 26	Aug 9	Aug 23	Sep 6	Sep 26
89–18	Aug 9	Aug 23	Sep 6	Sep 20	Oct 10
89–19	Aug 23	Sep 6	Sep 20	Oct 4	Oct 24
89–20	Sep 6	Sep 20	Oct 4	Oct 18	Nov 7
89–21	Sep 20	Oct 4	Oct 18	Nov 1	Nov 21
89–22	Oct 4	Oct 18	Nov 1	Nov 15	Dec 5
89-23	Oct 25	Nov 8	Nov 22	Dec 6	Dec 26
89–24	Nov 8	Nov 22	Dec 6	Dec 20	Jan 9, 1990
90–01	Nov 22	Dec 6	Dec 20, 19	989 Jan 3, 1990	Jan 23
90–02	Dec 6	Dec 20, 1989	Jan 3, 199		Feb 6
90–03	Dec 27, 198	39 Jan 10, 1990	Jan 24	Feb 7	Feb 27
90–04	Jan 10	Jan 24	Feb 7	Feb 21	Mar 13
9005	Jan 24	Feb 7	Feb 21	Mar 7	Mar 27
90–06	Feb 7	Feb 21	Mar 7	Mar 21	Apr 10
90–07	Feb 21	Mar 7	Mar 21	Apr 4	Apr 24
90–08	Mar 7	Mar 21	Apr 4	Apr 18	May 8
90–09	Mar 21	Apr 4	Apr 18	May 2	May 22
9010	Apr 4	Apr 18	May 2	May 16	Jun 5
9011	Apr 25	May 9	May 23	Jun 6	Jun 26
9012	May 9	May 23	Jun 6	Jun 20	Jul 10
9013	May 24	Jun 7	Jun 21	Jul 5	Jul 25
9014	Jun 7	Jun 21	Jul 5	Jul 18	Aug 7
90– 15	Jun 20	Jul 5	Jul 18	Aug 1	Aug 21
90–16	Jul 5	Jul 18	Aug 1	Aug 15	Sep 4
9017	Jul 25	Aug 8	Aug 22	Sep 5	Sep 25
9018	Aug 8	Aug 22	Sep 5	Sep 19	Oct 9
9019	Aug 22	Sep 5	Sep 19	Oct 3	Oct 23
9020	Sep 5	Sep 19	Oct 3	Oct 17	Nov 6
9021	Sep 26	Oct 10	Oct 24	Nov 7	Nov 27
90-22	Oct 10	Oct 24	Nov 7	Nov 21	Dec 11
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

¹All 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.

²A 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.

³At 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 90-05-001 PERMANENT RULES **BOARD OF MEDICAL EXAMINERS**

[Order 031—Filed February 8, 1990, 12:08 p.m.]

Date of Adoption: January 26, 1990.

Purpose: To set deadlines for medical licensure examination applications.

Citation of Existing Rules Affected by this Order: WAC Amending 308-52-100 Application for examination.

Statutory Authority for Adoption: RCW 18.71.017. Other Authority: RCW 18.72.070.

Pursuant to notice filed as WSR 90-01-103 on December 20, 1989.

Effective Date of Rule: Thirty-one days after filing.

February 7, 1990 J. M. Garrison Jr. Chairman

AMENDATORY SECTION (Amending Order PL 473, filed 7/18/84)

WAC 308-52-100 APPLICATIONS FOR EX-AMINATION. All applications for medical license by examination in the state of Washington shall be complete and on file in the office of the board of medical examiners, professional licensing services division, department of ((licensing)) health no later than ((August)) September 1 or ((February)) March 1.

WSR 90-05-002 PROPOSED RULES

DEPARTMENT OF LABOR AND INDUSTRIES

[Order 89-19-Filed February 9, 1990, 9:34 a.m.]

Continuance of WSR 90-01-148.

Title of Rule: Chapter 296-306 WAC, Safety standards for agriculture.

Purpose: The purpose of this continuance is to delay permanent adoption to review public comment received at public hearings and await the outcome of current legislative issues which may affect these proposed rules.

Other Identifying Information: WAC 296-306-400, 296-306-40003 and 296-306-40005.

Date of Intended Adoption: May 9, 1990.

February 9, 1990 Joseph A. Dear Director

WSR 90-05-003 PERMANENT RULES DEPARTMENT OF LICENSING

[Filed February 9, 1990, 9:53 a.m]

Date of Adoption: February 6, 1990.

Purpose: To revise the examination requirements for investment adviser and investment adviser salesperson registration.

Citation of Existing Rules Affected by this Order: Amending WAC 460-24A-050.

Statutory Authority for Adoption: RCW 21.20.070 and 21.20.450.

Pursuant to notice filed as WSR 90-01-061 on December 18, 1989.

Changes Other than Editing from Proposed to Adopted Version: Extends period in which series 63 examination may be substituted for series 65. Eliminates limitation on substitution of examination: All applicants may substitute.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The director finds these rules are necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of chapter 21.20 RCW.

Effective Date of Rule: Thirty-one days after filing.

February 6, 1990 Mary Faulk Director

AMENDATORY SECTION (Amending Order SDO-123-89, filed 8/17/89, effective 9/17/89)

WAC 460-24A-050 INVESTMENT ADVISER AND INVESTMENT ADVISER SALESPERSON (REPRESENTATIVE) REGISTRATION AND EX-AMINATIONS. (1) In order ((to be licensed in this state as an investment adviser the individual applicant, the officer if the applicant is a corporation or a general partner if the applicant is a partnership shall complete the uniform investment adviser law examination with a score of seventy percent or better and complete one of the following with a score of seventy percent or better:

- (a) NASD general securities principal examination (Series 24) or
- (b) NASD investment company products/variable contracts principal examination (Series 26).

The applicant must also complete a Form ADV for the state of Washington.

- (2) An individual applicant, an officer if the applicant is a corporation or a general partner if the applicant is a partnership any one of which has completed the uniform investment adviser law examination with a score of seventy percent or better and which holds one of the following designations, shall not be required to complete the exams designated in subsection (1)(a) and (b) of this section in order to apply for an investment advisers license:
 - (a) Chartered investment counselor, or
 - (b) Chartered financial analyst, or
- (c) Certified financial planner which designation is completed on or after the effective date of these rules.

The applicant must also complete a Form ADV for the state of Washington)) for an applicant to become licensed in this state as an investment adviser the individual applicant, an officer of the applicant if the applicant is a corporation, or a general partner of the applicant if the applicant is a partnership, shall:

(a) Pass the uniform investment adviser law examina-

tion (series 65); and

- (b)(i) Pass the NASD general securities principal examination (series 24); or
- (ii) Pass the NASD investment company products/variable contracts principal examination (series 26); or
 - (iii) Hold one of the following designations:
 - (A) Chartered investment counselor;
 - (B) Chartered financial analyst;
 - (C) Certified financial planner;
 - (D) Chartered financial consultant;
 - (E) Accredited personal financial specialist; and
 - (c) File a completed Form ADV.
- (((3))) (2) If the individual officer who takes the examination on behalf of a corporate applicant or the individual general partner who takes the examination on behalf of a partnership ceases to be an officer or general partner, then the investment adviser must notify the securities division of a substitute officer or general partner who has passed the examinations required in subsection (1) of this section within two months in order to maintain the investment adviser license.
- (((4))) (3) In order to ((be)) become licensed in this state as an investment adviser salesperson (representative) ((the individual applicant shall complete the uniform investment adviser law examination with a score of seventy percent or better and complete one of the following with a score of seventy percent or better unless subsection (6) of this section applies:
- (a) NASD general securities representative examination (Series 7), or
- (b) NASD investment company products/variable contracts limited representative qualifications examination (Series 6).

The applicant must also complete the Form U-4 for the state of Washington.

- (5) An individual who has completed the uniform investment adviser law examination with a score of seventy percent or better and who holds one of the following designations shall not be required to complete the exams designated in subsection (4) of this section in order to apply for an investment adviser salesperson (representative) license.
 - (a) Chartered investment counselor
 - (b) Chartered financial analyst
- (c) Certified financial planner whose designation is completed on or after the effective date of these rules.

The applicant must also complete the Form U-4 for the state of Washington)), an applicant shall:

- (a) Pass the uniform investment adviser law examination (series 65); and
- (b)(i) Pass the NASD general securities representative examination (series 7); or
- (ii) Pass the NASD investment company products/ variable contracts limited representative qualifications examination (series 6); or
 - (iii) Hold one of the following designations:
 - (A) Chartered investment counselor;
 - (B) Chartered financial analyst;
 - (C) Certified financial planner;
 - (D) Chartered financial consultant;
 - (E) Accredited personal financial specialist; and

(c) File a completed Form U-4.

(((6)) (4) The administrator may waive the testing requirements in subsection (((5))) (3) of this section for an investment adviser representative whose activities will be limited to supervising the firm's investment advisory activities in Washington, provided that the applicant has been employed for five years preceding the filing of the application in a supervisory capacity, or as a portfolio manager, by an investment adviser registered under the Investment Advisers Act of 1940 for at least five years and the investment adviser has been engaged in rendering "investment supervisory services" as defined in section 202 (a)(13) of the Investment Advisers Act of 1940.

(((7))) (5) Any individual who has been retained or employed by an investment adviser to solicit clients or offer the services of the investment adviser or manage the accounts of said clients any time during the two years prior to application and who has previously passed the required examination in subsection (1) or $((\frac{4}{4}))$ (3) of this section or the Washington state investment advisers examination shall not be required to retake the examination(s) to be eligible to be relicensed as an investment adviser salesperson (representative) upon application: PROVIDED, That until January 1, 1992, the uniform securities agent state law examination (series 63) may be substituted for the uniform investment adviser law examination (series 65) for the purpose of fulfilling the requirements of subsections (1) and (3) of this section.

WSR 90-05-004 PERMANENT RULES CENTRALIA COLLEGE

[Filed February 9, 1990, 10:02 a.m.]

Date of Adoption: February 8, 1990.

Purpose: To be in compliance with the Family Educational Rights and Privacy Act (20 U.S.C. Sec. 1232g) and its implementing regulation (34 C.F.R. Sec. 99).

Citation of Existing Rules Affected by this Order: Repealing WAC 132L-20-090 Student records.

Statutory Authority for Adoption: RCW 28B.50.140(13).

Pursuant to notice filed as WSR 89-24-092 on December 6, 1989.

Effective Date of Rule: Thirty-one days after filing.
February 8, 1990

Jack R. Kalmbach Dean of Administration

CENTRALIA COLLEGE, DISTRICT 12 CHAPTER 132L-20-090 STUDENT RECORDS POLICY

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 132L-20-090 Student Records Policy.

CENTRALIA COLLEGE, DISTRICT 12 CHAPTER 132L-280 STUDENT RECORDS POLICY

NEW SECTION

WAC 132L-280-010 GENERAL POLICY. Centralia College implements the policy contained in this chapter in compliance with the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g) and its implementing regulation (34 C.F.R. § 99). Briefly, Centralia College is required to provide students with access to their own education records, to permit students to challenge their records on the grounds that they are inaccurate, misleading, or otherwise in violation of the student's privacy or other right, to obtain written consent before releasing certain information and to notify students of these rights.

NEW SECTION

- WAC 132L-280-015 DEFINITIONS. For the purposes of this policy, the following definitions of terms apply: (1) "Student" means any individual who is or has been in attendance at Centralia College and for whom the college maintains education records.
- (2) "Education records" are defined as those records, files and documents (in handwriting, print, tapes, film, microfiche or other medium) maintained by Centralia College which contain information directly related to the individual student. Education records include only the following:
- (a) Records pertaining to admission, advisement, registration, grading, and progress toward a degree that are maintained by the registrar.
- (b) Testing information used for advisement purposes by the counseling center.
- (c) Information concerning payment of fees as maintained by the registrar.
- (d) Financial aid information as collected by the financial aid office.
- (e) Information regarding students participating in student government or athletics that is maintained by the student programs office or the athletics office.
- (3) "Directory Information" means the student's name, address, telephone number, date and place of birth, major field of study, eligibility for and participation in officially recognized activities, organizations, and sports, weight and height of members of athletic teams, dates of attendance, honor roll, degrees and awards received, and the most recent previous educational agency or institution attended by the student. Directory information may be disclosed at the discretion of the college and without the consent of the student unless he or she elects to prevent disclosure as provided for in WAC 132L-28-070.
- (4) "Written consent" means a written authorization for disclosure of student education records which is:
 - (a) signed,
 - (b) dated,
 - (c) which specifies the records to be disclosed,
 - (d) which specifies to whom disclosure is authorized.

(5) "Personally identifiable" means data or information which includes: the name of the student, the student's parent(s), or other family members; a personal identifier such as the student's social security number or student number; a list of personal characteristics which would make the student's identity easily traceable.

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 132L-280-020 ANNUAL NOTIFICA-TION OF RIGHTS. Centralia College shall notify students of their rights under the Family Educational Rights and Privacy Act of 1974 by publication in the college catalog and to new students during the registration process. The college shall make available upon request a copy of the policy governing release of student records. In addition, the college shall post at conspicuous places on the campus information regarding the existence of this policy and of the availability of copies.

[NEW SECTION]

WAC 132L-280-030 PROCEDURE TO IN-SPECT EDUCATION RECORDS. (1) Students may inspect and review their education records upon request to the appropriate college official as designated in WAC 132L-280-110.

- (2) Students must submit to the appropriate college official a written request which identifies as precisely as possible the record or records he or she wishes to inspect.
- (3) The appropriate college official will make the needed arrangements for access as promptly as possible and notify the student of the time and place where the records may be inspected. Access must be given in 45 days or less from the receipt of the request.

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

NEW SECTION

WAC 132L-280-040 DISCLOSURE OF EDU-CATION RECORDS. (1) Disclosure of Education Records. In addition to "directory information" the college may, at its discretion, make disclosures from education records of students to the following listed parties:

- (a) College officials including college administrative and clerical staff, faculty, and students where officially elected or appointed to the Associated Students of Centralia College senate or employed by the college. Access or release of records to the above is permissible only when the information is required for advisement, counseling, record keeping, reporting, or other legitimate educational interest consonant with their specific duties and responsibilities.
- (b) To officials of another school in which the student seeks or intends to enroll.
- (c) To authorized federal, state, or local officials as required by law.
- (d) In connection with financial aid for which the student has applied or received.

- (e) To appropriate parties in a health or safety emergency.
- (f) To accrediting organizations to carry out their functions.
- (g) To parents of an eligible student who claim the student as a dependent for income tax purposes.
- (h) To comply with a judicial order or a lawfully issued subpoena.
- (2) The college shall not permit access to or the release of education records or personally-identifiable information contained therein, other than "directory information," without the written consent of the student, to any party other than the above.
- (3) Education records released to third parties shall be accompanied by a statement indicating that the information cannot be subsequently released in a personally identifiable form to other parties without obtaining the consent of the student. The college is not precluded from permitting third party disclosures to other parties listed in (a) through (h) of this subsection.

NEW SECTION

WAC 132L-280-050 LIMITS ON RIGHTS TO REVIEW AND INSPECT AND OBTAIN COPIES OF EDUCATION RECORDS. (1) When a record contains information about more than one student, the student may inspect and review only the records which relate to him.

- (2) Centralia College reserves the right to refuse to permit a student to inspect the following records:
 - (a) The financial statement of the student's parents.
- (b) Letters and statements of recommendation for which the student has waived his or her right of access, or which were placed in file before January 1, 1975.
- (c) Records connected with an application to attend Centralia College if that application was denied.
- (d) Those records which are excluded from the Federal Rights and Privacy Act definition of education records.
- (3) Centralia College reserves the right to deny transcripts or copies of records not required to be made available by the Federal Educational Rights and Privacy Act in any of the following situations:
- (a) The student has an unpaid financial obligation to the college.
- (b) There is an unresolved disciplinary action against the student.

NEW SECTION

- WAC 132L-280-060 RECORD OF REQUEST AND DISCLOSURES. (1) The college shall maintain a record of requests for and disclosures of personally identifiable information in the education records of each student. The record maintained under this section shall be available for inspection and review as provided in WAC 132L-280-050.
- (2) The college shall maintain the record with the education records of the student as long as the records are maintained.
 - (3) The record must include:

- (a) The names of parties who have received personally-identifiable information,
- (b) The legitimate interest the parties had in requesting or obtaining the information,
- (c) The names and legitimate interests of additional parties to which the reviewing educational agency or institution may disclose or redisclose the information.
- (4) The following parties may inspect the record of requests and disclosures relating to a student:
 - (a) The student,
- (b) The college officials who are responsible for the custody of the records,
- (c) Persons authorized to audit the record keeping procedures of the college.
- (5) The college is not required to maintain a record if the request was from, or the disclosure was to:
 - (a) The student,
 - (b) A school official,
 - (c) A party with written consent from the student, or
 - (d) A party seeking directory information.

NEW SECTION

WAC 132L-280-070 DISCLOSURE OF DIRECTORY INFORMATION. Directory information may be disclosed at the discretion of the college and without the consent of the student unless the student elects to prevent disclosure by filing a written request with the registrar to prevent disclosure. The request shall continue in effect according to its terms unless revoked in writing by the student.

NEW SECTION

WAC 132L-280-080 REQUESTS FOR COR-RECTIONS, HEARINGS, ADDING STATEMENTS TO EDUCATION RECORDS. Students have the right to request to have records corrected that they believe are inaccurate, misleading, or in violation of their privacy rights. Following are the procedures for the correction of records:

- (1) A student must submit a written request to amend his or her education record to the appropriate college official responsible for the custody of the record as designated in WAC 132L-280-110. The request must identify the part of the record he/she wants changed and specify why the record is believed to be inaccurate, misleading or in violation of his or her privacy or other rights.
- (2) A student whose request for amendment of his or her education record has been denied may request a hearing by submitting a written request to the Dean of Students within 10 days following the denial. The written request must be signed by the student and shall indicate the reasons why the records should be amended. The Dean of Students shall notify the student of the hearing within 30 days after receipt of a properly filed request. In no case will the notification be less than 10 days in advance of the date, time and place of the hearing.
- (3) The hearing shall be a brief adjudicative proceeding as provided in RCW 34.05.482 and RCW 34.05.485 through 34.05.494 and shall be conducted by the student

services or other appropriate committee (the chair of the committee shall be an official of the college who does not have a direct interest in the outcome of the hearing). At the hearing, the student shall be afforded a full and fair opportunity to present evidence relevant to the issues raised in the original request to amend the student's education records. The student may be assisted by one or more individuals, including an attorney.

- (4) The student services or other appropriate committee will prepare a written decision, within 30 days after the conclusion of the hearing, based solely on the evidence presented at the hearing. The decision will include a summary of the evidence presented and the reasons for the decision. A copy of the decision shall be made available to the student.
- (5) If the student services or other appropriate committee decides the information is inaccurate, misleading, or in violation of the student's right of privacy, the custodian of the record will amend the record and notify the student, in writing, that the record has been amended.
- (6) If the student services or other appropriate committee decides that the challenged information is not inaccurate, misleading, or in violation of the student's right of privacy, the committee will notify the student in writing that the student has a right to place in the record a rebuttal statement commenting on the challenged information and/or a statement setting forth reasons for disagreeing with the decision.
- (7) The student's rebuttal statement will be maintained as part of the student's education records as long as the contested portion is maintained. If the contested portion of the education record is disclosed, the statement will also be disclosed.

NEW SECTION

WAC 132L-280-090 FEES FOR COPIES. Copies of student records shall be made at the expense of the requesting party at actual cost for copying as posted at the Admissions/Records Office.

NEW SECTION

WAC 132L-280-100 WAIVER. A student may waive any of his or her rights under this chapter by submitting a written, signed, and dated waiver to the office of the registrar. Such a waiver shall be specific as to the records and persons or institutions covered. A waiver shall continue in effect according to its terms unless revoked in writing which is signed and dated.

NEW SECTION

WAC 132L-280-110 TYPE AND LOCATION OF EDUCATION RECORDS.

Types	Location	Custodian
Admission Records, Cumulative Academic Records, Testing Records, Registration	Student Services Center	Director of Admissions & Records
and Payment of Tuition Records Student Government Participation Records	Student Services Center	Director of Student Programs

Financial Aid Student Services Center Director of Financial Records, Student Employment Aid Records Athletic Parti- Gym Athletic Director cipation Records

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

NEW SECTION

WAC 132L-280-120 REMEDY FOR STU-DENTS PROTECTED BY THIS ACT. A student may file a written complaint with the U.S. Department of Education regarding an alleged violation of the Federal Education Rights and Privacy Act. The address is:

Family Policy and Regulations Office U.S. Department of Education Washington, D.C. 20202

WSR 90-05-005 PERMANENT RULES CENTRALIA COLLEGE

[Filed February 9, 1990, 10:03 a.m.]

Date of Adoption: February 8, 1990.

Purpose: To comply with new APA requirements. Statutory Authority for Adoption: RCW 28B.50.140(13), 34.05.220 and 34.05.250.

Pursuant to notice filed as WSR 89-24-093 on December 6, 1989.

Effective Date of Rule: Thirty-one days after filing.

February 8, 1990

Jack R. Kalmbach

Dean of Administration

CENTRALIA COLLEGE, DISTRICT 12 CHAPTER 132L-133 ORGANIZATION

NEW SECTION

WAC 132L-133-020 ORGANIZATION—OP-ERATION—INFORMATION. (a) Organization. Centralia College is established in Title 28B RCW as a public institution of higher education. The institution is governed by a five-member board of trustees, appointed by the governor. The board employs a president, who acts as the chief executive officer of the institution. The president establishes the structure of the administration.

(b) Operation. The administrative office is located at the following address: Administration Building, Corner of Walnut and Rock Streets. The mailing address is 600 West Locust, Centralia, WA 98531.

The office hours are 8 a.m. to 5 p.m., Monday through Friday, except legal holidays. Educational operations are also located at the following addresses: 600 West Locust, Centralia; East County Center, Morton; and Tenino.

(c) Additional and detailed information concerning the educational offerings may be obtained from the catalog, copies of which are available at the following address: Admissions Office, 600 West Locust, Centralia, WA 98531.

CENTRALIA COLLEGE CHAPTER 132L-108 PRACTICE AND PROCEDURE

NEW SECTION

WAC 132L-108-010 ADOPTION OF MODEL RULES OF PROCEDURE. The model rules of procedure adopted by the chief administrative law judge pursuant to RCW 34.05.250, as now or hereafter amended, are hereby adopted for use at this institution. Those rules may be found at Chapter 10-08 Washington Administrative Code. Other procedural rules adopted in this title are supplementary to the model rules of procedure. In the case of a conflict between the model rules of procedure and procedural rules adopted in this title, the procedural rules adopted by this institution shall govern. Rules adopted at this institution prior to July 1, 1989, remain in full force and effect unless specifically repealed or amended.

NEW SECTION

WAC 132L-108-020 APPOINTMENT OF PRE-SIDING OFFICERS. The president or president's designee shall designate a presiding officer for adjudicative proceeding. The presiding officer shall be an administrative law judge, a member in good standing of the Washington State Bar Association, a panel of individuals, the president or his or her designee, or any combination of the above. Where more than one individual is designated to be the presiding officer, one person shall be designated by the president or president's designee to make decisions concerning discovery, closure, means of recording adjudicative proceedings, and similar matters.

NEW SECTION

WAC 132L-108-030 METHOD OF RECORD-ING. Proceedings shall be recorded by a method determined by the presiding officer, among those available pursuant to the model rules of procedure in WAC 10-08-170.

NEW SECTION

WAC 132L-108-040 APPLICATION FOR AD-JUDICATIVE PROCEEDING. An application for adjudicative proceeding shall be in writing. Application forms are available at the following address: Administrative Services, Administration Building, Corner of Walnut and Rock Streets. The mailing address is 600 West Locust, Centralia, WA 98531.

Written application for an adjudicative proceeding should be submitted to the above address within 20 days of the agency action giving rise to the application, unless provided for otherwise by statute or rule.

NEW SECTION

WAC 132L-108-050 BRIEF ADJUDICATIVE PROCEDURES. This rule is adopted in accordance with RCW 34.05.482-494, the provisions of which are hereby adopted. Brief adjudicative procedures shall be used in all matters related to:

- (1) Residency determinations made pursuant to RCW 28B.15.013, conducted by the admissions office;
 - (2) Challenges to contents of education records;
 - (3) Student conduct proceedings;
 - (4) Parking violations;
 - (5) Outstanding debts owed by students or employees;
- (6) Loss of eligibility for participation in institution sponsored athletic events, pursuant to Chapter 132L-400 WAC.

NEW SECTION

WAC 132L-108-060 DISCOVERY. Discovery in adjudicative proceedings may be permitted at the discretion of the presiding officer. In permitting discovery, the presiding officer shall make reference to the civil rules of procedure. The presiding officer shall have the power to control the frequency and nature of discovery permitted, and to order discovery conferences to discuss discovery issues.

NEW SECTION

WAC 132L-108-070 PROCEDURE FOR CLOS-ING PARTS OF THE HEARINGS. A party may apply for a protective order to close part of a hearing. The party making the request should state the reasons for making the application to the presiding officer. If the other party opposes the request, a written response to the request shall be made within 10 days of the request to the presiding officer. The presiding officer shall determine which, if any, parts of the proceeding shall be closed, and state the reasons therefore in writing within 20 days of receiving the request.

NEW SECTION

WAC 132L-108-080 RECORDING DEVICES. No cameras or recording devices shall be allowed in those parts of proceedings which the presiding officer has determined shall be closed pursuant to WAC 132L-108-010, except for the method of official recording selected by the institution.

WSR 90-05-006 PREPROPOSAL COMMENTS DEPARTMENT OF ECOLOGY

[Filed February 9, 1990, 1:48 p.m.]

Subject of Possible Rule Making: The Department of Ecology is drafting rules to govern the discharge of toxic air pollutants from new air pollution sources and certain existing air pollution sources.

Persons may comment on this subject in writing or by phone, Leslie Carpenter, Department of Ecology, 4350 150th N.E., Redmond, WA 98052-5301, (206) 867-7110, prior to the formal rule proposal date.

Other Information or Comments by Agency at this Time, if any: The Department of Ecology air program currently regulates only six air pollutants for which there are federal health standards. However, hundreds of

chemicals are routinely emitted into the air. These unregulated air emissions have been termed "toxic air pollutants." Examples of toxic air pollutants potentially subject to this rule making are perchloroethylene from dry cleaning businesses, chloroform from pulp mills, and dioxins from solid waste incinerators.

February 7, 1990 Fred Olson Deputy Director

WSR 90-05-007 NOTICE OF PUBLIC MEETINGS THE EVERGREEN STATE COLLEGE

[Memorandum—February 5, 1990]

This letter is to notify you of changes to the previously submitted schedule of board meetings for 1990.

Wednesday, March 14, 1990, change in time to 2:00 p.m., change in location to TESC Tacoma Campus, 1202 South "K" Street, Tacoma, WA.

Wednesday, April 11, 1990, change in date to Wednesday, April 18.

Wednesday, June 13, 1990, change in date to Wednesday, June 6.

WSR 90-05-008 EMERGENCY RULES DEPARTMENT OF FISHERIES

[Order 90-10-Filed February 9, 1990, 2:39 p.m.]

Date of Adoption: February 9, 1990. Purpose: Commercial fishing regulations.

Citation of Existing Rules Affected by this Order: Amending WAC 220-33-010.

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: Preseason run size estimates for lower river spring chinook indicate harvestable numbers are available. This regulation is adopted at the recommendation of the January 24, 1990, Columbia River Compact.

Effective Date of Rule: Immediately.

February 9, 1990 J. McKillip for Joseph R. Blum Director

NEW SECTION

WAC 220-33-01000M COLUMBIA RIVER GILL NET SEASONS BELOW BONNEVILLE. Notwithstanding the provisions of WACs 220-33-005, 220-33-010, 220-33-020, and 220-33-030:

(1) It is unlawful for a person to take or possess salmon, shad, and sturgeon taken for commercial purposes from Columbia River SMCRA 1A, 1B, 1C, and that portion of Area 1D downstream from Kelly Point at the mouth of the Willamette River, except:

noon February 11 until 6:00 p.m. February 13, 1990.

- (2) It is unlawful to fish for salmon, shad and sturgeon with gill net gear with a mesh size less than 8 inches.
- (3) During the season provided for in subsection 1 of this section, the following sanctuaries, as defined in WAC 220-33-005, are closed waters:

Grays Bay, Elokomin-A, Kalama-A, Lewis-A, Washougal, Cowlitz, Gnat Creek.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-33-01000L COLUMBIA RIVER GILL NET SEASONS BELOW BONNEVILLE. (89-139)

WSR 90-05-009 PERMANENT RULES CENTRALIA COLLEGE

[Filed February 12, 1990, 3:48 p.m.]

Date of Adoption: February 8, 1990.

Purpose: To comply with section 6, chapter 369, Laws of 1989, SHB 1558.

Statutory Authority for Adoption: RCW 28B.50.140(13) and chapter 369, Laws of 1989, SHB 1558.

Pursuant to notice filed as WSR 89-24-094 on December 6, 1989.

Changes Other than Editing from Proposed to Adopted Version: The change clarifies the grounds for ineligibility and makes compatible with terminology used in the Administrative Procedure Act.

Effective Date of Rule: Thirty-one days after filing. February 8, 1990

Jack R. Kalmbach Dean of Administration

CENTRALIA COLLEGE, DISTRICT 12 CHAPTER 132L-400 LOSS OF ELIGIBILITY—STUDENT ATHLETIC PARTICIPATION

NEW SECTION

WAC 132L-400-010 GROUNDS FOR INELIGI-BILITY. Any student found by the college to have violated chapter 69.41 RCW by virtue of a criminal conviction or by decision of the college's presiding officer shall be disqualified from participation in any schoolsponsored athletic event or activity.

NEW SECTION

WAC 132L-400-020 SUSPENSION PROCE-DURE—RIGHT TO INFORMAL HEARING. Any student notified of a claimed violation of WAC 132L-400-010 shall have the right to a brief adjudicative hearing if a written request for such a hearing is received by the dean of students within three days of receipt of a declaration of further athletic ineligibility. If no written request is received within three days after receipt of the declaration of athletic ineligibility, the student will be deemed to have waived any right to a brief adjudicative hearing and will be declared ineligible from further participation in school-sponsored athletic events for the remainder of the school year.

NEW SECTION

WAC 132L-400-030 HEARING. If a timely written request for a hearing is made, the dean of students shall designate a presiding officer who shall be a college officer who is not involved with the athletic program to conduct the brief adjudicative hearing. The presiding officer shall promptly conduct the hearing and permit affected parties to explain both the college's view of the matter and the student's view of the matter. The brief adjudicative proceeding shall be conducted in accordance with the Administrative Procedure Act, RCW 34-05.482-494.

NEW SECTION

WAC 132L-400-040 DECISION. The college official who acts as presiding officer shall issue a written decision which shall include a brief statement of the reasons for the decision and a notice that judicial review may be available. All documents presented, considered or prepared by the hearing officer shall be maintained as the official record of the brief administrative proceeding. A decision must be promptly rendered after the conclusion of the brief adjudicative hearing and in no event later than 20 days after the request for hearing is received by the dean of students.

WSR 90-05-010 NOTICE OF PUBLIC MEETINGS EDMONDS COMMUNITY COLLEGE

[Memorandum—February 12, 1990]

BOARD OF TRUSTEES RETREAT Inn at Langley, Washington Thursday, February 15, 1990 and Friday, February 16, 1990

The board of trustees of Edmonds Community College will be holding a retreat for the purposes of discussing the capital projects request to the State Board for Community College Education, program review, institutional demographics, documenting institutional effectiveness and building communities.

At 2:30 p.m. on February 16, 1990, the board of trustees will reconvene its February 15 meeting to take action only on the following items: New Administrative Procedure Act; and capital projects request.

It is anticipated that the retreat will begin around 4:00 p.m., Thursday, February 15, 1990, and end with the special board of trustees meeting at 3:00 p.m., Friday, February 16, 1990.

WSR 90-05-011 RULES COORDINATOR EASTERN WASHINGTON UNIVERSITY

[Filed February 12, 1990, 3:54 p.m.]

With the assignment of the responsibility for the development of the policies and procedures manual to institutional research, it is logical that Mr. Thomas W. Pyle, Executive Director, Institutional Research, Eastern Washington University, Mailstop 111, Cheney, Washington 99004, be designated as rules coordinator for Eastern Washington University.

B. Dell Felder President

WSR 90-05-012 NOTICE OF PUBLIC MEETINGS EDMONDS COMMUNITY COLLEGE

[Memorandum-February 12, 1990]

Thursday, February 15, 1990 Lynnwood Hall, Room 424 (1:00 - 4:00)

The facilities for this meeting are free of mobility barriers and interpreters for deaf individuals and brailled or taped information for blind individuals will be provided upon request when adequate notice is given.

WSR 90-05-013 EMERGENCY RULES DEPARTMENT OF SOCIAL AND HEALTH SERVICES (Public Assistance)

[Order 2940—Filed February 12, 1990, 4:29 p.m.]

Date of Adoption: February 12, 1990.

Purpose: WAC 388-96-559 Depreciation base, the primary purpose is to amend and clarify retroactively that the cost basis of land as well as that of depreciable assets is subject to the Department of General Administration appraisal limitation and the Deficit Reduction Act of 1984 (DEFRA) restriction on increased reimbursement resulting solely from a change of ownership. Recent administrative decisions have held DEFRA does not apply to land; however, the department believes this would result in the loss of substantial federal matching funds in violation of state law. (RCW 74.09.500 and

74.46.840) Pursuant to RCW 34.05.350(1) the department finds that immediate retroactive amendment of this rule to provide that land is subject to DEFRA is necessary for the preservation of the general welfare. Observing requirements of public notice and opportunity to comment prior to adoption would be contrary to the public interest. The department estimates that matching federal Medicaid funds of \$2.3 million may be lost in the absence of immediate adoption. Therefore, the amendment to WAC 388-96-559 is sought on an emergency basis. Another purpose is to track the 1989 legislative amendment (SHB 1864, section 14, chapter 372, Laws of 1989) which conforms the statute to DEFRA and further specifies that absence of a legal description shall not render a contract to purchase a nursing home unenforceable. Another purpose is to clarify, retroactively to January 1, 1985, that land is subject to appraisal and related party limitations. No change in policy or practice; WAC 388-96-585 Unallowable costs, there are two amendatory purposes. One is to clarify that lids on costs of legal and accounting services will apply only if they are exceeded in all three preceding cost report years as well. The second purpose is to amend and clarify, retroactive for all periods beginning on or after July 18, 1984, (the enactment date of the Deficit Reduction Act of 1984—DEFRA), that costs of land and depreciable assets are unallowable to the extent they cannot be reimbursed under DEFRA. Pursuant to RCW 34.05.350(1) the department finds that immediate retroactive amendment of this rule to provide that land is subject to DEFRA is necessary for the preservation of the general welfare. Observing requirements of public notice and opportunity to comment prior to adoption would be contrary to the public interest. The department estimates that matching federal Medicaid funds of \$2.3 million may be lost in the absence of immediate adoption. Therefore, the amendment to WAC 388-96-585 is sought on an emergency basis; and WAC 388-96-754 A contractor's return on investment, the purpose of the change in subsection (2) is to amend and clarify retroactively that land is subject to DEFRA for the purpose of calculating net invested funds. Recent administrative decisions have held DEFRA does not apply to land; however, the department believes this will result in loss of federal matching funds in violation of state law. (RCW 74.09.500 and 74.46.840) Pursuant to RCW 34.05.350(1) the department finds that immediate retroactive amendment of this rule to provide that land is subject to DEFRA is necessary for the preservation of the general welfare. Observing requirements of public notice and opportunity to comment prior to adoption would be contrary to the public interest. The department estimates that matching federal Medicaid funds of \$2.3 million may be lost in the absence of immediate adoption. Therefore, the amendment to WAC 388-96-754 is sought on an emergency basis. The purpose of the change in subsection (6) is to clarify that when net invested funds and resulting financing allowance are adjusted for a Medicaid contractor at settlement to reflect audit findings, if needed, such adjustments shall be based on a minimum occupancy level of eighty-five percent. This is consistent with other provisions regarding

calculations of net invested funds. No change in policy or practice.

Citation of Existing Rules Affected by this Order: Amending chapter 388-96 WAC, Nursing home accounting and reimbursement system, specifically WAC 388-96-559, 388-96-585 and 388-96-754.

Statutory Authority for Adoption: RCW 79.09.120 [74.09.120] and 74.46.800.

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: This rule amendment is necessary to comply generally with various provisions in chapter 74.46 RCW, Nursing Home Auditing and Cost Reimbursement Act of 1980 and federal Medicaid requirements. WAC 388-96-559 Depreciation base, amends and clarifies regulation to bring land, retroactively for all periods after July 17, 1984, within the restriction on increased Medicaid reimbursement resulting from a change of ownership pursuant to the Deficit Reduction Act of 1984 (DEFRA). The amendment conforms the state reimbursement system to federal requirements thus avoiding the loss of federal Medicaid funding which would violate state law. (RCW 74.09.500 and 74.46.840) Pursuant to RCW 34.05.350(1) the department finds that immediate retroactive amendment of this rule to provide that land is subject to DEFRA is necessary for the preservation of the general welfare. Observing requirements of public notice and opportunity to comment prior to adoption would be contrary to the public interest. The department estimates that matching federal Medicaid funds of \$2.3 million may be lost in the absence of immediate adoption. Therefore, the amendment to WAC 388-96-559 is sought on an emergency basis. Implements legislative provision on enforceability of nursing home purchase agreements. Clarifies, retroactively, that land is subject to appraisal and related party transaction rules; WAC 388-96-585 Unallowable costs, clarifies accounting and legal cost lid rule. Amends and clarifies retroactively for all periods after July 17, 1984, that costs which cannot be reimbursed under the Deficit Reduction Act of 1984 (DEFRA), for both land and depreciable assets, are unallowable. Pursuant to RCW 34.05.350(1) the department finds that immediate retroactive amendment of this rule to provide that land is subject to DEFRA is necessary for the preservation of the general welfare. Observing requirements of public notice and opportunity to comment prior to adoption would be contrary to the public interest. The department estimates that matching federal Medicaid funds of \$2.3 million may be lost in the absence of immediate adoption. Therefore, the amendment to WAC 388-96-585 is sought on an emergency basis; and WAC 388-96-754 A contractor's return on investment, clarifies that adjustments to a contractor's financing allowance based upon audit findings shall reflect a minimum bed occupancy level of eighty-five percent. Clarifies and amends retroactively to bring land within DEFRA in calculating net invested funds. Pursuant to RCW 34.05.350(1) the department finds that immediate retroactive amendment of this rule to provide that land is subject to DEFRA is

necessary for the preservation of the general welfare. Observing requirements of public notice and opportunity to comment prior to adoption would be contrary to the public interest. The department estimates that matching federal Medicaid funds of \$2.3 million may be lost in the absence of immediate adoption. Therefore, the amendment to WAC 388-96-754 is sought on an emergency basis.

Effective Date of Rule: February 13, 1990, 12:01 a.m.
February 12, 1990
Leslie F. James, Director
Administrative Services

AMENDATORY SECTION (Amending Order 2660, filed 8/2/88)

WAC 388-96-559 COST BASIS OF LAND AND DEPRECIATION BASE. (1) For all rates effective on or after January 1, 1985, the total depreciation base of depreciable assets and the cost basis of land shall be the lowest of:

(a) The contractor's appraisal, if any,

(b) The department's appraisal obtained through the department of general administration of the state of Washington, if any, or

- (c) The historical purchase cost of the contractor, or lessor if the assets are leased by the contractor, in acquiring ownership of the asset in an arm's-length transaction, and preparing the asset for use, less goodwill, and less accumulated depreciation incurred during periods the assets have been used in or as a facility by any and all contractors. Such accumulated depreciation is to be measured in accordance with subsection (5) of this section and WAC 388-96-561, 388-96-565, and 388-96-567. Estimated salvage value shall be deducted from historical cost where the straight-line or sum-of-theyears digits method of depreciation is used.
- (2) Unless otherwise provided or limited by this chapter or by chapter 74.46 RCW, the department shall, in determining the total depreciation base of a real or personal asset owned or leased by the contractor, deduct depreciation relating to all periods subsequent to the more recent of:
- (a) The date such asset was first used in the medical care program; or
- (b) The most recent date such asset was acquired in an arm's-length purchase transaction which the department is required to recognize for Medicaid cost reimbursement purposes.

No depreciation shall be deducted for periods such asset was not used in the medical care program or was not used to provide nursing care.

- (3) The department may have the fair market value of the asset at the time of purchase established by appraisal through the department of general administration of the state of Washington if:
- (a) The department challenges the historical cost of an asset; or
- (b) The contractor cannot or will not provide the historical cost of a leased asset and the department is unable to determine such historical cost from its own records or from any other source.

The contractor may allocate or reallocate values among land, building, improvements, and equipment in accordance with the department's appraisal.

If an appraisal is conducted, the depreciation base of the asset and cost basis of land will not exceed the fair market value of the asset. An appraisal conducted by or through the department of general administration shall be final unless the appraisal is shown to be arbitrary and capricious.

- (4) For leased assets, the department may examine documentation in its files or otherwise obtainable from any source to determine:
 - (a) The lessor's purchase acquisition date, or
- (b) The lessor's historical cost at the time of the last arm's-length purchase transaction.

If the department is unable to determine the lessor's acquisition date by review of its records or other records, the department, in determining fair market value as of such date, may use the construction date of the facility, as found in the state fire marshal's records or other records, as the lessor's purchase acquisition date of leased assets.

- where depreciable assets or land are acquired from a related organization, the contractor's depreciation base and land cost basis shall not exceed the base and basis the related organization had or would have had under a contract with the department.
- (6) If a contractor cannot or will not provide the lessor's purchase acquisition cost of assets leased by the contractor and the department is unable to determine historical purchase cost from another source, the appraised asset value of land, building, or equipment, determined by or through the department of general administration shall be adjusted, if necessary, by the department using the Marshall and Swift Valuation Guide to reflect the value at the lessor's acquisition date. If an appraisal has been prepared for leased assets and the assets subsequently sell in the first arm's-length transaction since January 1, 1980, ((pursuant to)) under subsection (8) of this section, the Marshall and Swift Valuation Guide will be used to adjust, if necessary, the asset value determined by the appraisal to the sale date. If the assets are located in a city for which the Marshall and Swift Valuation Guide publishes a specific index, or if the assets are located in a county containing that city, the city-specific index shall be used to adjust the appraised value of the asset. If the assets are located in a city or county for which a specific index is not calculated, the Western District Index calculated by Marshall and Swift shall be used.
- (7) For all rates effective on or after January 1, 1985, if depreciable assets or land are acquired by purchase which were used in the medical care program on or after January 1, 1980, the depreciation base or cost basis of such assets shall not exceed the net book value existing at the time of such acquisition or which would have existed had the assets continued in use under the previous Medicaid contract with the department, except that depreciation shall not be accumulated for periods during which such assets were not used in the medical care

program or were not in use in or as a nursing care facility.

- (8)(a) Subsection (7) of this section shall not apply to the most recent arm's-length purchase acquisition if it occurs ((at least)) ten years or more after the previous arm's-length transfer of ownership nor shall subsection (7) of this section apply to the first arm's-length purchase acquisition of assets occurring on or after January 1, 1980, for facilities participating in the Medicaid program ((prior to)) before January 1, 1980. The depreciation base or cost basis for such acquisitions shall not exceed the lesser of the fair market value as of the date of purchase of the assets determined by an appraisal conducted by or through the department of general administration or the owner's acquisition cost of each asset, land, building, or equipment. An appraisal conducted by or through the department of general administration shall be final unless the appraisal is shown to be arbitrary and capricious. Should a contractor request a revaluation of an asset, the contractor must document ten years have passed since the most recent arm's-length transfer of ownership. As mandated by Section 2314 of the Deficit Reduction Act of 1984 (P.L. 98-369) and ((pursuant to)) under RCW 74.46.840 for all rates after July 17, 1984,, this subsection is inoperative for any transfer of ownership of any asset, including land and all depreciable assets, occurring on or after July 18, 1984, leaving subsection (7) of this section to apply without exception to acquisitions occurring on or after July 18, 1984, except as provided in subsections (8)(b) and (9) of this section.
- (b) For all rates after July 17, 1984, subsection (8)(a) shall apply, however, to transfers of ownership of assets:
- (i) Occurring ((prior to)) before January 1, 1985, if the costs of such assets have never been reimbursed under Medicaid cost reimbursement on an owner-operated basis or as a related party lease; or
- (ii) ((Pursuant to)) Under written and enforceable purchase and sale agreements dated ((prior to August 1)) before July 18, 1984, which are documented and submitted to the department ((prior to)) before January 1, 1988.
- (c) For purposes of Medicaid cost reimbursement under this chapter, an otherwise enforceable agreement to purchase a nursing home dated before July 18, 1984, shall be considered enforceable even though the agreement contains:
- (i) No legal description of the real property involved; or
- (ii) An inaccurate legal description, notwithstanding the statute of frauds or any other provision of law.
- (9)(a) In the case of assets leased by the same contractor since January 1, 1980, in an arm's-length lease, and purchased by the lessee/contractor, the lessee/contractor shall have the option to have the:
- (i) Provisions of subsection (8) of this section apply to the purchase; or
- (ii) Reimbursement for property and return on investment continue to be calculated ((pursuant to)) under the provisions contained in RCW 74.46.530 (1)(e) and (f) and WAC 388-96-754(5). Reimbursement shall be

based upon provisions of the lease in existence on the date of the purchase.

- (b) The lessee/contractor may select the option in subsection (9)(a)(ii) of this section only ((if)) when the purchase date meets one of the following criteria. The purchase date is:
- (i) ((The purchase date is)) After the lessor has declared bankruptcy or has defaulted in any loan or mortgage held against the leased property;
- (ii) ((The purchase date is)) Within one year of the lease expiration or renewal date contained in the lease;
- (iii) ((The purchase date is)) After a rate setting for the facility in which the reimbursement rate set, ((pursuant to)) under this chapter and ((pursuant to)) under chapter 74.46 RCW, no longer is equal to or greater than the actual cost of the lease, or
- (iv) ((The purchase date is)) Within one year of any purchase option in existence on January 1, 1988.
- (10) For purposes of establishing the property and return on investment component rates, the value of leased equipment, if unknown by the contractor, may be estimated by the department using previous department of general administration appraisals as a data base. The estimated value may be adjusted using the Marshall and Swift Valuation Guide to reflect the value of the asset at the lessor's purchase acquisition date.

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 2847, filed 8/8/89, effective 9/8/89)

- WAC 388-96-585 UNALLOWABLE COSTS. (1) The department shall not allow costs if not documented, necessary, ordinary, and related to the provision of care services to authorized patients.
- (2) The department shall include, but not limit unallowable costs to the following:
- (a) Costs of items or services not covered by the medical care program. Costs of nonprogram items or services even if indirectly reimbursed by the department as the result of an authorized reduction in patient contribution((-));
- (b) Costs of services and items provided to SNF or ICF recipients covered by the department's medical care program but not included in SNF or ICF services respectively. Items and services covered by the medical care program are listed in chapters 388-86 and 388-88 WAC((\(\frac{1}{2}\))):
- (c) Costs associated with a capital expenditure subject to Section 1122 approval (Part 100, Title 42 C.F.R.) if the department found the capital expenditure inconsistent with applicable standards, criteria, or plans. If the contractor did not give the department timely notice of a proposed capital expenditure, all associated costs shall be nonallowable as of the date the costs are determined not to be reimbursable under applicable federal regulations((-));
- (d) Costs associated with a construction or acquisition project requiring certificate of need approval pursuant to chapter 70.38 RCW if such approval was not obtained((;));

- (e) Costs of outside activities (e.g., costs allocable to the use of a vehicle for personal purposes or related to the part of a facility leased out for office space)((:));
- (f) Salaries or other compensation of owners, officers, directors, stockholders, and others associated with the contractor or home office, except compensation paid for service related to patient care((7));
- (g) Costs in excess of limits or violating principles set forth in this chapter((-));
- (h) Costs resulting from transactions or the application of accounting methods circumventing the principles of the prospective cost-related reimbursement system((:));
- (i) Costs applicable to services, facilities, and supplies furnished by a related organization in excess of the lower of the cost to the related organization or the price of comparable services, facilities, or supplies purchased elsewhere((:));
- (j) Bad debts. Beginning July 1, 1983, the department shall allow bad debts of Title XIX recipients only if:
 - (i) The debt is related to covered services;
- (ii) It arises from the recipient's required contribution toward the cost of care,
- (iii) The provider can establish reasonable collection efforts were made:
- (iv) The debt was actually uncollectible when claimed as worthless, and
- (v) Sound business judgment established there was no likelihood of recovery at any time in the future.

Reasonable collection efforts shall consist of three documented attempts by the contractor to obtain payment. Such documentation shall demonstrate the effort devoted to collect the bad debts of Title XIX recipients is at the same level as the effort normally devoted by the contractor to collect the bad debts of non-Title XIX patients. Should a contractor collect on a bad debt, in whole or in part, after filing a cost report, reimbursement for the debt by the department shall be refunded to the department to the extent of recovery. The department shall compensate a contractor for bad debts of Title XIX recipients at final settlement through the final settlement process only.

- (k) Charity and courtesy allowances((:));
- (1) Cash, assessments, or other contributions, excluding dues, to charitable organizations, professional organizations, trade associations, or political parties, and costs incurred to improve community or public relations. Any portion of trade association dues attributable to legal and consultant fees and costs in connection with lawsuits or other legal action against the department shall be unallowable((-));
 - (m) Vending machine expenses((:));
- (n) Expenses for barber or beautician services not included in routine care((:));
 - (o) Funeral and burial expenses((:));
 - (p) Costs of gift shop operations and inventory((:));
- (q) Personal items such as cosmetics, smoking materials, newspapers and magazines, and clothing, except items used in patient activity programs where clothing is a part of routine care((:));
- (r) Fund-raising expenses, except expenses directly related to the patient activity program((:));

- (s) Penalties and fines((:));
- (t) Expenses related to telephones, televisions, radios, and similar appliances in patients' private accommodations((;));
 - (u) Federal, state, and other income taxes((:));
- (v) Costs of special care services except where authorized by the department((-,));
- (w) Expenses of key-man insurance and other insurance or retirement plans not in fact made available to all employees on an equal or fair basis in terms of costs to employees and benefits commensurate to such costs((-));
 - (x) Expenses of profit—sharing plans((:));
- (y) Expenses related to the purchase and/or use of private or commercial airplanes which are in excess of what a prudent contractor would expend for the ordinary and economic provision of such a transportation need related to patient care((-));
- (z) Personal expenses and allowances of owners or relatives((:));
- (aa) All expenses of maintaining professional licenses or membership in professional organizations((;));
 - (bb) Costs related to agreements not to compete((:));
 - (cc) Goodwill and amortization of goodwill((:));
- (dd) Expense related to vehicles which are in excess of what a prudent contractor would expend for the ordinary and economic provision of transportation needs related to patient care((-));
- (ee) Legal and consultant fees in connection with a fair hearing against the department relating to those issues where:
- (i) A final administrative decision is rendered in favor of the department or where otherwise the determination of the department stands at the termination of administrative review, or
- (ii) In connection with a fair hearing, a final administrative decision has not been rendered; or
- (iii) In connection with a fair hearing, related costs are not reported as unallowable and identified by fair hearing docket number in the period they are incurred if no final administrative decision has been rendered at the end of the report period; or
- (iv) In connection with a fair hearing, related costs are not reported as allowable, identified by docket number, and prorated by the number of issues decided favorably to a contractor in the period a final administrative decision is rendered.
- (ff) Legal and consultant fees in connection with a lawsuit against the department, including suits which are appeals of administrative decisions((-));
- (gg) Lease acquisition costs and other intangibles not related to patient care((-));
- (hh) Interest charges assessed by the state of Washington for failure to make timely refund of over-payments and interest expenses incurred for loans obtained to make such refunds((:));
- (ii) Beginning January 1, 1985, lease costs, including operating and capital leases, except for office equipment operating lease costs((-));
 - (ji) Beginning January 1, 1985, interest costs((;));
- (kk) Travel expenses outside the states of Idaho, Oregon, and Washington, and the Province of British

Columbia. However, travel to or from the home or central office of a chain organization operating a nursing home will be allowed whether inside or outside these areas if such travel is necessary, ordinary, and related to patient care((:));

(II) Board of director fees for services in excess of one hundred dollars per board member, per meeting, not to

exceed twelve meetings per year((:));

(mm) Moving expenses of employees in the absence of a demonstrated, good-faith effort to recruit within the states of Idaho, Oregon, and Washington, and the Province of British Columbia((-));

- (nn) Depreciation expense in excess of twenty-five hundred dollars per year for passenger cars or other vehicles primarily used for the administrator, facility staff, or central office staff((-));
- (00) Any costs associated with the use of temporary health care personnel from any nursing pool not registered with the director of the department of licensing at the time of such pool personnel use((-));
- (pp) Costs of payroll taxes associated with compensation in excess of allowable compensation for owners, relatives, and administrative personnel((:));
- (qq) Department-imposed postsurvey charges incurred by the facility as a result of subsequent inspections which occur beyond the first postsurvey visit during the certification survey calendar year((;));
- (rr) Costs and fees otherwise allowable for legal services, whether purchased, allocated by a home office, regional office or management company, or performed by the contractor or employees of the contractor, in excess of the eighty-fifth percentile of such costs, measured on a total cost basis, reported by all contractors for the most recent cost report period: PROVIDED, That this limit shall not apply to a contractor ((if)) unless the contractor has ((not)) exceeded this percentile ((at any time during)) for each of the three years preceding the most recent cost report year((:));
- (ss) Costs and fees otherwise allowable for accounting and bookkeeping services, whether purchased, allocated by a home office, regional office or management company, or performed by the contractor or employees of the contractor, in excess of the eighty-fifth percentile of such costs, measured on a per patient-day cost basis, reported by all contractors for the most recent cost report period((: PROVIDED, That)), provided this limit shall not apply to a contractor ((if)) unless the contractor has ((not)) exceeded this percentile ((at any time during)) for each of the three years preceding the most recent cost report year, and
- (tt) After July 17, 1984, costs of assets, including all depreciable assets and land, which cannot be reimbursed under the provisions of the Deficit Reduction Act of 1984 (DEFRA) and state statutes and regulations implementing DEFRA.

AMENDATORY SECTION (Amending Order 2742, filed 12/31/88 [12/21/88])

WAC 388-96-754 A CONTRACTOR'S RETURN ON INVESTMENT. (1) The department shall

- establish for individual Medicaid facilities return on investment allowances composed of a financing allowance and a variable return allowance.
- (2) The department shall determine the financing allowance by:
- (a) Multiplying the net invested funds of each facility by eleven percent and dividing by the contractor's total patient days. Annual patient days taken from the contractor's cost report for the most recent twelve-month cost report period will be used. If the cost report covers less than twelve months, the department will estimate annual patient days and working capital costs for a full year based upon data in the cost report. If a capitalized addition or retirement of an asset results in a different licensed bed capacity during the ensuing period, the department shall adjust the prior period total patient days used in computing the financing and variable return allowances to anticipated patient day level; and
- (b) In computing the portion of net invested funds representing the net book value of tangible fixed assets, the same assets, depreciation bases, lives, and methods referred to in this chapter, including owned and leased assets, shall be used, except the capitalized cost of land upon which a facility is located and other such contiguous land which is reasonable and necessary for use in the regular course of providing patient care shall also be included. Subject to provisions contained in this chapter. for land purchases before July 18, 1984 (the enactment date of the Deficit Reduction Act of 1984 (DEFRA)), capitalized cost of land shall be the buyer's capitalized cost. For land purchases on or after July 18, 1984, capitalized cost shall be that of the owner of record on July 17, 1984, or buyer's capitalized cost, whichever is lower. In the case of leased facilities where the net invested funds are unknown or the contractor is unable or unwilling to provide necessary information to determine net invested funds, the department may determine an amount to be used for net invested funds based upon an appraisal conducted by the department of general administration per this chapter.
- (3) The department shall determine the variable return allowance according to the following procedure:
- (a) The department shall rank all facilities in numerical order from highest to lowest based upon average per diem allowable costs for the sum of the administration and operations and property cost centers for the preceding cost report period. In the case of a new contractor, property and administration and operations cost levels actually used to set the initial rate shall be used for the purpose of ranking the new contractor. The department shall adjust the new contractor's costs to the cost year used to establish the most recent variable return ranking for all providers using inflation factors authorized by provisions of this chapter.
- (b) The department shall compute the variable return allowance by multiplying the total prospective rate for each facility by the appropriate percentage which shall not be less than one percent nor greater than four percent. The department shall divide the facilities ranked according to subsection (3)(a) of this section into four groups, from highest to lowest, with an equal number of facilities in each group or nearly equal as is possible.

The department shall assign facilities in the highest quarter a percentage of one, in the second highest quarter a percentage of two, in the third highest quarter a percentage of three, and in the lowest quarter a percentage of four. The per patient day variable return allowance in the initial rate of a new contractor shall be the same as that in the rate of the preceding contractor, if any.

- (4) The sum of the financing allowance and the variable return allowance shall be the return on investment for each facility and shall be added to the prospective rate for each facility.
- (5) If a facility is leased by a contractor as of January 1, 1980, in an arm's-length agreement, which continues to be leased under the same lease agreement as defined in this chapter, and for which the annualized lease payment, plus any interest and depreciation expenses of contractor-owned assets, for the period covered by the prospective rates, divided by the contractor's total patient days, minus the property cost center determined according to this chapter, is more than the return on investment allowance determined according to this section, the following shall apply:
- (a) The financing allowance shall be recomputed substituting the fair market value of the assets, as of January 1, 1982, determined by department of general administration appraisal less accumulated depreciation on the lessor's assets since January 1, 1982, for the net book value of the assets in determining net invested funds for the facility. Said appraisal shall be final unless shown to be arbitrary and capricious.
- (b) The sum of the financing allowance computed under this subsection and the variable return allowance shall be compared to the annualized lease payment, plus any interest and depreciation expenses of contractorowned assets, for the period covered by the prospective rates, divided by the contractor's total patient days, minus the property cost center rate determined according to this chapter. The lesser of the two amounts shall be called the alternate return on investment allowances.
- (c) The return on investment allowance determined in accordance with subsections (1), (2), (3), and (4) of this section or the alternate return on investment allowance, whichever is greater, shall be the return on investment allowance for the facility and shall be added to the prospective rate of the facility.
- (d) In the case of a facility leased by the contractor as of January 1, 1980, in an arm's-length agreement, if the lease is renewed or extended pursuant to a provision of the lease agreement existing on January 1, 1980, the treatment provided in subsection (5)(a) of this section shall be applied except that in the case of renewals or extensions made on or subsequent to April 1, 1985, per a provision of the lease agreement existing on January 1, 1980, reimbursement for the annualized lease payment shall be no greater than the reimbursement for the annualized lease payment for the last year prior to the renewal or extension of the lease.
- (6) The information from the two prior reporting periods used to set the two prospective return on investment rates in effect during the settlement year is subject to field audit. If the financing allowances which can be

documented and calculated at audit of the prior periods are different than the prospective financing allowances previously determined by desk-reviewed, reported information, and other relevant information, the prospective financing allowances shall be adjusted to the audited level at final settlement of the year the rates were in effect, except the adjustments shall reflect a minimum bed occupancy level of eighty-five percent. Any adjustments to the financing allowances pursuant to this subsection shall be for settlement purposes only. However, the variable return allowances shall be the prospective allowances determined by desk-reviewed, reported information, and other relevant information and shall not be adjusted to reflect prior-period audit findings.

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

WSR 90-05-014 PROPOSED RULES DEPARTMENT OF SOCIAL AND HEALTH SERVICES (Public Assistance)

[Filed February 12, 1990, 4:30 p.m.]

Original Notice.

Title of Rule: Nursing home accounting and reimbursement system, amending chapter 388-96 WAC.

Purpose: WAC 388-96-010 Terms, the only substantive change is to subsection (45) and clarifies that a Medicaid contractor's "net invested funds," which is the starting point for calculating the contractor's financing allowance subcomponent of the contractor's return on investment (ROI) Medicaid reimbursement rate component, shall not include assets or asset values in excess of the various reimbursement lids and limits set forth in chapter 74.46 RCW. The department has never included such allowable assets in a contractor's net invested funds and the change is made for the purposes of clarity and consistency with other provisions of chapters 74.46 RCW and 388-96 WAC. The purpose of the numerous other proposed changes is to help conform the regulation to the department's drafting guidelines and they are not intended to be substantive; WAC 388-96-204 Field audits, the purpose is to clarify when audits of other years for the same nursing home Medicaid provider are required, when material discrepancies, undocumented costs, trust fund irregularities or other problems are surfaced by departmental audit; WAC 388-96-559 Depreciation base, the primary purpose is to amend and clarify retroactively that the cost basis of land as well as that of depreciable assets is subject to the Department of General Administration appraisal limitation and the Deficit Reduction Act of 1984 (DEFRA) restriction on increased reimbursement resulting solely from a change of ownership. Recent administrative decisions have held DEFRA does not apply to land; however, the department believes this would result in the loss of substantial federal matching funds in violation of state law. (RCW 74.09.500 and 74.46.840) Pursuant to

34.05.350(1) the department finds that immediate retroactive amendment of this rule to provide that land is subject to DEFRA is necessary for the preservation of the general welfare. Observing requirements of public notice and opportunity to comment prior to adoption would be contrary to the public interest. The department estimates that matching federal Medicaid funds of \$2.3 million may be lost in the absence of immediate adoption. Therefore, the amendment to WAC 388-96-559 is sought on an emergency basis. Another purpose is to track the 1989 legislative amendment (SHB 1864, section 14, chapter 372, Laws of 1989) which conforms the statute to DEFRA and further specifies that absence of a legal description shall not render a contract to purchase a nursing home unenforceable. Another purpose is to clarify, retroactively to January 1, 1985, that land is subject to appraisal and related party limitations. No change in policy or practice; WAC 388-96-561 Depreciation base-Donated or inherited assets, the purpose is to amend and clarify retroactively that donated or inherited land will, for reimbursement purposes, be subject to DEFRA and appraisal procedures and otherwise be given the same treatment as depreciable assets. No change in policy or practice; WAC 388-96-585 Unallowable costs, there are two amendatory purposes. One is to clarify that lids on costs of legal and accounting services will apply only if they are exceeded in all three preceding cost report years as well. The second purpose is to amend and clarify, retroactive for all periods beginning on or after July 18, 1984, (the enactment date of the Deficit Reduction Act of 1984—DEFRA), that costs of land and depreciable assets are unallowable to the extent they cannot be reimbursed under DEFRA. Pursuant to RCW 34.05.350(1) the department finds that immediate retroactive amendment of this rule to provide that land is subject to DEFRA is necessary for the preservation of the general welfare. Observing requirements of public notice and opportunity to comment prior to adoption would be contrary to the public interest. The department estimates that matching federal Medicaid funds of \$2.3 million may be lost in the absence of immediate adoption. Therefore, the amendment to WAC 388-96-585 is sought on an emergency basis; WAC 388-96-713 Rate determination, the purpose is to update an obsolete reference to return on equity (ROE) rates. They were replaced by return on investment (ROI) rates as of January 1, 1985; WAC 388-96-719 Method of rate determination, in subsection (3)(c) the purpose is to clarify that property, return on investment and enhancement cost center Medicaid rate components will not be increased by legislatively appropriated inflation adjustments. In subsection (4) the purpose is to clarify that computation of the return on investment rate component shall be subject to the eighty-five percent minimum bed occupancy requirement, in accordance with RCW 74.46.430(4). Neither change represents a substantive change in department practice or policy; WAC 388-96-745 Property cost area reimbursement rate, the change is proposed in subsection (5) to provide a uniform starting date for adjustment of per bed cost limits in limiting per bed construction costs to a reasonable level for Medicaid allowability and reimbursement purposes. Some subsections are renumbered for clarity; WAC 388-96-754 A contractor's return on investment, the purpose of the change in subsection (2) is to amend and clarify retroactively that land is subject to DEFRA for the purpose of calculating net invested funds. Recent administrative decisions have held DEFRA does not apply to land, however, the department believes this will result in loss of federal matching funds in violation of state law. (RCW 74.09.500 and 74.46.840) Pursuant to RCW 34.05.350(1) the department finds that immediate retroactive amendment of this rule to provide that land is subject to DEFRA is necessary for the preservation of the general welfare. Observing requirements of public notice and opportunity to comment prior to adoption would be contrary to the public interest. The department estimates that matching federal Medicaid funds of \$2.3 million may be lost in the absence of immediate adoption. Therefore, the amendment to WAC 388-96-754 is sought on an emergency basis. The purpose of the change in subsection (6) is to clarify that when net invested funds and resulting financing allowance are adjusted for a Medicaid contractor at settlement to reflect audit findings, if needed, such adjustments shall be based on a minimum occupancy level of eighty-five percent. This is consistent with other provisions regarding calculations of net invested funds. No change in policy or practice; WAC 388-96-763 Rates for recipients requiring exceptionally heavy care, the purpose is to establish specific procedures for obtaining, monitoring and calculating exceptional care patient rates; WAC 388-96-768 Minimum wage, this change is proposed at the request of the state of Washington Department of Labor and Industries. Its purpose is to allow employees of nursing homes receiving payments for temporary and total disability from labor and industries to return to work, if approved by a physician, in a reduced capacity while recovering from the disability. The rule change allows such employees to receive less than the minimum wage levels established by the legislature in the Biennial Appropriation Act. The minimum wage, as set forth in this section, or more, must be paid to the employee when he or she returns to usual work; WAC 388-96-771 Receivership, the purpose is to implement new legislative provisions designed to facilitate recovery of emergency or transitional funds granted to receivers of nursing homes facing possible closure. (SHB 1864, section 4, chapter 372, Laws of 1989); WAC 388-96-773 Adjustments to prospective rates, this section is being repealed because it is obsolete and confuses Medicaid contractors. By its terms it controls rate revisions only for periods prior to May 20, 1985, and no current rate revision requests relate to these early periods; and WAC 388-96-774 Prospective rate revisions, one change in subsection (7) requires a Medicaid contractor's total Medicaid reimbursement rate (all components) to be considered as a resource available to the contractor rather than just the nursing services component rate, in determining whether a prospective rate revision should be granted as authorized by subsection (3). Another change, also in subsection (7), allows the department to look at a nursing facility's staff pattern in evaluating requests for increased

staff funding. These changes represent changes in department policy and practices but the impact is expected to be minimal.

Statutory Authority for Adoption: RCW 79.09.120 [74.09.120] and 74.46.800.

Statute Being Implemented: RCW 79.09.120 [74.09-.120] and 74.46.800.

Summary: WAC 388-96-010, modifies definition of "net invested funds" to make it consistent with other provisions of chapter 388-96 WAC and emphasize that such funds will not include amounts in excess of limits set forth in the chapter. The change is proposed to enhance consistency and clarity. Other changes are purely formal and are intended to comply with department regulation drafting guidelines: WAC 388-96-204, clarifies audits of other years are authorized, but not required, when material discrepancies or trust fund mishandling are uncovered by departmental audit; WAC 388-96-559, amends and clarifies regulation to bring land, retroactively for all periods after July 17, 1984, within the restriction on increased Medicaid reimbursement resulting from a change of ownership pursuant to the Deficit Reduction Act of 1984 (DEFRA). The amendment conforms the state reimbursement system to federal requirements thus avoiding the loss of federal Medicaid funding which would violate state law. (RCW 74.09.500 and 74.46.840) Pursuant to RCW 34.05.350(1) the department finds that immediate retroactive amendment of this rule to provide that land is subject to DEFRA is necessary for the preservation of the general welfare. Observing requirements of public notice and opportunity to comment prior to adoption would be contrary to the public interest. The department estimates that matching federal Medicaid funds of \$2.3 million may be lost in the absence of immediate adoption. Therefore, the amendment to WAC 388-96-559 is sought on an emergency basis. Implements legislative provision on enforceability of nursing home purchase agreements. Clarifies, retroactively, that land is subject to appraisal and related party transaction rules; WAC 388-96-561, amends and clarifies, retroactively for all periods after July 17, 1984, that donated or inherited land is subject to the Deficit Reduction Act of 1984 (DEFRA), as are depreciable nursing home assets, and clarifies that appraisal procedures apply to donated or inherited land as well; WAC 388-96-585 clarifies accounting and legal cost lid rule. Amends and clarifies retroactively for all periods after July 17, 1984, that costs which cannot be reimbursed under the Deficit Reduction Act of 1984 (DEFRA), for both land and depreciable assets, are unallowable. Pursuant to RCW 34.05.350(1) the department finds that immediate retroactive amendment of this rule to provide that land is subject to DEFRA is necessary for the preservation of the general welfare. Observing requirements of public notice and opportunity to comment prior to adoption would be contrary to the public interest. The department estimates that matching federal Medicaid funds of \$2.3 million may be lost in the absence of immediate adoption. Therefore, the amendment to WAC 388-96-585 is sought on an emergency basis; WAC 388-96-713, updates obsolete reference to return on equity rate to reflect the return on investment rate which

replaced it in 1985. The change is made for clarification; WAC 388-96-719, clarifies that legislatively determined inflation increases contained in biennial budget acts will not be applied to increase property, return on investment or enhancement rates. Clarifies that a facility's return on investment rate shall be calculated per patient day assuming a minimum occupancy of eighty-five percent as provided in RCW 74.46.430(4); WAC 388-96-745, provides that new construction per bed cost limits set forth in this section are to be adjusted to the average date of construction from May 1987 utilizing Marshall and Swift Cost Indexes. The change is necessary to provide a starting date for adjustment of such cost limits; WAC 388-96-754, clarifies that adjustments to a contractor's financing allowance based upon audit findings shall reflect a minimum bed occupancy level of eightyfive percent. Clarifies and amends retroactively to bring land within DEFRA in calculating net invested funds. Pursuant to RCW 34.05.350(1) the department finds that immediate retroactive amendment of this rule to provide that land is subject to DEFRA is necessary for the preservation of the general welfare. Observing requirements of public notice and opportunity to comment prior to adoption would be contrary to the public interest. The department estimates that matching federal Medicaid funds of \$2.3 million may be lost in the absence of immediate adoption. Therefore, the amendment to WAC 388-96-754 is sought on an emergency basis; WAC 388-96-763, establishes detailed procedures for obtaining and maintaining exceptional care rates for heavy-care Medicaid recipients and sets forth a formula for calculating such rates; WAC 388-96-768, exempts nursing home employees from minimum wage levels who are declared totally but temporarily disabled, until they return to usual work duties; WAC 388-96-771, in accordance with new state law, adds provisions which allow recovery of operational funds extended to receivers of troubled nursing homes, whether such homes participate in Title XIX Medicaid or not; WAC 388-96-773. section repealed as obsolete; and WAC 388-96-774, grants department specific authority to consider a Medicaid contractor's total reimbursement rate, as opposed to the nursing services rate component only, and to examine staff scheduling in evaluating requests for rate increases.

Reasons Supporting Proposal: This rule amendment is necessary to comply generally with various provisions in chapter 74.46 RCW, Nursing Home Auditing and Cost Reimbursement Act of 1980 and federal Medicaid requirements.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Denise Gaither, Aging and Adult Services/Residential Rates, 753-5817.

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

Rule is necessary because of federal law, Deficit Reduction Act of 1984 (DEFRA), Sec. 2314.

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

Proposal Changes the Following Existing Rules: See above.

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

Hearing Location: OB-2 Auditorium, 12th and Franklin, Olympia, Washington, on April 10, 1990, at 10:00 a.m.

Submit Written Comments to: Troyce Warner, Chief, Office of Issuances, Department of Social and Health Services, Mailstop OB-33H, Olympia, Washington 98504, by April 10, 1990.

Date of Intended Adoption: April 17, 1990.

February 12, 1990 Leslie F. James, Director Administrative Services

Reviser's note: The material contained in this filing will appear in the 90-06 issue of the Register as it was received after the applicable closing date for the issue for agency-typed material exceeding the volume limitations of WAC 1-21-040.

WSR 90-05-015 PERMANENT RULES DEPARTMENT OF HEALTH (Examining Board of Psychology)

[Order 033—Filed February 13, 1990, 1:29 p.m.]

Date of Adoption: December 8, 1989.

Purpose: Final adoption of emergency repealer to repeal the following WAC's which were filed in error.

Citation of Existing Rules Affected by this Order: Repealing WAC 308-122-503, 308-122-550, 308-122-555, 308-122-560, 308-122-565, 308-122-570, 308-122-575 and 308-122-580.

Statutory Authority for Adoption: RCW 18.83.090. Pursuant to notice filed as WSR 89-21-051 on October 31, 1989.

Changes Other than Editing from Proposed to Adopted Version: WAC 308-122-500 is not repealed.

Effective Date of Rule: Thirty-one days after filing.

December 8, 1989

Kathleen Worsley, Ph.D.

Chair

REPEALER

The following sections of the Washington Administrative Code are hereby repealed:

308-122-503 STAGGERED EFFECTIVE PERIODS FOR NEW CONTINUING EDUCATION RULES.

308-122-550 CONTINUING EDUCATION REQUIREMENTS.

308–122–555 DEFINITION OF CREDITABLE CPE.

308–122–560 DEFINITION OF ACCEPTABLE DOCUMENTATION AND PROOF OF CPE.

308–122–565 CONTINUING EDUCATION—SPECIAL CONSIDERATIONS.

308-122-570 CONTINUING EDUCATION—ENFORCEMENT.

308–122–575 CONTINUING EDUCATION—EXEMPTIONS.

308-122-580 CONTINUING EDUCATION-PROGRAM OR COURSE APPROVAL.

WSR 90-05-016 EMERGENCY RULES DEPARTMENT OF HEALTH

(Examining Board of Psychology)

[Order 032—Filed February 13, 1990, 1:33 p.m.]

Date of Adoption: February 10, 1990.

Purpose: To amend by emergency filing WAC 308-122-500 Continuing education—Purpose and scope, which was amended in error.

Citation of Existing Rules Affected by this Order: Amending WAC 308-122-500 Continuing education—Purpose and scope.

Statutory Authority for Adoption: RCW 18.83.090.

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

Reasons for this Finding: This rule was amended in error and does not now reflect current licensure requirements for psychologists. This amendment is necessary for the health, safety and general welfare of the public.

Effective Date of Rule: Immediately.

February 10, 1990 Nicholas Wiltz, Ph.D. Chair

AMENDATORY SECTION (Amending Order PM 862, filed 9/19/89, effective 10/20/89)

WAC 308-122-500 CONTINUING EDUCA-TION—PURPOSE AND SCOPE. The ultimate aim of continuing education is to ensure the highest quality of professional work. Continuing ((psychological)) psychology education consists of educational activities designed to review existing concepts and techniques and to convey information and knowledge about advances in ((the science and applications of)) psychology as ((appropriate)) applied to the work settings. The objectives are to improve and increase the ability of the psychologist ((or psychological associate or affiliate)) to deliver the highest possible quality of psychological work and to keep the professional psychologist ((or associate or affiliate)) abreast of current developments in a rapidly changing field. All psychologists, licensed pursuant to chapter 18-.83 RCW, and ((psychological associate or affiliate)) holders of certificates of qualification issued pursuant to RCW 18.83.105 ((fall types hereafter referred to as licensees))), will be required to meet the continuing education requirements set forth in these rules as a prerequisite to license renewal.

WSR 90-05-017 **EMERGENCY RULES** DEPARTMENT OF HEALTH (Examining Board of Psychology)

[Order 035—Filed February 13, 1990, 1:36 p.m.]

Date of Adoption: February 10, 1990.

Purpose: To repeal by emergency order the following WACs which were adopted in error, WAC 308-122-503, 308-122-550, 308-122-555, 308-122-560, 308-122-565, 308-122-570, 308-122-575 and 308-122-580.

Citation of Existing Rules Affected by this Order: Repealing WAC 308-122-503, 308-122-550, 308-122-555, 308-122-560, 308-122-565, 308-122-570, 308-122-575 and 308-122-580.

Statutory Authority for Adoption: RCW 18.83.090.

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

Reasons for this Finding: These rules were adopted in error and do not reflect the current licensure requirements. Their repeal is necessary for the health, safety and general welfare of the public.

Effective Date of Rule: Immediately.

February 10, 1990 Nicholas Wiltz, Ph.D.

Chair

REPEALER

The following sections of the Washington Administrative Code are hereby repealed:

308-122-503 STAGGERED EFFECTIVE PERI-ODS FOR NEW CONTINUING EDUCATION RULES.

308-122-550 CONTINUING EDUCATION REQUIREMENTS.

308–122–555 DEFINITION OF CREDITABLE CPE.

308-122-560 DEFINITION OF ACCEPTABLE DOCUMENTATION AND PROOF OF CPE.

308-122-565 CONTINUING EDUCATION— SPECIAL CONSIDERATIONS.

308–122–570 CONTINUING EDUCATION— ENFORCEMENT.

308-122-575 CONTINUING EDUCATION— EXEMPTIONS.

308-122-580 CONTINUING EDUCATION-PROGRAM OR COURSE APPROVAL.

> WSR 90-05-018 PERMANENT RULES ENERGY FACILITY SITE EVALUATION COUNCIL

[Filed February 13, 1990, 3:02 p.m.]

Date of Adoption: February 12, 1990.

Purpose: To bring Title 463 WAC into conformance with the Administrative Procedure Act.

Citation of Existing Rules Affected by this Order: Repealing WAC 463-34-020, 463-34-040, 463-34-100, 463-30-070, 463-30-110, 463-30-130, 463-30-140, 463-30-150, 463-30-160, 463-30-170, 463-30-180, 463-30-210, 463-30-220, 463-30-260, 463-30-290, 463-30-295, 463-30-340, 463-30-350, 463-30-370 and 463-30-380; amending WAC 463-30-010, 463-30-020, 463-30-050, 463-30-060, 463-30-080. 463-30-090, 463-30-100, 463-30-120, 463-30-190, 463-30-200, 463-30-230, 463-30-240, 463-30-250, 463-30-270, 463-30-300, 463-30-310, 463-30-320, 463-30-330, 463-30-410, 463-30-420, 463-34-010, 463-34-030, 463-34-050, 463-34-060, 463-34-070, 463-34-080 and 463-34-090; and new sections WAC 463-30-085 and 463-30-385.

Statutory Authority for Adoption: RCW 80.50.040.

Pursuant to notice filed as WSR 89-24-014 on November 29, 1989; and [WSR 90-03-087 on January

Changes Other than Editing from Proposed to Adopted Version: In WAC 463-30-060 reference to RCW 80.50.020(16) was corrected to RCW 80.50.020(3) and reference to RCW 80.50.020(13) was corrected to RCW 80.50.020(12).

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: Changes were made from the Office of Administrative Hearings model rules in order to conform to the council's procedures and for reasons of clarity.

Effective Date of Rule: Thirty-one days after filing. February 12, 1990 Curtis Eschels Chairman

Chapter 463-30 WAC PROCEDURE—((CONTESTED CASE HEAR-**INGS**)) ADJUDICATIVE PROCEEDINGS

AMENDATORY SECTION (Amending Order 109, filed 11/16/76)

WAC 463-30-010 PURPOSE AND SCOPE OF THIS CHAPTER. The purpose of this chapter is to set forth procedures by which ((contested case hearings)) adjudicative proceedings are to be conducted before the council under chapter 34.05 RCW. Except as indicated herein, the uniform procedural rules set forth in chapter ((1-08)) 10-08 WAC shall not apply to ((contested case hearings)) adjudicative proceedings before the council.

AMENDATORY SECTION (Amending Order 82-2, filed 4/30/82)

WAC 463-30-020 COUNCIL CONDUCTED HEARINGS AND ADMINISTRATIVE LAW JUDGES. The council may conduct ((contested case hearings)) adjudicative proceedings pursuant to chapters 34.05 and 80.50 RCW or it may utilize an administrative law judge provided by the office of administrative hearings pursuant to chapter 34.12 RCW. In the event the council elects to conduct the hearing, a presiding officer shall be appointed and the hearing shall be governed by the regulations and procedures contained in this chapter and chapter 34.05 RCW, as applicable.

AMENDATORY SECTION (Amending Order 109, filed 11/16/76)

WAC 463-30-050 STATUS OF AGENCIES AND AGENCY MEMBERS IN ((CONTESTED CASES)) ADJUDICATIVE PROCEEDINGS. All state agencies having members on the council are deemed to be parties to any ((contested case)) adjudicative proceeding before the council. For purposes of any ((contested case hearing)) adjudicative proceeding, however, the agency representative on the council shall be deemed to be a member of the council and not a member of the agency. It shall be proper for the agency representative on the council to ((maintain liaison with)) communicate with employees of the represented agency, excepting those agency employees ((actively involved in the contested case proceedings)) who have participated in the proceeding in any manner or who are otherwise disqualified by RCW 34.05.455.

AMENDATORY SECTION (Amending Order 109, filed 11/16/76)

WAC 463-30-060 DEFINITIONS—PERSONS AND PARTIES. The terms "person" and "party" when used in this chapter shall have the following meanings. The term "person" shall be defined according to RCW 80.50.020(3). The term "party" shall mean and be limited to the following:

- (1) The "applicant" as defined in RCW 80.50.020(1).
- (2) Each "member agency" as defined in RCW ((80.50.020(16))) 80.50.030(3).
- (3) The "counsel for the environment" as defined in RCW 80.50.020(((13))) (12).
- (4) Each person admitted to ((a contested case)) an adjudicative proceeding as an "intervenor," ((provided that the council order granting intervention specifically provides that such person shall be a party to the proceeding, and provided further that such person shall be)) is a party only for ((such)) the purposes and subject to ((such)) any limitations and conditions ((as may be)) specified in the council order granting intervention.

AMENDATORY SECTION (Amending Order 81-1, filed 3/11/81)

WAC 463-30-080 COMMENCEMENT OF ((CONTESTED CASE)) ADJUDICATIVE PROCEEDINGS. ((Contested case)) Adjudicative proceedings ((pursuant to RCW 80.50.090(3))) shall ((be commenced)) commence upon issuance of a formal notice of hearing ((by the council)) or prehearing conference. The notice shall be served upon all parties at least twenty days in advance of the initial hearing date, unless the council finds that an emergency exists requiring the hearing or prehearing conference to be held upon less notice.

The time and place of continued hearing sessions may also be set:

- (1) Upon the record without further written notice to the parties; or
- (2) By letter from the executive secretary of the council; or
 - (3) By letter from the presiding officer.
- In such instances, twenty days' prior notice is not required.

NEW SECTION

WAC 463-30-085 PROVISIONS REGARDING LIMITED ENGLISH-SPEAKING AND HEARING IMPAIRED PERSONS. Provisions in WAC 10-08-040 (2) and (3)(c), 10-08-045, 10-08-150, and 10-08-160(2) relating to procedures involving limited English-speaking or hearing impaired persons are incorporated in these rules by this reference.

AMENDATORY SECTION (Amending Order 109, filed 11/16/76)

WAC 463-30-090 PUBLICITY—COM-MENCEMENT OF ((CONTESTED CASE)) ADJU-DICATIVE PROCEEDINGS. Upon the filing of an application for certification, the council shall prepare an appropriate statement for dissemination to the news media which shall: (1) Describe all actions taken to date regarding the proposed site, and (2) state clearly that any person may be allowed to present timely written or oral argument for or against the proposed site to be certified and that advance ((written)) notice within a reasonable time shall be required of persons who desire ((to argue orally)) status as intervenors in accordance with WAC 463-30-400.

AMENDATORY SECTION (Amending Order 109, filed 11/16/76)

WAC 463-30-100 APPEARANCE AND PRACTICE BEFORE THE COUNCIL. ((In determining who shall be entitled to appear and practice before the council, the council will be guided by the provisions of WAC 1-08-040 through 1-08-060.)) (1) General. In all proceedings in which pleadings are filed and a hearing is held involving the taking of testimony on a record subject to review by the courts, the following persons may appear in a representative capacity:

- (a) Attorneys at law duly qualified and entitled to practice before the supreme court of the state of Washington;
- (b) Attorneys at law duly qualified and entitled to practice before the highest court of any other state;
- (c) Upon permission of the presiding officer, an officer or employee of a party or person seeking party status.

The presiding officer may expel a person who does not have the requisite degree of legal training, experience, or skill to appear in a representative capacity.

- (2) Notices of appearance and withdrawal of attorneys. Attorneys or other authorized representatives appearing on behalf of a party or withdrawing from a proceeding shall immediately so notify the council and all parties to the proceeding.
- (3) Unethical conduct. All persons appearing in proceedings before the council in a representative capacity

shall conform to the standards of ethical conduct required of attorneys before the courts of Washington. If any representative fails to conform to these standards, the council may decline to permit the person to appear in a representative capacity in any proceeding before the council.

AMENDATORY SECTION (Amending Order 109, filed 11/16/76)

WAC 463-30-120 FILING AND SERVICE((= BY WHOM SERVED)). ((The council shall cause to be served all orders, notices, and other papers issued by it, together with any other papers which it is required by law to serve. Every other paper shall be served by the party filing it.)) (1) Filing. Filing of any document shall be deemed complete only upon receipt by the executive secretary or other authorized agent of the council. Receipt in the council's telefax machine, or similar device, does not constitute filing. Unless in a particular case the council specifies a different number of copies, every pleading submitted to the council shall be filed with two copies. Filing a document with the council does not constitute service upon the office of the attorney general or any other party. Likewise, service on the office of the attorney general does not constitute a filing with the council.

(a) Applications. Applications for a site certificate shall be filed in the manner prescribed by the rules governing such applications.

(b) Other pleadings. All pleadings shall be legible and a copy shall be served upon each party to the proceeding.

(2) Service.

(a) Service by parties. Service of pleadings by parties shall be made by delivering one copy to each party in person, by mail, properly addressed with postage prepaid, by commercial parcel delivery company properly tendered with fees prepaid, or by telefacsimile transmission, where originals are mailed simultaneously. Except as otherwise provided, when any party has appeared by attorney or other authorized representative, service upon such attorney or representative will be deemed valid service upon the party of all future pleadings before the council. Service of pleadings by mail shall be complete when a true copy of the document is properly addressed and stamped and deposited in the United States mail. Service by commercial parcel delivery company shall be complete when accepted for delivery by the company.

(b) Service by the council. All notices, findings of fact, decisions, and orders required to be served by the council may be served in person, by mail, by commercial parcel delivery company, properly tendered with fees prepaid, or by telefacsimile transmission, when originals are mailed simultaneously. Service of documents shall be complete when a true copy of the document, properly addressed and stamped, is deposited in the United States mail with first class postage affixed, or accepted for delivery by the parcel delivery company.

(c) Certificate of service. There shall appear on the original of every pleading when filed with the council in accordance with this subsection, either an acknowledgment of service, or the following certificate:

AMENDATORY SECTION (Amending Order 109, filed 11/16/76)

WAC 463-30-190 ((LIMITED)) DISCOVERY PRACTICE. ((Formal discovery devices in contested case proceedings shall consist of subpoenas, depositions, interrogatories, and requests for production.)) Discovery is available when permitted by the presiding officer and shall be conducted in accordance with RCW 34.05.446.

AMENDATORY SECTION (Amending Order 109, filed 11/16/76)

WAC 463-30-200 SUBPOENAS—PRACTICE. ((The council practice regarding subpoenas shall substantially conform to the provisions of WAC 1-08-150 through 1-08-220.)) (1) Subpoenas shall be issued and enforced, and witness fees paid, as provided in RCW 34.05.446.

- (2) Every subpoena shall identify the party causing issuance of the subpoena and shall state the name of the agency and the title of the proceeding and shall command the person to whom it is directed to attend and give testimony or produce designated books, documents, or things under his or her control at the time and place set for the hearing.
- (3) A subpoena may be served by any suitable person over eighteen years of age, by exhibiting and reading it to the witness, or by giving him or her a copy thereof, or by leaving such copy at the place of his or her abode. When service is made by any other person than an officer authorized to serve process, proof of service shall be made by affidavit.

(4) The presiding officer, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may:

(a) Quash or modify the subpoena if it is unreasonable and oppressive; or

(b) Condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(5) No subpoena shall be issued or given effect to require the attendance and testimony of, or the production of evidence by, any member of the council or any member of the council staff in any proceeding before the council.

(6) The council shall only be responsible for paying the witness fees of the witnesses which it subpoenas. Each subpoena shall bear the name of the party requesting or issuing the subpoena and the party responsible for paying the witness fees.

AMENDATORY SECTION (Amending Order 109, filed 11/16/76)

NOTICE((= WAC 463-30-230 OFFICIAL MATTERS OF LAW)). (1) Upon written or oral motion((5)) the council may officially notice ((any matter of law. The council will be guided by WAC 1-08-370)):

(a) Any judicially cognizable facts;

(b) Technical or scientific facts within the council's

specialized knowledge; and

(c) Codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association.

- (2) Parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material so noticed and the sources thereof, including any staff memoranda and data, and they shall be afforded an opportunity to contest the facts and material so noticed.
- (3) A party proposing that official notice be taken may be required to produce a copy of the material to be noticed.

AMENDATORY SECTION (Amending Order 109, filed 11/16/76)

WAC 463-30-240 OFFICIAL NOTICE-((MA-TERIAL FACTS)) EVALUATION OF EVIDENCE. ((Upon written or oral motion, the council may officially notice relevant facts in the absence of controverting evidence. In implementing this rule, the council will be guided by WAC 1-08-380)) WAC 463-30-230 shall not be construed to preclude the council from utilizing its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.

AMENDATORY SECTION (Amending Order 109, filed 11/16/76)

WAC 463-30-250 STIPULATIONS AND ((AD-MISSIONS OF RECORD)) SETTLEMENT. ((The existence or nonexistence of a material fact, as made or agreed in a stipulation or in an admission of record, will be conclusively presumed against any party bound thereby, and no other evidence with respect thereto will be received upon behalf of such party. Any party bound by a stipulation or admission of record may withdraw the same by showing that it was made inadvertently or under a bona fide mistake of fact and that withdrawal will not unjustly prejudice the rights of other parties to the proceeding.)) (1) Stipulations are encouraged. The parties to any adjudicative proceeding before the council may, by stipulation in writing filed with the council or entered into the record, agree upon the facts or any portion thereof involved in the proceeding. This stipulation, if accepted by the council, shall be binding upon the parties thereto and may be used by the council as evidence at the hearing. The council may reject the stipulation or require proof by evidence of the stipulated facts, notwithstanding the stipulation of the parties.

(2) Before or after a formal hearing, parties to a proceeding may enter into discussions leading to a voluntary settlement. In furtherance of a voluntary settlement, the council may invite the parties to confer among themselves or with a designated person. Settlement conferences shall be informal and without prejudice to the rights of the parties. No statement, admission, or offer of settlement made at a settlement conference shall be admissible in evidence in any formal hearing before the council. Any resulting settlement or stipulation shall be stated on the record or submitted in writing and is subject to approval by the council.

AMENDATORY SECTION (Amending Order 109, filed 11/16/76)

WAC 463-30-270 **PREHEARING** CONFERENCE((S PRIOR TO HEARING)). ((On its own motion or at the request of a party the council may direct the parties to appear at a specified time and place for prehearing conferences regarding any scheduled hearing. Primary emphasis shall be on the simplification of issues prior to hearing. In the discretion of the council, the following matters may also be taken up:

- (1) The necessity of amendments to the pleadings;
- (2) The possibility of obtaining stipulations, admissions of facts, or documents;
 - (3) The limitation of the number of expert witnesses;
- (4) Other matters which may aid in disposition of the proceeding, including scheduling of the hearing and determination of sequence of the subject matter.)) (1) The presiding officer upon his or her own motion or upon request of a party may direct the parties or their representatives to engage in a prehearing conference or conferences to consider:
 - (a) Simplification of issues;
- (b) The necessity or desirability of amendments to the pleadings;
- (c) The possibility of obtaining stipulations, admissions of fact, and admissions of the genuineness of documents which will avoid unnecessary proof;
- (d) Limitations on the number and consolidation of the examination of witnesses;
 - (e) Procedural matters;
- (f) Distribution of written testimony and exhibits to the parties prior to the hearing;
- (g) The disposition of petitions for leave to intervene in the proceeding filed pursuant to WAC 463-30-400 may be ruled upon at a prehearing conference;
- (h) Such other matters as may aid in the disposition or settlement of the proceeding including scheduling the hearing and determination of the sequence of the subject matter.
- (2) Prehearing conferences may be held by telephone conference call or at a time and place specified by the presiding officer.
- (3) Following the prehearing conference, the presiding officer shall issue an order reciting the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties concerning all of the matters considered. If no objection to such notice is filed within ten days after the date such notice is mailed, it shall control the subsequent course of the proceeding unless modified for good cause by subsequent order.

- (4) In any proceeding the presiding officer may, at his or her discretion, conduct a conference prior to the taking of testimony, or may recess the hearing for such conference, for the purpose of carrying out the purpose of this section. The presiding officer shall state on the record the results of such conference.
- (5) Nothing in this section shall be construed to limit the right of the council to order a prehearing conference or other settlement procedure prior to issuance of a notice of hearing.

AMENDATORY SECTION (Amending Order 109, filed 11/16/76)

WAC 463-30-300 HEARING SCHEDULE GUIDELINES. In any ((contested case)) adjudicative site certification proceeding ((on certification)) the council shall, after consultation with the parties schedule the hearing process so that the following general subject areas may be heard separately at specified times, to the extent they are in issue:

- (1) The description of the particular energy facility and the proposed site.
- (2) Consistency of the proposal with zoning and land use regulations.
- (3) Physical site suitability and related safety considerations.
 - (4) NPDES permit or permits.
- (5) On-site and local impacts (physical): Such as aquatic, terrestrial and atmospheric.
- (6) On-site and local impacts (societal): Such as housing, services, recreation, economics, transportation, health, and tax base.
 - (7) Peripheral area impacts (all categories).
- (8) Adverse impacts minimization and consideration of conditions of certification.
- ((The council may alter the sequence in which the foregoing matters are to be considered in any given ease.)) At the commencement of the ((contested case)) hearing, the council shall publicly announce the proposed schedule by which the hearing is to be conducted. ((It is the intent and purpose of this section to accomplish two equally important objectives. First, interested persons may avail themselves of the opportunity to attend and hear only those segments of the whole hearing process which are of keen personal interest. Second, applicants and other parties may determine the specific nature of council concern regarding critical issues without the necessity of proceeding through the entire hearing process.)) The council may alter the schedule.

AMENDATORY SECTION (Amending Order 109, filed 11/16/76)

WAC 463-30-310 RULES OF EVIDENCE. ((In ruling upon evidentiary matters, the council shall be guided by the provisions of WAC 1-08-450 through 1-08-530.)) (1) All rulings upon objections to the admissibility of evidence shall be made in accordance with the provisions of RCW 34.05.452.

(2) Where practicable, the presiding officer may order:

- (a) That all documentary evidence which is to be offered during the hearing or portions of the hearing be submitted to the presiding officer and to the other parties sufficiently in advance to permit study and preparation of cross—examination and rebuttal evidence;
- (b) That documentary evidence not submitted in advance as required in (a) of this subsection be not received in evidence in the absence of a clear showing that the offering party had good cause for his or her failure to produce the evidence sooner, unless it is submitted for impeachment purposes;
- (c) That the authenticity of all documents submitted in advance in a proceeding in which such submission is required be deemed admitted unless written objection thereto is filed prior to the hearing, except that a party will be permitted to challenge such authenticity at a later time upon a clear showing of good cause for failure to have filed such written objection.
- (3) When portions only of a document are to be relied upon, the offering party shall identify the pertinent excerpts and state the purpose for which such materials will be offered. Only the excerpts, in the form of copies, shall be received in the record. However, the whole of the original documents, except any portions containing confidential material protected by law, shall be made available for examination and for use by all parties.
- (4) No former employee of the council shall appear, except with the permission of the council, as an expert witness on behalf of other parties in a proceeding in which the former employee participated.
- (5) The refusal of a witness to answer any question which has been ruled to be proper shall, in the discretion of the presiding officer, be grounds for striking all testimony of the witness.
- (6) Any party bound by stipulation or admission of record may, at any time prior to closure of the record, be permitted to withdraw its agreement in whole or in part by showing to the satisfaction of the presiding officer that such stipulation or admission was made inadvertently or under a bona fide mistake of fact contrary to the true fact and that its withdrawal at the time proposed will not unjustly prejudice the rights of other parties to the proceeding.

AMENDATORY SECTION (Amending Order 82-2, filed 4/30/82)

WAC 463-30-320 ((PROPOSED COUNCIL ORDER OR RECOMMENDATION)) ENTRY OF INITIAL AND FINAL ORDERS. ((In any case where a contested case proceeding is conducted by an administrative law judge or a panel of council members less than a majority, there shall be prepared a proposed council order, supported by written findings of fact and conclusions of law, copies of which shall be served upon all parties. The proposed order, findings and conclusions shall be transmitted to the council. In a site certification proceeding, the proposed council order shall be designated a proposed council recommendation and shall be styled accordingly:)) Every decision and order whether initial or final shall:

(1) Be correctly captioned to identify the council and name of the proceeding;

- (2) Identify all parties and representatives participating in the proceeding;
- (3) Include a concise statement on the nature and background of the proceeding;
- (4) Contain appropriate numbered findings of fact meeting the requirements of RCW 34.05.461;
- (5) Contain appropriate numbered conclusions of law, including citations to statutes and rules relied upon;
- (6) Contain an initial or final order disposing of all contested issues;
- (7) If applicable, contain a statement describing the parties' rights to reconsideration or other administrative relief.

AMENDATORY SECTION (Amending Order 109, filed 11/16/76)

WAC 463-30-330 ((PROPOSED ORDER—EX-CEPTIONS)) PETITION FOR REVIEW AND RE-PLIES. ((Any party of record may file exceptions to a proposed council order. Exceptions must be filed with the council and one copy must be served upon all parties of record within 10 days of the date of service of the proposed council order.)) (1) Any party to an adjudicative proceeding may file a petition for review of an initial order.

- (2) The petition for review shall be filed with the executive secretary of the council within twenty days of the date of service of the initial order unless a different place and time limit for filing the petition are specified in the initial order in its statement describing available procedures for administrative relief. Copies of the petition shall be served upon all other parties or their representatives at the time the petition is filed.
- (3) The petition for review shall specify the challenged portions of the initial order and shall refer to the evidence of record which is relied upon to support the petition.
- (4) Any party may file an answer to a petition for review. The answer shall be filed with the executive secretary of the council within fourteen days after the date of service of the petition and copies of the answer shall be served upon all other parties or their representatives at the time the answer is filed.

NEW SECTION

WAC 463-30-335 RECONSIDERATION. A petition for reconsideration of a final order under RCW 34.05.470 shall be filed with the executive secretary of the council.

AMENDATORY SECTION (Amending Order 109, filed 11/16/76)

WAC 463-30-410 PARTICIPATION BY INTERVENOR. In general, it is the policy of the council to allow any intervenor broad procedural latitude. To the extent that the council determines that numerous intervenors might unduly delay the proceedings or prejudice the rights of existing parties, intervenor status may be conditioned upon assent by the prospective intervenor and counsel for the environment to ((allowing)) allow the counsel for the environment to act as lead counsel

for the balance of the hearing, where the intervenor's interests more closely align with those of the counsel for the environment. Intervenor status may also be conditioned upon allowance of other parties to act as lead parties, where appropriate. The council reserves the right to prescribe other limitations and conditions, where appropriate. ((It is the intent and purpose of this section to prevent unwarranted proliferation of issues leading, in turn, to delay and prejudice to existing parties.))

AMENDATORY SECTION (Amending Order 78-9, filed 8/28/78)

WAC 463-30-420 PARTICIPATION BY COUN-TY, CITY AND PORT DISTRICT REPRESENTA-TIVES. In any ((contested case to the extent that council action involves site certification matters relating to any county, city or port district or any combination thereof in which an energy facility is sought to be located, they shall be separated and divided to allow individual county, city and/or port district representatives to participate in discussion and county and city representatives shall vote only with regard to matters specifically affecting the concerned county or city. Port districts are nonvoting members of the council)) adjudicative site certification proceeding, designated council members representing local jurisdictions may discuss and, if authorized, vote only on issues affecting their jurisdictions. Issues shall be separated for purposes of discussion and voting.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 463-30-070 PLEADINGS—LEGIBILITY. WAC 463-30-110 NOTICE AND OPPORTUNITY TO BE HEARD—TIME.

WAC 463-30-130 SERVICE—UPON WHOM SERVED.

WAC 463-30-140 WAIVER OF SERVICE—FILING.

WAC 463-30-150 SERVICE—METHOD OF SERVICE.

WAC 463-30-160 SERVICE—WHEN SERVICE COMPLETE.

WAC 463-30-170 PROOF OF SERVICE—FIL-ING WITH COUNCIL.

WAC 463-30-180 PROOF OF SERVICE—METHOD.

WAC 463-30-210 DEPOSITIONS AND INTER-ROGATORIES—PRACTICE.

WAC 463-30-220 REQUEST FOR PRODUCTION.

WAC 463-30-260 DEFINITION OF ISSUES BEFORE HEARING.

WAC 463-30-290 PREHEARING CONFERENCE RECORD OF ACTION.

WAC 463-30-295 ORDERS REGARDING PROCEDURE, SCHEDULING AND SUBSTANTIVE ISSUES.

WAC 463-30-340 PROPOSED ORDER—CONTENTS OF EXCEPTIONS.

WAC 463-30-350 REPLIES TO EXCEPTIONS. WAC 463-30-360 REPLIES TO EXCEPTIONS—CONTENTS.

WAC 463-30-370 EXCEPTIONS AND REPLIES TO EXCEPTIONS—BRIEFS AND ARGUMENTS. WAC 463-30-380 ADOPTION OF PROPOSED ORDER.

Chapter 463-34 WAC
PROCEDURE—PETITIONS FOR RULE MAKING
AND DECLARATORY ((RULINGS)) ORDERS

AMENDATORY SECTION (Amending Order 107, filed 11/4/76)

WAC 463-34-010 PURPOSE AND SCOPE OF THIS CHAPTER. This chapter sets forth procedures to be followed in ((rule-making proceedings before the council and further specifies the manner in which declaratory rulings may be sought)) petitions for rule making and for declaratory orders pursuant to chapter ((34.04)) 34.05 RCW.

AMENDATORY SECTION (Amending Order 107, filed 11/4/76)

WAC 463-34-030 PETITIONS FOR RULE MAKING—((CONTENTS)) FORM, CONTENT, AND FILING. ((Where the petition requests amendment to or promulgation of a rule, the amended or proposed rule must be set out in full. The petition must also include the reasons for the request. Where the petition requests repeal of an existing and identified rule, the reasons for the proposed repeal must be set out in the petition:)) A petition for adoption, amendment, or repeal of a rule may be filed pursuant to RCW 34.05.330 and shall generally adhere to the following form:

(1) At the top of the page, centered, shall appear the wording "before the energy facility site evaluation council." On the left side of the page below the foregoing the following caption shall be set out: "In the matter of the petition of (name of petitioning party) for rule making." Opposite the caption shall appear the word "petition."

(2) The body of the petition shall be set out in num-

bered paragraphs:

(a) The first paragraph shall state the name and address of the petitioner and whether the petition seeks the adoption of a new rule or amendment or repeal of an existing rule.

(b) The second paragraph, in case of a proposed new rule or amendment of an existing rule, shall set forth the desired rule in its entirety. If the petition seeks repeal of an existing rule, the rule proposed to be repealed shall be set forth in full.

(c) The third paragraph shall set forth concisely the reasons for the proposal and shall state the petitioner's interest in the subject matter of the rule. The petition should in subsequent paragraphs state a full explanation of reasons supporting the proposal.

(3) Petitions shall be dated and signed by the petitioner or its attorney. The original and two legible copies

shall be filed with the council.

AMENDATORY SECTION (Amending Order 107, filed 11/4/76)

WAC 463-34-050 ((CONSIDERATION OF PETITION—FURTHER HEARING)) PETITION FOR RULE MAKING—CONSIDERATION AND DISPOSITION. ((All petitions shall be considered by the council, which may order a hearing for the further consideration and discussion of the requested promulgation, amendment, or repeal of the rule.)) (1) Each petition for the adoption, amendment, or repeal of a rule shall be considered by the council, and the council may, in its discretion, solicit comments or invite discussion concerning the matter prior to disposition of the petition.

(2) If the council denies the petition, the denial shall be in writing and shall be served upon the petitioner.

AMENDATORY SECTION (Amending Order 107, filed 11/4/76)

WAC 463-34-060 DISPOSITION TIME. ((The council shall notify the petitioning party within 30 days of the disposition, if any, of the petition.)) Within sixty days after the petition's submission, the council shall deny the petition in writing, stating its reasons for the denial or initiate rule-making proceedings.

AMENDATORY SECTION (Amending Order 107, filed 11/4/76)

WAC 463-34-070 ((PETITIONS FOR DECLARATORY RULINGS—POSSIBLE DISPOSITION))
DECLARATORY ORDERS—FORM, CONTENT,
AND FILING. ((Any interested person may petition the council for a declaratory ruling. The council shall consider the petition and, within a reasonable time:

(1) Issue a nonbinding declaratory ruling; or

(2) Notify the person that no declaratory ruling is to be issued; or

(3) Set a reasonable time and place for oral hearing or submission of written evidence upon the matter.)) A petition for a declaratory order may be filed pursuant to RCW 34.05.240 and shall generally adhere to the following form:

(1) At the top of the page, centered, shall appear the wording "before the energy facility site evaluation council." On the left side of the page below the foregoing the following caption shall be set out: "In the matter of the petition of (name of petitioning party) for a declaratory order." Opposite the caption shall appear the word "petition."

(2) The body of the petition shall be set out in numbered paragraphs:

(a) The first paragraph shall state the name and address of the petitioning party.

(b) The second paragraph shall state all rules or statutes that may be brought into the issue by the petition.

(c) Succeeding paragraphs shall set out the facts relied upon and the reasons for granting its relief.

(d) The concluding paragraph shall specify the relief sought by the petitioner.

The petition shall be subscribed and verified in the manner prescribed for verification of complaints in the superior courts of this state.

(3) The original and two legible copies of the petition shall be filed with the council.

AMENDATORY SECTION (Amending Order 107, filed 11/4/76)

WAC 463-34-080 ((ORAL HEARING)) DE-CLARATORY ORDERS—PROCEDURAL RIGHTS OF PERSONS IN RELATION TO PETITION. ((Hear or of the council shall, within a reasonable time thereafter:

- (1) Issue a binding declaratory ruling; or
- (2) Issue a nonbinding declaratory ruling; or
- (3) Notify the person that no declaratory ruling is to be issued.) (1) If a petition for a declaratory order is set for specified proceedings under RCW 34.05.240 (5)(b), the agency shall give not less than seven days' advance written notice of the proceeding to the petitioner and all persons described in RCW 34.05.240(3). The notice shall specify the time, date, place, and nature of the proceeding and shall describe how interested persons may participate.

(2) The council may order that RCW 34.05.410 through 34.05.494 and chapter 463-30 WAC shall apply in a proceeding under this section.

AMENDATORY SECTION (Amending Order 107, filed 11/4/76)

WAC 463-34-090 DECLARATORY ((RUL-ING—CONTENTS)) ORDERS—DISPOSITION OF PETITION. ((Any person petitioning for declaratory ruling shall state all legal rules or statutes which may bear upon the petition and shall also state all facts relied upon. If a binding declaratory ruling is sought, then the petition must be subscribed and verified in the manner prescribed for verification of complaints in the superior court of this state.)) A declaratory order entered by the council or a decision by the council to decline to enter a declaratory order shall be in writing and shall be served upon the petitioner and all other persons described in RCW 34.05.240(3).

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 463-34-020 SCOPE OF PETITIONS FOR RULE MAKING.

WAC 463-34-040 RULE-MAKING PETI-TIONS—REQUEST FOR SPECIFIC TIME. WAC 463-34-100 FORM OF PETITIONS.

WSR 90-05-019 NOTICE OF PUBLIC MEETINGS DEPARTMENT OF LICENSING

[Memorandum—February 13, 1990]

MARINE FUEL USE STUDY - PUBLIC HEARING

The Department of Licensing has changed the date of the previously announced hearing to present the results of the 1988-1989 Marine Fuel Use Study. The hearing will be held at 10:00 a.m., March 20, 1990, in the Executive Conference Room, Department of Licensing, Highways-Licenses Building, 12th Avenue and Franklin Street, Olympia, Washington 98504.

The study to determine the amount or proportion of moneys paid to the department as motor vehicle fuel tax which is tax on marine fuel is in accordance with the provisions of RCW 43.99.030. The study period covered September 1, 1988, through August 31, 1989.

The information is important as it establishes the amount of nonrefunded marine fuel tax available for deposit in the outdoor recreation account. These funds are administered by the Interagency Committee for Outdoor Recreation and used to acquire and develop boating facilities statewide.

Should you wish to express your views on this study, you may attend this hearing to do so. You may also contact the Department of Licensing in writing at the above address on or before March 19, 1990, to make your thoughts known.

WSR 90-05-020 PERMANENT RULES DEPARTMENT OF SOCIAL AND HEALTH SERVICES (Public Assistance)

[Order 2939—Filed February 13, 1990, 3:27 p.m., effective March 1, 1990]

Date of Adoption: February 13, 1990.

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

Citation of Existing Rules Affected by this Order: Repealing WAC 388-09-010, 388-09-020, 388-09-030 and 388-09-040.

Statutory Authority for Adoption: RCW 34.05.220 (1)(a).

Pursuant to notice filed as WSR 90-04-020 on January 29, 1990.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: Emergency rules were filed on July 3 and October 31, 1989, and expire on February 28, 1990. These permanent rules become effective March 1, 1990. This is less than thirty days from their filing. The reason for the shorter period is so Department of Social and Health Services has no gap in rules adequate to meet its statutory requirements and to prevent imminent peril to the public safety or welfare. RCW 34.05.220 (1)(a) permits

an agency to adopt rules governing the procedures prescribed or authorized by the Administrative Procedure Act, chapter 34.05 RCW. If an agency does not, then the model rules govern. The model rules are inadequate to meet all Department of Social and Health Services' (DSHS) action under the APA so the agency must have rules with some variations from the model rules.

Effective Date of Rule: March 1, 1990.

February 13, 1990 Leslie F. James, Director Administrative Services

REPEALER

The following sections of the Washington Administration Code are repealed:

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

WAC 388-09-020 ADMINISTRATIVE HEAR-ING-APPLICABILITY OF CHAPTER 388-08 WAC.

WAC 388-09-030 ADMINISTRATIVE HEAR-ING-APPEARANCE AND PRACTICE BEFORE DEPARTMENT-WHO MAY APPEAR.

WAC 388-09-040 TIME LIMIT FOR RENDER-ING 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.

WSR 90-05-021 EMERGENCY RULES DEPARTMENT OF SOCIAL AND HEALTH SERVICES (Public Assistance)

[Order 2941—Filed February 13, 1990, 3:28 p.m.]

Date of Adoption: February 13, 1990.

Purpose: This change will correct the January 1, 1990, update to the funeral/interment program payment standard and allow Department of Social and Health Services staff to legally authorize payments at these amounts.

Citation of Existing Rules Affected by this Order: Amending WAC 388-42-150 Maximum cost standards. Statutory Authority for Adoption: RCW 74.08.090.

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

Reasons for this Finding: This rule amendment is necessary to correct the January 1, 1990, amendment to WAC to accurately show the increase of the funeral/interment program standards by two percent, in accordance with the distribution of vendor rate funding as instructed by the legislature.

Effective Date of Rule: February 14, 1990, 12:01 a.m.
February 13, 1990
Leslie F. James, Director
Administrative Services

AMENDATORY SECTION (Amending Order 2682, filed 8/30/88)

WAC 388-42-150 MAXIMUM COST STAN-DARDS.

- (1) Mortuary services—Actual costs, but not to exceed:
- (a) Essential services only $\$ ((\frac{273}{273}))$ 278
- (b) Essential services plus

funeral/memorial service . . . \$ ((626)) 638

- (2) Burial services—Actual costs, but not to exceed:
- (a) Burial only, no plot included \dots \$ ((342)) 348
- (b) Burial with plot included,

single or multiple interment . \$ ((395)) 402

- (3) Cremation services—Actual costs, but not to exceed:
- (a) Cremation only \$ ((162)) <u>165</u>
- (b) Cremation and disposition..... \$ ((243)) 247
- (4) These standards include all applicable taxes.
- (5) These standards shall be effective ((September 1, 1988)) February 13, 1990.

WSR 90-05-022 PERMANENT RULES DEPARTMENT OF SOCIAL AND HEALTH SERVICES (Public Assistance)

[Order 2942—Filed February 13, 1990, 3:29 p.m.]

Date of Adoption: February 13, 1990.

Purpose: To amend rule to clarify cooperation procedures regarding AFDC recipients.

Citation of Existing Rules Affected by this Order: Amending WAC 388-14-200 Eligibility—Assignment of support rights—Cooperation with Office of Support Enforcement—Effect of noncooperation.

Statutory Authority for Adoption: RCW 74.20A.270. Pursuant to notice filed as WSR 90-01-072 on December 19, 1989.

Effective Date of Rule: Thirty-one days after filing.
February 13, 1990
Leslie F. James, Director
Administrative Services

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

WAC 388-14-200 ELIGIBILITY—ASSIGN-MENT OF SUPPORT RIGHTS—COOPERATION WITH OFFICE OF SUPPORT ENFORCEMENT—EFFECT OF NONCOOPERATION. This section establishes the initial and continuing requirements which affect eligibility for aid to families with dependent children. These requirements also affect eligibility for family independence program services.

- (1) Beginning August 1, 1975, as a condition of eligibility for assistance, each applicant/recipient shall make assignment to the office of support enforcement of any and all right, title, and interest in any support obligation the applicant/recipient may have. This includes support rights of any other family member for whom the applicant/recipient is applying for or receiving financial assistance. It also includes rights to support which have accrued at the time such assignment is executed. Through this assignment, the applicant/recipient authorizes the office of support enforcement to provide services for the family, and to continue to provide services after the family stops receiving assistance, until services are terminated under this chapter.
- (2) When the applicant/recipient satisfies subsection (1) of this section ((is satisfied)), the department may require further cooperation ((is further required)) by the applicant/recipient as a continuing condition of eligibility for assistance unless the department determines ((that)) the applicant/recipient has good cause not to cooperate under WAC 388-24-111. The applicant/recipient's cooperation includes, but is not limited to, assisting the office of support enforcement in or by doing the following:
 - (a) Identifying and locating absent parents by:
- (i) Providing ((all)) relevant information known to, possessed by, or reasonably obtainable by the applicant/recipient about the absent parent, such as the absent parent's:
 - (A) Name and known aliases;
 - (B) Address;
 - (C) Telephone number or numbers;
 - (D) Social Security number;
 - (E) Employment history; and
 - (F) Physical description.
- (ii) Providing data regarding the date and place of marriage, separation, divorce, or dissolution, and copies of any documents, ((which are)) reasonably obtainable without fee, including any court orders establishing paternity and/or support obligations;
- (iii) Providing information ((to establish)) establishing the support debt amount ((of the support debt)) accrued ((prior to)) before the application. Applicants shall give information at the time of application and/or at a later time, if requested by the office of support enforcement, to supplement existing information.
- (b) Notifying the office of support enforcement when there are changes in information concerning the absent parent;
 - (c) Establishing the paternity of a child:
- (i) The applicant shall take ((all)) reasonable action requested by the office, the prosecuting attorneys, the attorney general, private attorneys compensated under RCW 74.20.350, courts, or other agencies in:
 - (A) Administrative hearings; or
- (B) Actions to ((prosecute or maintain any legal action or remedy for the establishment of)) establish paternity; or
- (C) Investigations preparatory to or supplementary to such hearings or actions.

- (ii) The applicant shall assist in the development of medical and anthropological evidence relating to the alleged father's paternity based ((upon)) on tests performed by experts on the mother and the child.
- (d) Establishing and collecting support and/or ((in)) obtaining support payments or ((any)) other payments or property due the applicant/recipient or a dependent child. The applicant shall take ((all)) reasonable action requested by the office of support enforcement, the prosecuting attorneys, the attorney general, private attorneys compensated under RCW 74.20.350, courts or other agencies in:
 - (i) Administrative hearings; or
- (ii) Actions to ((prosecute or maintain any legal action or remedy for the establishment)) establish or ((collection of)) collect support obligations; or
- (iii) Investigations preparatory to or supplementary to such hearings or actions.
- (e) Remitting ((all)) support payments the applicant/recipient receives, from any person or agency, to the office of support enforcement within eight days of receipt of said payments;
- (f) Executing a repayment agreement and repaying retained support moneys under the agreement.
- (3) An applicant/recipient may attest to the lack of information, under penalty of perjury, if:
- (a) ((He or she)) The applicant/recipient submits to an interview:
- (i) Conducted by the office of support enforcement, a prosecuting attorney, the attorney general, or private attorney compensated under RCW 74.20.350; and
- (ii) Answers questions intended to obtain relevant information.
- (b) The ((requested information is)) applicant/recipient does not ((known to)) know of, ((possessed by)) possess, or cannot reasonably ((obtainable by)) obtain the ((applicant/recipient)) department's requested information.
- (4) ((Any)) The department shall consider an applicant/recipient who attests to the lack of information ((shall be considered)) to be cooperating, as required under this section, unless the:
- (a) ((The)) Applicant/recipient fails or refuses to submit to an interview and answer questions;
- (b) ((The)) Department produces credible evidence which shows that the applicant/recipient's attestation is false; or
- (c) ((The)) Applicant/recipient previously gave inconsistent information for which ((he or she)) the applicant/recipient has no reasonable explanation.
 - (5) The department may not refuse to:
- (a) Allow the applicant/recipient to sign an attestation; or
- (b) Sanction ((him or her)) the applicant/recipient for failure to cooperate merely because previous attempts to identify an absent parent resulted in blood test results excluding the person identified.

The applicant/recipient, however, must cooperate with any necessary retesting.

(6) ((The department shall find the applicant/recipient ineligible to receive assistance if the applicant/recipient fails to cooperate as defined in this section. The

department shall provide any assistance for which the children may be eligible as specified in WAC 388-33-453. The department shall compute requirements for the child or children without regard to the requirements of the applicant/recipient.

- (7)) If the office, the prosecuting attorney, the attorney general, or a private attorney compensated under RCW 74.20.350, believes the applicant/recipient is not cooperating, they shall ((notify)) send notice of the alleged noncooperation to the community services office ((of)) and the ((noncooperation)) applicant/recipient. The notice shall be evidence of noncooperation and shall include a statement:
- (a) ((A statement)) Explaining how the applicant/recipient failed to cooperate with that office, including what actions were required; ((and))
- (b) ((A statement)) Of the action that office believes the applicant/recipient must take to resume cooperation;
 - (c) Informing the applicant/recipient that the:
- (i) Same evidence is furnished to the community services office;
- (ii) Applicant/recipient may contact the community services office immediately if the applicant/recipient disagrees with the evidence, needs assistance in order to cooperate, or believes the action required is unreasonable; and
- (iii) Applicant/recipient's grant may be reduced or terminated if the IV-A agency determines the applicant/recipient failed to cooperate after a review of all of the evidence.
- (((8))) (7) The department shall include in the notice of planned action either ((attach)) a:
- (a) Copy of the ((notice)) evidence of noncooperation ((to,)); or ((include the))
- (b) Statement((s from)) of the ((notice in, the notice of planned action)) evidence of noncooperation.
- (((9))) (8) If the applicant/recipient fails to cooperate by missing an interview without reasonable excuse, cooperation resumes when the applicant/recipient appears for a rescheduled interview and either provides information or attests to the lack of information. The office of support enforcement, prosecuting attorney, attorney general, or private attorney shall reschedule the interview within seven business days from the date the applicant/recipient contacts them to reschedule an interview.
- (((10))) (9) Cooperation resumes when the applicant/recipient performs the required action. The department shall reinstate the grant effective on the date cooperation resumes.
- (((11))) (10) If the applicant/recipient does not remit support moneys within eight days of receipt as required under WAC 388-14-200 (2)(e)(ii) and the applicant/recipient is currently receiving an AFDC grant, or cash benefits under the family independence program, the office of support enforcement shall:
- (a) Document the applicant/recipient has, in fact, received and retained support money((s)) and the amount of said money;
- (b) Issue a notice of debt as provided in WAC 388-13-020 to the applicant/recipient to recover the payments, which notice includes the following information:

- (i) An explanation of the applicant/recipient's responsibility to cooperate by turning over the support money((s)) as a condition of eligibility for public assistance, and the sanction for failure to cooperate;
- (ii) A list of the support money((s)) retained, including the dates and amounts as well as copies of any documentary evidence (such as copies of checks, front and back), the office possesses;
- (iii) A proposed repayment agreement that may include a provision for a voluntary grant deduction;
- (iv) An explanation that repaying retained support money((s)) according to a repayment agreement is a condition of cooperation;
- (v) ((A notice that)) The recipient may request an informal meeting with the office, within twenty days of the date of service of the notice of debt, to:
- (A) Clarify the recipient's responsibilities for cooperation; and
- (B) Resolve ((any)) differences regarding the existence or amount of the claim for unremitted support money((s)) and/or the proposed repayment agreement.
- (vi) ((A notice that)) The recipient has the right to request a hearing under WAC 388-13-060 to:
- (A) Contest the department's claim of ownership of the support money identified in the notice; and/or
- (B) The reasonableness of the proposed repayment agreement.
- (vii) A statement that the office will notify the community services office that the recipient failed to cooperate unless the recipient, within twenty days of the date of service of the notice of debt, executes the proposed repayment agreement, requests an informal meeting or requests an administrative hearing.
- (((12))) (11) The department shall base the repayment agreement on the:
- (a) ((The)) Applicant/recipient's total income and resources including the AFDC grant or cash benefits under the family independence program; and
- (b) $((\frac{The}{t}))$ Total amount of retained support money((s)).
- $((\frac{13}{13}))$ (12) The monthly amount of the repayment shall not exceed ten percent of the:
- (a) ((The)) Grant payment standard during any month the applicant/recipient remains in public assistance status, or
- (b) ((The)) Cash benefits paid under the family independence program.
- (((14))) (13) When an applicant/recipient retains support money((s)) but is no longer an active recipient of public assistance money, the office of support enforcement shall proceed under RCW 74.20A.270 and chapter 388-13 WAC, without reference to the procedural requirements of WAC 388-14-200(4).
- (((15))) (14) The office of support enforcement shall notify the community services office when the recipient fails to cooperate if the recipient:
- (a) ((The recipient)) Fails to sign a repayment agreement for the amount of retained support money((s)) claimed by the office in the notice of debt or as determined by an administrative law judge if a hearing is requested under WAC 388-13-060;

- (b) ((The recipient)) Enters into a repayment agreement but subsequently fails to make a payment under the terms of the agreement, or fails to comply with the decision of the administrative law judge.
- (((16))) (15) The office of support enforcement shall promptly notify the community services office when ((either of)) the ((following changes in circumstances occurs)) recipient:
- (a) ((The recipient)) Fails to enter into a repayment agreement and then consents to do so and signs a repayment agreement:
- (b) ((The recipient)) Defaults on an agreement or an administrative decision and then makes a regularly scheduled payment according to the agreement or decision.
- (((17))) (16) Nothing in ((these rules)) WAC 388-14-200 makes an otherwise eligible child ineligible for public assistance because of the ((failure of)) applicant/ recipient's failure to cooperate as defined in this section.

WSR 90-05-023 WITHDRAWAL OF PROPOSED RULES DEPARTMENT OF SOCIAL AND HEALTH SERVICES (Public Assistance)

[Filed February 13, 1990, 3:30 p.m.]

I would like to withdraw WSR 90-02-033, dated December 29, 1989, WAC 388-42-150 because of a mathematical error. This section will be filed for another hearing.

Leslie F. James, Director Administrative Services

WSR 90-05-024 PROPOSED RULES DEPARTMENT OF SOCIAL AND HEALTH SERVICES

(Public Assistance)

[Filed February 13, 1990, 3:31 p.m.]

Continuance of WSR 90-01-123.

Title of Rule: Chapter 388-29 WAC, Standards—Eligibility.

Submit Written Comments to: Troyce Warner, Chief, Office of Issuances, Department of Social and Health Services, Mailstop OB-33H, Olympia, Washington 98504, by February 28, 1990.

Date of Intended Adoption: March 1, 1990.

February 13, 1990 Leslie F. James, Director Administrative Services

WSR 90-05-025 PROPOSED RULES DEPARTMENT OF SOCIAL AND HEALTH SERVICES

(Public Assistance)

[Filed February 13, 1990, 3:32 p.m.]

Original Notice.

Title of Rule: WAC 388-42-150 Maximum cost standards.

Purpose: This change will correct the January 1, 1990, update to the funeral/interment program payment standard and allow Department of Social and Health Services staff to legally authorize payments at these amounts.

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

Reasons Supporting Proposal: This rule amendment is necessary to correct the January 1, 1990, amendment to WAC to accurately show the increase of the funeral/interment program standards by two percent, in accordance with the distribution of vendor rate funding as instructed by the legislature.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Kay Hanvey, Income Assistance/Assistance Programs, 753-7393.

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

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

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

Proposal Changes the Following Existing Rules: See above.

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

Hearing Location: OB-2 Auditorium, 12th and Franklin, Olympia, Washington, on March 28, 1990, at 10:00 a.m.

Submit Written Comments to: Troyce Warner, Chief, Office of Issuances, Department of Social and Health Services, Mailstop OB-33H, Olympia, Washington 98504, by March 28, 1990.

Date of Intended Adoption: April 25, 1990.

February 13, 1990 Leslie F. James, Director Administrative Services

AMENDATORY SECTION (Amending Order 2682, filed 8/30/88)

WAC 388-42-150 MAXIMUM COST STANDARDS.

(4) These standards include all applicable taxes.

(1) Mortuary services—Actual costs,
but not to exceed:
(a) Essential services only\$ ((273)) 278
(b) Essential services plus
funeral/memorial service \$ ((626)) 638
(2) Burial services—Actual costs,
but not to exceed:
(a) Burial only, no plot included \$ ((342)) 348
(b) Burial with plot included,
single or multiple interment \$ ((395)) 402
(3) Cremation services—Actual costs,
but not to exceed:
(a) Cremation only \$ ((162)) 165
(b) Cremation and disposition

(5) These standards shall be effective ((September 1, 1988)) February 13, 1990.

WSR 90-05-026 NOTICE OF PUBLIC MEETINGS CLEMENCY AND PARDONS BOARD

[Memorandum—February 12, 1990]

The Washington State Clemency and Pardons Board hereby files with the code reviser the following schedule of its regular meetings for 1990: Clemency and Pardons Board meetings shall be held on Friday, March 8, 1990, and thereafter on the second Friday of June, September and December 1990, at 9:00 a.m. in the Governor's Conference Room.

WSR 90-05-027 PROPOSED RULES DEPARTMENT OF PERSONNEL (Personnel Board)

[Filed February 13, 1990, 3:50 p.m.]

Continuance of WSR 90-03-045.

Title of Rule: Amending WAC 356-30-145, 356-30-180, 356-30-190 and 356-30-280.

Purpose: These rules within chapter 356-30 WAC pertain to employee rights relating to transfers, within projects, relocation, with the same class, probationary period and trial service periods.

Statutory Authority for Adoption: RCW 41.06.040.

Statute Being Implemented: RCW 41.06.150.

Summary: In general, these proposals are housekeeping in pature and clarify the intent of the rule and also

ing in nature and clarify the intent of the rule and also provide for uniform transfer rights to employees. This will allow employees to transfer within different status after having completed six months of their probationary periods.

Reasons Supporting Proposal: Department of Social and Health Services has several classes with 12-month probationary periods. It would be advantageous to the employee and the department to allow transfers after completion of six months of the probationary periods. This is also consistent with timeframes surrounding promotional eligibility.

Name of Agency Personnel Responsible for Drafting: Paul Peterson, 521 Capitol Way South, Olympia, 586-8354; Implementation and Enforcement: Department of Personnel.

Name of Proponent: Bonnie Parker, Department of Social and Health Services, OB-14, 753-5184, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: This proposal will make transfers consistent with the timeframes surrounding promotional eligibility under current WAC's. It will provide uniform transfer rights to employees in project employment, relocating of positions

with incumbent, within the same class, within a probationary period and for reversion of employees who fail to satisfactorily complete the trial service period. These proposals are also in part clarifying in nature to emphasize the intent of the rule.

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 Capitol Way South, Olympia, WA, on March 8, 1990, at 10:00 a.m.

Submit Written Comments to: Paul Peterson, Department of Personnel, P.O. Box 1789, FE-11, Olympia, WA 98507, by March 6, 1990.

Date of Intended Adoption: March 8, 1990.

February 9, 1990 Dee W. Henderson Secretary

WSR 90-05-028 PERMANENT RULES DEPARTMENT OF PERSONNEL (Personnel Board)

[Order 339—Filed February 13, 1990, 3:51 p.m., effective April 1, 1990]

Date of Adoption: February 8, 1990.

Purpose: This rule pertains to employees in their trial service period or any employee who has been reverted and their rights in this status.

Citation of Existing Rules Affected by this Order: Amending WAC 356-30-320 Trial service—Reversion—Status.

Statutory Authority for Adoption: RCW 41.06.040 and 41.06.150.

Pursuant to notice filed as WSR 90-03-045 on January 16, 1990.

Effective Date of Rule: April 1, 1990.

February 9, 1990 Dee W. Henderson Secretary

AMENDATORY SECTION (Amending Order 204, filed 5/23/84, effective 9/1/84)

WAC 356-30-320 TRIAL SERVICE—REVER-SION—STATUS. (1) ((An)) ((e)) Employees who ((was)) were appointed from a voluntary demotion register to a class not previously held or from a promotional register within ((an)) the same agency and fail(s)) to satisfactorily complete the trial service period shall automatically revert to a position in the former classification.

(2) ((An)) ((e)) Employees who ((was)) were appointed from a voluntary demotion register to a class not previously held or from a promotional register into another agency and who fail((s)) to satisfactorily complete the trial service period shall be given ((15)) fifteen calendar days' written notice and placed on the dualagency reversion register and the service-wide reversion

register for ((his or her)) their former class. ((Employees who are reverted do not have the right of appeal.)) If an employee elects not to accept the first offer of employment, the employee's name is removed from the reversion register. The employee may then request his/her name ((is then)) be placed on the reemployment register.

(3) Employees who are reverted do not have the right

of appeal.

- romoted, demoted, or transferred to a position under the jurisdiction of the higher education personnel board in accordance with provisions of their rules and fail to complete their trial service period may request their names be placed on the dual-agency reversion register and service-wide reversion register for ((his/her)) their former class.
- (((4))) (5) Employees who are reemployed from the service—wide reversion registers shall enter a trial service period. ((Names of)) ((e)) Employees reverted during this period ((will)) may request their names be placed on the register from which they came.
- (((5))) (6) Employees who voluntarily revert to their former class may request ((of)) the director of personnel ((reactivation of)) to reactivate their promotional score for the class from which reverted. Employees involuntarily reverted to ((their)) a former class shall have all examination grades nullified for the class from which they are reverted ((nullified)).

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

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

WSR 90-05-029 PERMANENT RULES DEPARTMENT OF PERSONNEL (Personnel Board)

[Order 338—Filed February 13, 1990, 3:52 p.m., effective April 1, 1990]

Date of Adoption: February 8, 1990.

Purpose: These rules describe the information that must be included in examination announcements and also establish guidelines in using mechanical, electrical, or electronic devices used in testing situations.

Citation of Existing Rules Affected by this Order: Repealing WAC 356-22-11001; new section WAC 356-22-111; and amending WAC 356-22-120 and 356-22-010.

Statutory Authority for Adoption: RCW 41.06.040 and 41.06.150.

Pursuant to notice filed as WSR 90-03-047 on January 16, 1990.

Effective Date of Rule: April 1, 1990.

February 9, 1990 Dee W. Henderson Secretary AMENDATORY SECTION (Amending Order 267, filed 1/2/87)

WAC 356-22-010 EXAMINATION—ANNOUNCEMENTS. (1) Recruitment shall be conducted publicly in any manner which the director or designee determines will attract a sufficient number of qualified persons to meet the needs of the classified service, and shall include methods designed to attract protected group members. Recruitment announcements shall be posted publicly, as selected by the director, and at all offices of the department of personnel. Each recruitment announcement shall give the title and salary range of the class, a general description of the duties performed, the applicable minimum or desirable qualifications, the expected type of examination, and shall encourage protected group members to apply.

- (2) The director may limit recruitment to applicants meeting selective criteria.
- (3) The director may limit open competitive recruitment to applicants available for employment to specific geographic locations.
- (4) Registers established under subsections (2) and (3) of this section will be used exclusively for filling positions for which such recruitment has been conducted.

NEW SECTION

WAC 356-22-111 EXAMINATIONS—USE OF AIDS BY APPLICANTS. (1) The director may allow applicants to use mechanical, electrical, or electronic devices, or combinations thereof, that supplement the applicant's capabilities, provided:

- (a) The devices are judged by the director to have physical characteristics such as size, acoustical qualities, and portability that will make them not physically disturbing to other applicants taking the examination.
- (b) The devices are suitable for and actually allowed to be used in performing the duties of the class for which the applicant is being tested.
- (c) The devices do not enhance a physical capability or a mental capability that the test designers intended should be measured unaided by such supplements.
- (d) The devices do not supply knowledge to the applicants that the test designers intended should be measured unaided by such supplements.
- (2) Unless the device has previously been determined by the director as allowable for use in the examination, applicants will not be allowed to use it.
- (3) The use, when allowable, of such devices is optional by the applicants. The department of personnel shall not be required to furnish such devices or make special arrangements for their use.

AMENDATORY SECTION (Amending Order 175, filed 9/22/82)

WAC 356-22-120 EXAMINATIONS—PROMOTIONAL—EVALUATIONS—REGULATIONS.

(1) Inter-agency and intra-agency promotional examinations shall be announced as the director of personnel

determines the need and shall be open to current employees and employees who have been separated by reduction in force within the last year who meet the minimum requirements of the position. Promotional examinations shall consist of any combination of written, performance or oral test, or rating of training and experience.

- (2) The announcement of the promotional examination shall specify the desirable or minimum requirements, the <u>expected</u> parts of the examination and the method of rating. Announcements shall be prominently posted by all appropriate agencies to ensure that the information is reasonably available to all.
- (3) For a class used by only one agency, a promotional evaluation may be used in promotional scores if the class is in workweek group E and all competing employees are employed by the same agency at the time of the examination.
- (4) When any of the conditions in (3) above are not met, a promotional evaluation may be used in promotional scores provided that the director of personnel determines such promotional evaluations are practical and necessary to improve the effectiveness of the examination.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 356-22-11001 EXAMINATIONS—USE OF AIDS BY APPLICANTS.

WSR 90-05-030 EMERGENCY RULES DEPARTMENT OF FISHERIES

[Order 90-11-Filed February 13, 1990, 4:15 p.m.]

Date of Adoption: February 13, 1990. Purpose: Commercial fishing regulations.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-01000M.

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: Preseason run size estimates for lower river spring chinook indicate harvestable numbers are available. This regulation is adopted at the recommendation of the February 13, 1990, Columbia River Compact.

Effective Date of Rule: Immediately.

February 13, 1990 Joseph R. Blum Director

NEW SECTION

WAC 220-33-01000N COLUMBIA RIVER GILL NET SEASONS BELOW BONNEVILLE. Notwithstanding the provisions of WACs 220-33-005, 220-33-010, 220-33-020, and 220-33-030:

(1) It is unlawful for a person to take or possess salmon, shad, and sturgeon taken for commercial purposes from Columbia River SMCRA 1A, 1B, 1C, and that portion of Area 1D downstream from Kelly Point at the mouth of the Willamette River, except:

6:00 p.m. February 13 until 6:00 p.m. February 16,

noon February 18 until 6:00 p.m. February 23, 1990. noon February 25 until 6:00 p.m. March 2, 1990. noon March 4 until 6:00 p.m. March 9, 1990.

- (2) It is unlawful to fish for salmon, shad and sturgeon with gill net gear with a mesh size less than 8 inches.
- (3) During the season provided for in subsection 1 of this section, the following sanctuaries, as defined in WAC 220-33-005, are closed waters:

Grays Bay, Elokomin-A, Kalama-A, Lewis-A, Washougal, Cowlitz, Gnat Creek.

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 p.m. February 13, 1990:

WAC 220-33-01000M COLUMBIA RIVER GILL NET SEASONS BELOW BONNEVILLE. (90-10)

WSR 90-05-031 PERMANENT RULES THE EVERGREEN STATE COLLEGE

[Filed February 14, 1990, 8:51 a.m.]

Date of Adoption: January 10, 1990.

Purpose: Implements chapter 34.05 RCW, new section WAC 174-400-020 Loss of eligibility—Student athletic participation.

Statutory Authority for Adoption: Chapter 34.05 RCW.

Pursuant to notice filed as WSR 89-23-053 on November 14, 1989.

Effective Date of Rule: Thirty-one days after filing.

February 13, 1990

Rita M. Sevcik

Rules Coordinator

Chapter 174–400 WAC LOSS OF ELIGIBILITY—STUDENT ATHLETIC PARTICIPATION

WAC

174-400-010 Immediate suspension.

NEW SECTION

WAC 174-400-010 IMMEDIATE SUSPEN-SION. Student athletes found to have violated chapter 69.41 RCW (Legend drugs—Prescription drugs) shall, upon conviction, be immediately suspended from participation in school-sponsored athletic events by the director of athletics. The period of loss of eligibility to participate will be determined by the director of athletics at the conclusion of a brief adjudicative hearing, to be commenced within twenty days of the suspension.

WSR 90-05-032 PERMANENT RULES GAMBLING COMMISSION

[Order 205-Filed February 14, 1990, 10:41 a.m]

Date of Adoption: February 9, 1990.

Purpose: Establishes a method of making interpretive and policy statements available to the public. Clarifies the exemptions for secondary verification code requirements. Provides rules and manner of conducting Washington blackjack. Formalize policy regarding the granting of approval for alternative raffle drawings.

Citation of Existing Rules Affected by this Order: Amending WAC 230-20-325, 230-30-070, 230-40-010 and 230-40-120; and new sections WAC 230-40-125 and 230-60-100.

Statutory Authority for Adoption: RCW 34.05.220(4) and [34.05].230.

Other Authority: RCW 9.46.070 (11) and (14).

Pursuant to notice filed as WSR 89-24-001 on November 27, 1989.

Changes Other than Editing from Proposed to Adopted Version: Amendment to subsection (3) and (4) stricken of WAC 230-20-325; and added subsection (18) to WAC 230-40-125.

Effective Date of Rule: Thirty-one days after filing.

February 14, 1990 Ronald O. Bailey Director

AMENDATORY SECTION (Amending Order 186, filed 2/13/89)

WAC 230-20-325 MANNER OF CONDUCT-ING A RAFFLE. All raffles shall be conducted by selling individual prenumbered tickets for not more than five dollars and awarding prizes by selecting winners by a random drawing from among all tickets sold. The following operating procedures apply:

(1) All tickets for use in any raffle shall be consecutively numbered and each ticket shall be accounted for separately in accordance with WAC 230-08-070. Raffle tickets sold to the general public shall have a stub or other detachable section bearing a duplicate number corresponding to the number on the ticket: Provided, That with prior written director approval, tickets may include any consecutively numbered or lettered object if a stub imprinted with an identical number or letter and all other information required by WAC 230-20-325, is provided to each entrant at the time of purchase.

- (2) All prizes available, whether cash or merchandise, and all rules by which such prizes may be won, including all costs to a participant, shall be disclosed to each participant. This information shall be printed upon each ticket sold, or shall be otherwise provided in writing to each purchaser at the time of sale and shall also include, but not be limited to, date and time of drawing, location of drawing, and name of organization conducting raffle.
- (3) No person shall be required to pay, directly or indirectly, more than \$5.00 in order to enter any raffle. After April 15, 1990, each raffle ticket must be sold for the same price as every other raffle ticket being used for that particular raffle. No free tickets, or any opportunity to participate in the drawing of any raffle, shall be awarded or given to a person as a prize or reward for selling raffle tickets or for purchasing a certain number of raffle tickets. No person shall be required to obtain more than one ticket or to pay for anything other than the ticket, in order to enter the raffle: Provided, That licensed raffles conducted among members of the organization only, may be conducted using alternative sales methods if specifically authorized by the commission. This authority will be issued on an individual basis and will require a detailed written request.
- (4) From October 15, 1988, through April 15, 1990, each raffle ticket must be sold for the same price as every other raffle ticket being used for that particular raffle. However, the sponsor may provide to a purchaser of a raffle ticket an opportunity to obtain by random method a discount on such a ticket, including the opportunity to obtain that ticket free, but only if the sponsor maintains records for each book of raffle tickets so that income from the sale of tickets in each book can be audited.
- (5) If an entrant is required to be present at a raffle drawing in order to be eligible for the prize drawing, then a statement setting forth this condition shall be set forth conspicuously on each raffle ticket and on all promotional material concerning the raffle. When the participant is not required to be present at the drawing the ticket stub or other detachable section(s) of the ticket shall contain the purchaser's name, complete address, and telephone number, and shall be maintained for a period of not less than three years from the end of the fiscal year in which the raffle was completed.
- (6) In conducting a drawing in connection with any raffle, each ticket seller shall return to the licensee the stubs or other detachable section of all tickets sold. The licensee shall then place each stub or other detachable section of each ticket sold into a receptacle out of which the winning tickets are to be drawn. Such receptacle shall be designed so that each ticket placed therein has an equal opportunity with every other ticket to be the one withdrawn. Provided, an alternative drawing format to determine the winning ticket may be utilized if such format is approved by the director in writing prior to the sale of any ticket. The following requirements must be met prior to utilizing any such alternative drawing format:
- (a) The organization must have a current raffles license;

- (b) The alternate format must meet the definition of a drawing as defined by WAC 230-02-500;
- (((b))) (c) Any alternate format utilized to determine the winners must be closely controlled by the licensee;
- (((c))) (d) The request to utilize an alternative drawing format shall contain, at a minimum, the following information:
 - (i) The time, date and location of the drawing;
- (ii) The type of random selection process to be used and complete details of its operation;
- (iii) The name and telephone number of the raffles manager; and
- (iv) The signature of the organization's chief executive officer.
- (7) The raffle license issued by the commission or a photostatic copy of the license shall be conspicuously posted and displayed at the location at all times during the occasion when a drawing is being conducted.

AMENDATORY SECTION (Amending Order 196, filed 8/15/89)

WAC 230-30-070 CONTROL OF PRIZES. All prizes from the operation of punchboards and pull tabs shall be awarded in cash or in merchandise.

- (1) Prizes shall be cash or merchandise only. Prizes may not involve the opportunity of taking an additional chance or chances on another punchboard or of obtaining another pull tab or pull tabs. Where the prize involves the opportunity to punch again on the same punchboard, a prize must be awarded for each such punch which is not less than the highest amount of money, or worth not less than the most valuable merchandise prize, which might otherwise have been won by the punch for which the opportunity to take the second punch was awarded. Each such board must clearly indicate on its face the terms and conditions under which the opportunity to obtain the second, or step—up punch, may be obtained and the prizes which may be won by the step—up punch.
 - (2) Display of prizes:
- (a) All prizes shall be displayed in the immediate vicinity of the punchboard or pull tab device and such prizes shall be in full view of any person prior to that person purchasing the opportunity to play.
- (b) When the prize is cash it shall be displayed as follows:
- (i) If the punchboard or pull tab series contains the opportunity to win both cash and merchandise prizes, the money itself shall not be displayed, but a coupon designating the cash available to be won shall be substituted; and
- (ii) If the only prizes which may be won are cash prizes, they shall be clearly and fully described or represented by a coupon displayed upon the prize flare attached to the face or displayed in the immediate vicinity of the pull tab dispensing device.
- (c) The licensee shall display prizes so arranged that a customer can easily determine which prizes are available from any particular punchboard or pull tab series or device operated or located upon the premises.

- (d) Upon determination of a winner of a merchandise prize, the licensee shall immediately remove that prize from any display and present it to the winner.
- (e) Upon determination of a winner of any cash prize of five dollars or more, or of any merchandise prize with a retail value of five dollars or more, but prior to award of the prize, the licensee shall conspicuously delete all references to that prize being available to players from any flare, punchboard or pull tab dispensing device upon which such reference may appear, and from any other list, sign, or notice which may be posted, in such a manner that all future customers will know the prize is no longer available. The prize shall then be paid or delivered to the winner forthwith.
 - (3) Payment of prizes.

The licensee must pay or award to the customer or player playing the punchboard or pull tab series all such prizes that have not been deleted from the flare of the punchboard or pull tab series when the punchboard or pull tab series is completely played out.

(4) Cash in lieu of merchandise prizes.

No licensee shall offer to pay cash in lieu of merchandise prizes which may be won.

- (5) Record of winners:
- (a) When any person wins a cash prize of over twenty dollars or wins a merchandise prize with a retail value of more than twenty dollars from the play of any punch-board or pull tab series, the licensee or licensee's representative shall make a record of the win. The record of the win shall be made in a standard format prescribed by the commission and shall disclose at minimum the following information:
- (i) The Washington state identification stamp number of the punchboard or pull tab series from which the prize was won;
- (ii) The series number of the pull tab series or punchboard from which the prize was won;
 - (iii) The name of the punchboard or pull tab series;
- (iv) The date the pull tab series or punchboard was placed out for play:
- (v) The date the pull tab series or punchboard was removed from play;
 - (vi) The month, day and year of the win;
 - (vii) If the prize is cash, the amount of the prize won;
- (viii) If the prize is merchandise, a description of the prize won and its retail value;
 - (ix) The printed full name of the winner;
- (x) The current address of the winner which will include the street address, the city and the state.
- (((b))) (xi) It shall be the responsibility of the licensee to determine the identity of the winner and the licensee shall require such proof of identification as is necessary to properly establish the winner's identity. The licensee shall require the winner to sign his name in ink on the winning pull tab being presented for payment. The licensee shall not pay out any prize unless and until the winner has fully and accurately furnished to the licensee all information required by this rule to be maintained in the licensee record of the win.
- (((c))) (b) From October 1, 1989, until December 31, 1990, the commission shall conduct a test of an alternative method of maintaining a record of winners. This test

shall not include more than 100 licensees, all of which receive written permission from the director. Charitable or nonprofit licensees participating in this test shall be prohibited from intermingling of funds allowed by WAC 230-08-010(6) and must deposit funds separately and intact as set out in WAC 230-12-020. All participants shall adhere to alternative requirements for retention of winning tabs or punches required by subsection (6) of this rule and WAC 230-30-072. In addition, effective April 1, 1990, all participants shall use only pull tabs that utilize a secondary verification code to prohibit counterfeiting on tabs that award prizes greater than \$20.00. Such codes shall be approved by the Director prior to use within this state. ((Banded pull tabs and p)) Punchboards are exempt from the secondary verification code requirements. During the period of the test when a person wins a cash prize of over twenty dollars or a merchandise prize with a retail value of more than twenty dollars, the following alternative winners record procedures shall apply:

(i) The winners shall be required to print their name and date of birth, in ink, upon the side of the winning punch or tab opposite the winning symbol(s);

(ii) The licensee or their representative shall then verify the winner's identity and record the date and initial the winning punch or tab.

- (6) Retention of records. Every licensee shall keep the record of all prizes awarded in excess of twenty dollars, containing all of the information required in subsection (5) above, and all winning pull tabs or punchboard punches for a period of at least four months following the last day of the month in which it was removed from play and shall display the same to any representative of the commission or law enforcement officials upon demand.
- (7) Defacing winning punches or tabs. The licensee shall, within twenty-four hours after a winning pull tab or punch of five dollars or more has been presented for payment, mark or perforate the winning symbols in such a manner that the pull tab or punch cannot be presented again for payment.
- (8) Value of merchandise prizes. For purposes of this rule, the retail value of a merchandise prize shall be the amount actually paid therefor by the licensed operator plus 50 percent of that actual cost.
- (9) Spindle, banded, or "jar" type pull tabs played in a manner which awards merchandise prizes only. Pull tab series which award only merchandise prizes valued at no more than five dollars, are hereby permitted to employ schemes whereby certain predesignated pull tabs are free or the player is otherwise reimbursed the actual cost of said pull tabs. Flares for spindle-type pull tabs operated in this manner shall designate the total number of pull tabs in the series and the total number of pull tabs designated as free or reimbursable. Free or reimbursable pull tabs in these types of pull tab series shall not constitute a prize or prizes nor shall monies collected and later reimbursed constitute revenue for the purposes of determining gross receipts.

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

WAC 230-40-010 TYPES OF CARD GAMES AUTHORIZED. The commission hereby authorizes the following card games to be played in public card rooms and social card rooms licensed by the commission:

(1) Poker.

Any poker game described in Hoyle's Modern Encyclopedia of Card Games, by Walter B. Gibson, published by Doubleday and Company, Inc., April 1974, 1st edition, pages 219 through 277 provided that only a maximum of five betting rounds per hand are permitted.

- (2) Hearts.
- (3) Pinochle.
- (4) Cribbage.
- (5) Rummy.
- (6) Mah-jongg (tiles).
- (7) Pan.
- (8) Pitch.
- (9) Washington Blackjack as set forth in WAC 230-40-125.

Card games not herein authorized are prohibited.

AMENDATORY SECTION (Amending Order 194, filed 7/18/89)

WAC 230-40-120 LIMITS ON WAGERS IN CARD GAMES - EXCEPTION-WASHINGTON BLACKJACK. The following limits shall not be exceeded in making wagers on any card game. For games in which the following method of wagering is allowed:

- (1) Multiple wagers per player per hand during each round, each wager or raise shall not exceed \$5.00. There shall be no more than a total of two raises per round irrespective of the number of players: Provided, That in card games providing for three or more rounds of betting, the wager or raise for the last round of betting, shall not exceed \$10.00.
- (2) Single wagers per player per hand during each round (no raises), each wager shall not exceed \$5.00.
- (3) Single wager per player per game, each wager shall not exceed \$5.00.
- (4) Amount per point, each point shall not equal more than five cents in value.
- (5) An ante, except for panguingue (pan), shall not be more than \$6.00. The ante may, by house rule, be made by one or more players but the total ante may not exceed \$6.00. No one player can ante more than five dollars. An ante may be used as part of a players wager. The maximum betting on the first round when an ante is used may not exceed \$15.00 per person, including the
- (6) Panguingue (pan) maximum value of a chip for payoff will not exceed \$2.00. Ante will not exceed one chip. No doubling of conditions. Players going out, may collect not more than two chips from each participating player.

No licensee shall allow these wagering limits to be exceeded in a card game on his premises. Provided, Washington Blackjack shall be subject to the rules and wagering limits set forth in WAC 230-40-125.

NEW SECTION

WAC 230-40-125 WASHINGTON BLACK-JACK - RULES OF PLAY - WAGERING LIMITS. Washington Blackjack is a non-house banking, card game and shall be played only in the following manner:

- (1) One or two standard fifty-two-card decks shall be used with suits disregarded and each card valued numerically only: ace, 1 or 11; face cards (K, Q, J), 10 each; others according to their spots, 10 to 2. One or two decks may be used when there are six or less players. Two decks shall be used when there are seven or more players. The cards shall be dealt from a shoe at all times. The game is played with a dealer/banker and only a player may be a dealer/banker.
- (2) When starting a new table the cards are cut to determine who the first dealer/banker will be. The dealer shall announce the amount of money that he or she will put into the bank. A minimum bank may be established as per individual house rule.
- (3) Once the bank has been established, the player to the immediate left of the dealer places his/her wager on the bet line and the dealer covers that wager by matching it with a like amount of chips. Each player makes their wager in turn and each wager is immediately matched by the dealer. The maximum wager shall not be more then ten dollars (\$10.00) and the minimum wager may be set by house rule. If the bank runs out of money (tapped out) prior to the commencement of the deal, then only those players with a wager covered will be dealt a hand. No player may be dealt more than one hand.
- (4) The play begins with the dealer dealing one card face up to each covered player including himself/herself, one more card face up to each covered player, and then one down card to himself/herself. If a player holds an ace and a face card or a ten, it is a "natural" 21 and the player collects twice the amount of their bet from the dealer, unless the dealer also has a natural which results in a tie (push). All ties result in the players and the dealer recovering their wagers.
- (5) If the dealer has a "natural," he/she collects the wagers from players who do not have a "natural". If the dealer does not have a "natural," he/she pays off any player with a "natural" starting with the one closest to their left. Should the dealer not have enough money in the bank to make up the two for one payoff due on a "natural," then those hands and wagers will be frozen in place until the additional wagers are made up or the hand is over. If after the hand is over, a dealer cannot cover the two for one, the player shall get the amount of wager that was covered by the dealer.
- (6) If the dealer does not have a "natural," play continues with the player on the dealer's immediate left. The dealer deals cards face up, one by one, as that player calls for them. The player's aim is to total 21 or as close to 21 without going over. When a player is satisfied with their total, they shall declare "stand". If more cards are wanted, the player declares "hit". If a player goes over a 21 point count, the hand is a "bust" and they must turn the hand down, while the dealer collects the bet.

- (7) The dealer does the same with each remaining player. Any player who stands must wait while the dealer draws his or her cards. If the dealer goes bust, each standing player is paid the amount of their wager. If the dealer "stands," the down card is turned up and players whose totals are higher than the dealer's are paid. The dealer collects from any player whose total is less. Action is always to the left of the dealer. Any frozen wagers needing to be "made up" will be done in order, to the left of the dealer from losing wagers the dealer collects. Should the dealer not be able to cover all frozen wagers then those frozen wagers are released to the winning players and the deal passes immediately to the left at which time the new dealer shall announce their bank and shuffle the cards. The same shall apply if the dealer has no money in the bank. The dealer may, if allowed by house rule, add to their bank in between hands.
- (8) Upon completion of the shuffle, the player to the right of the dealer shall cut the cards. After the cards have been placed into the shoe the dealer shall insert a blank card approximately three quarters of the way through the deck(s). A dealer may deal from the shoe until he/she reaches the blank card. After the blank card appears, the dealer may continue dealing that hand, but will not start a new hand. The deal must then pass to the player on the dealer's immediate left. The discards may only be reshuffled to complete the last hand.
- (9) Once wagers are placed and covered on the bet line, no player, including the dealer, may touch those wagers until the winner has been determined. Any player touching the wagers may be ruled to have fouled and their wager forfeited.
- (10) Any player who lifts their cards up from the table or slides their cards out of their own playing area shall be ruled to have fouled and their wager may be forfeited.
- (11) No player may "buy" the bank. The deal must pass around the table to the left and no player can authorize another player to deal for him or her. A new player entering the game may not participate as the dealer/banker until at least two other players have dealt. If a player does not wish to deal and passes the deal, that player may not play in the first two hands conducted by the next dealer. A dealer may after completing one full hand, pass the deal and be able to participate in the next hand.
- (12) The dealer must stand on 17 or above and must take hits on 16 or below. If a dealer has an ace, it shall be counted as 11 (eleven) if it brings his or her total to 17 or more (but not over 21).
- (13) If a player's first two cards total exactly 9, 10 or 11, they may double their wager and receive one more card. The player must then stand on those three cards. If the dealer's bank is insufficient to cover a double down wager, the player may wager an amount equal to the dealer's remaining bank. The dealer must then cover that wager. If the dealer has no bank then a player may not double down.
- (14) If the dealer's face—up card is a ten, face card or ace, he/she may look at their face—down card to see if they have a natural; if his/her face—up card is anything else, they may not look at their face—down card until

their turn comes to draw. Should the dealer violate this rule their hand may be ruled to have been fouled, which shall result in forfeiture of all remaining dealer wagers.

- (15) If a player's first two cards are a pair, then that player may split the pair into two separate hands. The amount of the player's original bet then goes on one of the cards, and they must place an equal amount as a bet on the other card. When this player's turn to draw comes, they receive an up-card for each hand and then play each hand in order. If the dealer does not have enough in their bank to cover the doubled bet, the dealer must cover an amount equal to the value of their remaining bank. The player then has the option to divide the wagers in any manner between the two hands, not to exceed the allowable limit per hand. If the dealer has no bank then the player may divide their wager in any manner between the two hands. If a player's original bet was a minimum allowed in that game then they may not split their pair. A player may only split a pair once.
- (16) The dealer will pay only on the value of the cards held by the player and shall not pay on the number of cards received or the card sequence.
- (17) There shall be no credit or I.O.U. issued by any player or management.
- (18) Washington Blackjack shall be authorized for a one year test beginning April 1, 1990, and concluding March 31, 1991. Of the five (5) tables authorized under RCW 9.46.0281(1) the card room licensee may utilize no more than two (2) tables for Washington Blackjack, and must notify the director ten (10) days prior to initiating play.

NEW SECTION

WAC 230-60-100 INTERPRETIVE AND POLICY STATEMENTS (1) The commission shall prepare interpretive or policy statements to advise the public of the commission's current opinions, approaches and likely course of action. These statements shall be prepared when it is not feasible or practicable to adopt rules.

- (2) Persons interested in obtaining copies of interpretive or policy statements shall write to the Director requesting they receive copies of all statements issued by the agency.
- (3) The commission shall prepare a roster of persons who have requested copies of interpretive or policy statements. Whenever a interpretive or policy statement is issued the commission shall send a copy of the statement to each person listed on the roster. The roster shall be updated annually and eliminate those persons who do not indicate a desire to continue on the roster.
- (4) Persons requesting the interpretive or policy statements shall pay for the mailing costs and the following cost per sheet of paper:
 - (a) \$.25 per page for the first ten pages;
 - (b) \$.10 per page for any pages thereafter.

WSR 90-05-033 PERMANENT RULES GAMBLING COMMISSION

[Order 206-Filed February 14, 1990, 10:42 a.m.]

Date of Adoption: February 9, 1990.

Purpose: To authorize the use of electronic cranes that were previously certified during a test for a specified period.

Citation of Existing Rules Affected by this Order: Amending [new section] WAC 230-20-698.

Statutory Authority for Adoption: RCW 9.46.070 (3)(11)(14) and 9.46.0201.

Pursuant to notice filed as WSR 90-01-021 on December 11, 1989.

Effective Date of Rule: Thirty-one days after filing.
February 14, 1990
Ronald O. Bailey
Director

NEW SECTION

WAC 230-20-698 ELECTRONIC CRANE AMUSEMENT GAMES – SPECIAL AUTHORIZATION. Electronic crane games that were certified for play in Washington under the provisions of WAC 230-20-699 are authorized to be operated in the locations specified in WAC 230-20-670 until December 31, 1990. Locations and operators must be licensed as set forth in WAC 230-04-190 and WAC 230-04-201.

WSR 90-05-034 PROPOSED RULES GAMBLING COMMISSION

[Filed February 14, 1990, 10:43 a.m.]

Original Notice.

Title of Rule: WAC 230-02-022 Cost defined; 230-08-120 Quarterly activity report by operators of bingo games (license Class D and above); 230-08-125 Annual activity reports by operators of Class A, B and C bingo, all classes of raffles and bona fide charitable and non-profit amusement games; 230-20-064 Maximum receipts, prizes, and expenses for bingo games—Net income required; and 230-30-052 Punchboards and pull tabs operated by charitable or nonprofit organizations—Net income required.

Purpose: WAC 230-02-022, to provide a uniform definition of "cost" to facilitate the regulatory process; WAC 230-08-120 and 230-08-125, additional reporting requirement necessary to allow monitoring of bingo net income under changes to WAC 230-20-064; WAC 230-20-064, to establish guidelines for regulating maximum expenses related to punchboards/pull tabs and snack bar operated at bingo games; and WAC 230-30-052, to establish guidelines for regulating maximum expenses for operating punchboard/pull tab activities.

Statutory Authority for Adoption: RCW 9.46.070 (1)(16).

Statute Being Implemented: Chapter 9.46 RCW.

Summary: WAC 230-02-022, the rule provides consistency in the definition of cost to facilitate required regulations; WAC 230-08-120 and 230-08-125, allows for improved monitoring of bingo net income requirements; WAC 230-20-064, establishes guidelines for maximum expenses pertaining to certain activities operated at bingo games; and WAC 230-30-052, establishes guidelines for maximum expenses related to the operation of punchboard/pull tab activities.

Name of Agency Personnel Responsible for Drafting: Frank L. Miller, Deputy Director, Lacey, 438-7640; Implementation: Ronald O. Bailey, Director, Lacey, 438-7640; and Enforcement: Richard A. Nicks, Assistant Director, Lacey, 438-7690.

Name of Proponent: Washington State Gambling commission and Bingo Study Committee, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Rules were developed by the bingo study committee and staff to facilitate compliance with overall reporting requirements.

Proposal does not change existing rules.

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

The agency has considered whether these rule changes are subject to the Regulatory Fairness Act and has determined that they are not for the following reasons: The additional reporting requirements do not affect more than 10% of one industry or 20% of all industries; and some changes are clarifications and as such only house-keeping changes.

Hearing Location: Red Lion Inn, 2525 North 20th, Pasco, WA 99301, on April 13, 1990, at 10:00 a.m.

Submit Written Comments to: Washington State Gambling Commission, 4511 Woodview Drive S.E., Lacey, WA 98504-8121, by April 13, 1990.

Date of Intended Adoption: April 13, 1990.

February 14, 1990 Ronald O. Bailey Director

AMENDATORY SECTION (Amending Order 201, filed 11/27/89)

WAC 230-02-022 COST DEFINED. "Cost" means the monetary value paid or owed by the purchaser, for any gambling or non-gambling product or service, at the time of the transaction and documented on the sales receipt/transfer document. "Cost" ((includes)) excludes all sales taxes paid by the purchaser. "Cost" does not include any markup or value added by the purchaser.

AMENDATORY SECTION (Amending Order 190, filed 4/18/89)

WAC 230-08-120 QUARTERLY ACTIVITY REPORT BY OPERATORS OF BINGO GAMES (LICENSE CLASS D AND ABOVE). Each organization licensed to conduct bingo games in Class D and above shall submit an activity report to the commission concerning the licensed activity and other matters set forth below during each of the following periods of the year:

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

If the licensee does not renew its license, then it shall file a report for the period between the previous report filed and the expiration date of its license. The report form shall be furnished by the commission and the completed report shall be received in the office of the commission or post-marked no later than 30 days following the end of the period for which it is made.

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

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

- (1) The gross gambling receipts from bingo, by month.
- (2) The total amount of cash prizes actually paid out and the total of the cost to the licensee of all merchandise prizes actually paid out by month.
 - (3) The net gambling receipts, by month.
- (4) Full details on all expenses directly related to bingo, including at least the following:
- (a) Wages, monies, or things of value paid or given to each person connected with the management, promotion, conduct or operation of the bingo game together with an attachment setting out the following:
 - (i) Name;
 - (ii) Duties performed;
 - (iii) Hours worked; and
- (iv) Wages, monies or things of value paid or given for conducting bingo activities. When an employee works in more than one activity, the total hours worked and total wages shall also be reported,
- (b) A statement describing the allocation method used in allocating common use expenses; and
 - (c) A detailed listing of all items included under "other."
 - (5) The net income.
 - (6) The total number of customers participating.
 - (7) The total number of sessions held.
- (8) Net income from the operation of retail sales activities operated in conjunction with bingo games.

AMENDATORY SECTION (Amending Order 190, filed 4/18/89)

WAC 230-08-125 ANNUAL ACTIVITY REPORTS BY OP-ERATORS OF CLASS A, B, AND C BINGO, ALL CLASSES OF RAFFLES, AND BONA FIDE CHARITABLE OR NONPROFIT AMUSEMENT GAMES. Each licensee for the operation of all classes of raffles and bona fide charitable or nonprofit amusement games, and Class A, B, or C bingo games shall submit to the commission an annual summary of each separate licensed activity on a form supplied by the commission.

The report form shall be furnished by the commission and the completed report shall be received in the office of the commission or postmarked no later than 30 days following the expiration of such organization's license year. The report shall be signed by the highest ranking officer or his/her designee. If the report is prepared by someone other than this officer, then the preparer shall include his/her name and phone number on the report.

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

- (1) The gross gambling receipts from the conduct of each licensed activity:
- (2) The total amount of cash prizes actually paid out, and the total of the cost to the licensee of all merchandise prizes actually paid out for each licensed activity;
 - (3) The net gambling receipts for each activity;
- (4) Full details on all expenses directly related to each activity, including all compensation paid by the licensee to each person for any work connected with the management, promotion, conduct or operation of each of the licensed activities, including a description of the work performed by that person. Provided that RCW 9.46.0277 and WAC 230-20-070 are observed in relation to the restriction against employing persons to conduct or otherwise take part in the operation of a raffle.
 - (5) The net income from each activity;
 - (6) The total number of sessions conducted during the year; and
 - (7) The total number of players participating in bingo games.
- (8) Net income from the operation of retail sales activities operated in conjunction with bingo games.

AMENDATORY SECTION (Amending Order 190, filed 4/18/89)

WAC 230-20-064 MAXIMUM RECEIPTS, PRIZES, AND EXPENSES FOR BINGO GAMES—NET INCOME REQUIRED. Bingo is to be conducted as a social pastime and for the raising of funds to support the purpose(s) of the organization only. Organizations licensed to ((operate)) conduct bingo games must comply with the following limitations:

- (1) Gross receipts from the sale of bingo cards shall not exceed the limits by class of license for the organization's license year as set out in WAC 230-04-201 and Table 1. below. Any organization not currently licensed to conduct bingo at any class and applying for a Class "D" or above license shall submit with its license application a pro forma plan of operation including a market study with: Planned attendance; prices; prize payout schedules; net income predictions; and any other information requested by the commission.
- (2) To prevent the payment of prizes in such amounts that would significantly reduce net income, prize payouts, as percentages of gross receipts, shall not exceed the percentages listed in Table 1. by class of license. ((Any licensee who exceeds the maximum calendar quarter prize payout limit for its class of license by more than two percentage points (2.0%) in any quarter must report such to the commission, no later than 15 days following the end of the quarter and provide the commission additional reports as necessary to monitor progress toward
- (3) To insure that licensees meet the intent of RCW 9.46.010 and to prevent the payment of excessive expenses, ((adjusted)) combined net income from bingo games, punchboard/pull tabs, and food, drink or

other retail sales activities conducted in conjunction with bingo games, as a percentage of bingo games gross receipts shall not be less than the percentage listed in Table 1. by class of license for any annual license period((. Any licensee who reports not income more than two percentage points (2.0%) below the minimum annual license period requirement for its class during any quarter must report to the commission additional reports necessary to monitor progress toward compliance)): Provided, that local gambling taxes paid or accrued will be allowed as a credit when computing net income for bingo and punchboards and pull tabs. Provided further, ((Ŧ)) that net income limits, as set out in Table 1. below, for bingo games located in jurisdictions which do not authorize punchboards and pull tabs shall be ((allowed the following expense credit for measuring compliance with this subsection:)) reduced by the following adjustments:

- (a) Class D, E, or F ((=)) : less 1.0%
- (b) Class G, H, I, or J ((=)): less 2.0% (c) Class K and above ((3.0)): less 2.5%
- (4) Reporting requirements, any licensee who:
- (a) Exceeds the maximum calendar quarter prize payout limit by more than two percentage points (2.0%) in any quarter must report such to the Commission, no later than 15 days following the end of the quarter and provide the Commission additional reports determined by the staff as necessary to monitor progress toward compliance.
- (b) Exceeds the annual minimum net income requirements by more than two percentage points (2.0%) during any quarter must provide the Commission additional reports determined by the staff as necessary to monitor progress toward compliance.

Table 1.

							Annual ((Adjusted))	<u>Annual</u> Minimum
							Minimum	Net Income
							Net Income((:))	Requirements
					Annual	Calendar Quarter	((Minimum))	- Bingo &
	License Annual			Prize Payout	Prize Payout	Requirements	Punchboards/	
Group	Class		Gross Re	eceipts	Limits	Limits	– Bingo *	Pull Tabs **
	Α	Up	to \$ 1	10,000	No Limits	No Limits	((None))	No Limits ***
							No Limits ***	
	В	\$ 10,0	01- 5	50,000	No Limits	No Limits	((None))	No Limits ***
							No Limits ***	
	С	50,0	01- 10	00,000	No Limits	No Limits	((None))	No Limits ***
		·					No Limits ***	
	D	100,0	01- 30	00,000	Max of 85.0%	Max of 86.5%	At least 2.0%	At least 3.0%
	E	300,0	01- 50	00,000	Max of 84.0%	Max of 85.0%	At least 3.0%	At least 4.0%
I	F	500,0	01- 1,00	00,000	Max of 83.0%	Max of 84.0%	At least 4.5%	At least 5.5%
	G	1,000,0		00,000	Max of 80.0%	Max of 81.0%	At least 6.0%	At least 8.0%
	Н	1,500,0	01- 2,00	00,000	Max of 78.0%	<u>Max of</u> 79.0%	At least 8.0%	At least 10.0%
	I	2,000,0	01- 2,50	00,000	Max of 76.0%	Max of 77.0%	At least 10.0%	At least 12.0%
II	J	2,500,0	01- 3,00	00,000	Max of 74.0%	Max of 75.0%	At least 12.0%	At least 14.0%
	K	3,000,0	01- 3,50	00,000	Max of 72.0%	Max of 73.0%	At least 13.5%	At least 16.0%
	L	3,500,0		00,000	Max of 70.0%	Max of 71.0%	At least 14.5%	At least 17.0%
	M	Ov	er 4,00	00,000	Max of 70.0%	Max of 71.0%	At least 15.5%	At least 18.0%

- Combined net income from bingo games and sales of food, drink, or other retail items, if applicable, as a percent of bingo gross receipts. Local gambling taxes are not considered an expense for computing net income.
- Combined net income from punchboards/pull tabs, games and sales of food, drink, or other retail items, if applicable, as a percent of bingo gross receipts. Local gambling taxes are not considered an expense for computing net income.
- Combined net income must be equal to or greater than zero (0) if wages or rent is paid to operate the activity. Local gambling taxes are not considered an expense for computing net income.

NEW SECTION

WAC 230-30-052 PUNCHBOARDS AND PULL TABS OP-ERATED BY CHARITABLE OR NONPROFIT ORGANIZA-TIONS - NET INCOME REQUIRED. Charitable or nonprofit organizations operating punchboards and pull tabs shall not pay excessive expenses. To ensure that licensees meet the intent of RCW 9.46-.010 and to prevent the payment of excessive expenses, net income, as

- a percentage of gross receipts, shall not be less than the limits set out in subsections (1) and (2) below when measured over the annual license period. The limits set out in Table 1. of WAC 230-20-064 shall apply to organizations operating punchboards and pull tabs in conjunction with a bingo game. Net income limits:
- (1) Class A and B licensees Net income of at least 5.5% before deduction of local taxes; and
- (2) Class C and above licensees Net income of at least 7.0%, before deduction of local taxes.

WSR 90-05-035 PROPOSED RULES SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed February 14, 1990, 11:00 a.m.]

Original Notice.

Title of Rule: Chapter 392-120 WAC, Finance— University of Washington transition school and early entrance program allocations.

Purpose: To set forth policies and procedures relating to the allocation of state and federal moneys to the University of Washington for eligible highly capable students attending a University of Washington transition school and early entrance program.

Statutory Authority for Adoption: RCW 28A.58.217. Statute Being Implemented: RCW 28A.58.217.

Summary: See above.

Reasons Supporting Proposal: See above.

Name of Agency Personnel Responsible for Drafting: Richard M. Wilson, Old Capitol Building, (206) 753–2298; Implementation: Robert Schley, Old Capitol Building, (206) 753–1717; and Enforcement: David Moberly, Old Capitol Building, (206) 753–6742.

Name of Proponent: Superintendent of Public Instruction, governmental.

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

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

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 98504, on April 6, 1990, at 9:00 a.m.

Submit Written Comments to: Richard M. Wilson, Legal Services, Old Capitol Building, SPI, by April 4, 1990.

Date of Intended Adoption: April 11, 1990.

February 13, 1990 Judith A. Billings Superintendent of Public Instruction

AMENDATORY SECTION (Amending Order 88-21, filed 9/12/88)

WAC 392-120-005 PURPOSE. The purpose of this chapter is to set forth policies and procedures relating to the allocation of state and federal moneys to the University of Washington for eligible ((academically)) highly capable students attending a University of Washington transition school and early entrance program.

AMENDATORY SECTION (Amending Order 88-21, filed 9/12/88)

WAC 392-120-010 DEFINITION—UNIVERSITY OF WASHINGTON TRANSITION SCHOOL AND EARLY ENTRANCE PROGRAM. As used in this chapter, "University of Washington transition school and early entrance program" means a program operated by the University of Washington for the education of ((academically)) highly capable students ((who are performing at least at high school level)).

AMENDATORY SECTION (Amending Order 88-21, filed 9/12/88)

WAC 392-120-015 DEFINITION—((APPROVED UNIVERSITY OF WASHINGTON TRANSITION SCHOOL AND EARLY ENTRANCE PROGRAM AGREEMENT)) ALLOWABLE ACTIVITIES. As used in this chapter, ((*approved University of Washington transition school and early entrance program agreement means an agreement between a school district and the University of Washington for a school year which meets the requirements for joint or cooperative action pursuant to the Interlocal Cooperation Act; chapter 39.34 RCW)) *allowable activities* means:

- (1) Selection of students;
- (2) Precollege activities;
- (3) Special advising; and
- (4) Necessary activities for the support of students.

AMENDATORY SECTION (Amending Order 88-21, filed 9/12/88)

WAC 392-120-020 ((SCHOOL DISTRICT AUTHORIZATION OF REALLOCATION OF MONEYS TO UNIVERSITY OF WASHINGTON TRANSITION SCHOOL AND EARLY ENTRANCE PROGRAM)) DEFINITION—ELIGIBLE STUDENT. ((A school district meeting the following conditions may authorize the superintendent of public instruction to allocate directly to the University of Washington all or a portion of the state basic education, state categorical, and federal moneys generated by each resident student attending the University of Washington transition school and early entrance program:

(1) The school district shall enter into an agreement with the University of Washington pursuant to WAC 392-120-015. The agreement shall contain the following provisions:

- (a) Timely enrollment reports to the school district by the University of Washington transition school and early entrance program;
- (b) Assurance by the parties of compliance with the provisions of RCW 28A.58.217; and
- (c) Any other information the school district and the University of Washington deem appropriate.
- (2) The school district shall report any of the district's student(s) enrolled in the University of Washington transition school and early entrance program on the regular monthly enrollment report P-223 to the superintendent of public instruction in the same manner as other enrolled students are reported.
- (3) The school district shall submit to the superintendent of public instruction a written authorization for reallocation of moneys which shall
- (a) Indicate the dollar amount(s) and source(s) of the amount(s) to be allocated to the University of Washington by the superintendent of public instruction; and
- (b) Include a statement assuring the superintendent of public instruction that the school district has entered into an agreement with the University of Washington transition school and early entrance program pursuant to WAC 392-120-015 and subsection (1) of this section.)) As used in this chapter, "eligible student" means a student:
- (1) Enrolled in the University of Washington transition school and early entrance program for not more than three years; and
- (2) Eighteen years of age or younger at the beginning of the school year.

AMENDATORY SECTION (Amending Order 88-21, filed 9/12/88)

WAC 392-120-025 ((TRANSMISSION OF MONEYS TO THE UNIVERSITY OF WASHINGTON)) DEFINITION—FULL-TIME EQUIVALENT ELIGIBLE STUDENT. ((When so authorized pursuant to WAC 392-120-020(3) by any school district, the superintendent of public instruction shall transmit moneys on a quarterly basis to the University of Washington:)) As used in this chapter, "full-time equivalent eligible student" means a student enrolled in and attending all courses required for continued enrollment in the transition school, and also means a student who is enrolled in the early entrance program and maintaining 12 college credits or more per quarter.

NEW SECTION

WAC 392-120-030 DEFINITION—SCHOOL YEAR. As used in this chapter, "school year" means the beginning of autumn quarter through the end of spring quarter, as defined in WAC 478-132-030.

NEW SECTION

WAC 392-120-035 DEFINITION—RESIDENT SCHOOL DISTRICT. As used in this chapter, "resident school district" means the same as that term is defined in WAC 392-137-010(4).

NEW SECTION

WAC 392-120-040 DEFINITION—ALLOWABLE REVENUE SOURCES. As used in this chapter, "allowable revenue sources" means those state revenue accounts for which the eligible student would otherwise be reported by the resident school district for allocation purposes.

NEW SECTION

WAC 392-120-045 DEFINITION—REVENUE PER ELIGIBLE STUDENT. As used in this chapter, "revenue per eligible student" means:

(1) Calculate the annual allocation for allowable revenue sources for the resident school district for each eligible student used for the most recent apportionment payment;

(2) Divide the result obtained in subsection (1) of this section by the annual average full-time students for the resident school district used for the most recent apportionment payment.

NEW SECTION

WAC 392-120-050 CONTRACT BETWEEN THE SUPERINTENDENT OF PUBLIC INSTRUCTION AND THE UNIVERSITY OF WASHINGTON. The superintendent of public instruction shall contract under the Interlocal Cooperation Act with the University of Washington for the admission and enrollment in the transition school of up to thirty highly capable students in the state of Washington each academic year, and for the continued enrollment and instruction in the early entrance program of such students until they turn eighteen or complete three years at the transition school and/or early entrance program, whichever first occurs.

NEW SECTION

WAC 392-120-055 RESPONSIBILITIES—UNIVERSITY OF WASHINGTON. The allocation of moneys pursuant to this chapter are conditioned on the University of Washington transition school and early entrance program performing the following:

(1) Reporting each month for each eligible student of their:

- (a) Hours of enrollment; and
- (b) Resident school district.
- (2) Expending the moneys allocated pursuant to this chapter on allowable activities.
- (3) Providing health screening as agreed to by contract with the superintendent of public instruction; enforcing chapter 180–140 WAC and all applicable federal laws relating to student discipline and rights for students enrolled in the transition school or early entrance program who have not yet registered or enrolled in college level courses; and enforcing Title 478 WAC and all applicable federal laws relating to student conduct, discipline, records and rights, for students who have registered and enrolled in one or more college level courses.
- (4) Reporting to the resident school district of the enrollment of each student in the University of Washington transition school and early entrance program.
- (5) Reporting annually the actual expenditures on allowable activities.

NEW SECTION

WAC 392-120-060 RESPONSIBILITIES—SUPERINTENDENT OF PUBLIC INSTRUCTION. In carrying out the responsibilities associated with this chapter, the superintendent of public instruction shall:

(1) Perform such calculations as are necessary to carry out the several provisions of this chapter;

(2) Allocate such moneys as determined to the University of Washington transition school and early entrance program quarterly.

NEW SECTION

WAC 392-120-065 CALCULATION OF QUARTERLY ALLOCATION. The superintendent of public instruction shall calculate the quarterly allocation of moneys to the University of Washington transition school and early entrance program as follows:

(1) Sum the following for each eligible student:

(a) Determine the revenue per eligible student; and

(b) Multiply the result obtained in (a) of this subsection by the fulltime equivalent eligible student.

(2) Adjust the result obtained in subsection (1) of this section by any over or under payments resulting from prior quarterly allocations.

NEW SECTION

WAC 392-120-070 RECOVERY OF UNSPENT MONEYS. The University of Washington transition school and early entrance program shall remit the positive difference determined by subtracting

the actual expenditures on allowable activities from the total allocation.

WSR 90-05-036 PROPOSED RULES SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed February 14, 1990, 11:03 a.m.]

Original Notice.

Title of Rule: Chapter 392–183 WAC, Loss of eligibility—Student athletic participation.

Purpose: To set forth policies and procedures to implement due process procedures and discipline relating to violations of chapter 69.41 RCW.

Statutory Authority for Adoption: RCW 69.41.340. Statute Being Implemented: RCW 69.41.346

[69.41.340].

Summary: See above.

Reasons Supporting Proposal: See above.

Name of Agency Personnel Responsible for Drafting: Richard M. Wilson, Old Capitol Building, (206) 753–2298; Implementation: Bridget Cullerton, Old Capitol Building, (206) 586–6394; and Enforcement: Jeff Carpenter, Old Capitol Building, (206) 753–6752.

Name of Proponent: Superintendent of Public Instruction, governmental.

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

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

Proposal 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 98504, on April 6, 1990, at 9:00 a.m.

Submit Written Comments to: Richard M. Wilson, Legal Services, by April 4, 1990.

Date of Intended Adoption: April 11, 1990.

February 13, 1990 Judith A. Billings Superintendent of Public Instruction

Chapter 392–183 WAC LOSS OF ELIGIBILITY—STUDENT ATHLETIC PARTICIPA-TION

NEW SECTION

WAC 392-183-005 AUTHORITY. The authority for this chapter is RCW 69.41.340 which authorizes the superintendent of public instruction, in consultation with the Washington Interscholastic Activity Association to adopt rules and regulations regarding loss of eligibility to participate in school-sponsored athletic events for any student athlete found to have violated chapter 69.41 RCW, Legend drugs—Prescription drugs.

NEW SECTION

WAC 392-183-010 PURPOSE. The purpose of this chapter is to set forth policies and procedures to implement due process procedures and discipline relating to violations of chapter 69.41 RCW.

NEW SECTION

WAC 392-183-015 GROUNDS FOR INELIGIBILITY. Any student found by the school district to have violated chapter 69.41 RCW by virtue of a criminal conviction or otherwise insofar as it prohibits the possession, use or sale of legend drugs, including anabolic steroids, will be disqualified from participation in WIAA sponsored school sports programs.

NEW SECTION

WAC 392-183-020 DUE PROCESS. The Washington Interscholastic Activity Association shall adopt, publish, and make available to all students and parents, written rules which state with reasonable clarity the types of misconduct for which loss of eligibility may occur under the provisions of this chapter. In addition, written procedures for present mitigating circumstances shall be developed. Such procedures shall be consistent with rules developed by the WIAA to govern all student eligibility appeals. Such rules shall:

(1) Specify the reason(s) for their alleged ineligibility, the rule being violated, and provide written notice of applicable procedures and

timelines.
(2) Specify that the student may represent himself/herself or be represented by a person of choice. The student shall also have the opportunity to testify, present, and cross-examine witnesses and intro-

duce relevant evidence.

(3) Specify that any decision shall be rendered within five calendar days following the date of the hearing.

(4) Specify that the student is entitled to an appeal and set forth guidelines for a proposed resolution.

NEW SECTION

WAC 392-183-025 DISCIPLINE. The Washington Interscholastic Authority Association shall adopt, publish, and make available to all students and parents, written rules which state with reasonable clarity the form of discipline imposed for violation of this chapter. Such rules shall include the following:

(1) The penalty for a first violation of this chapter shall be immediate ineligibility for interscholastic competition in the current interscholastic sports program for the remainder of the season.

(2) The penalty for a second violation of this chapter shall be ineligibility and prohibition from participating in any WIAA member school sports program for a period of one calendar year from the date of the second violation.

(3) The penalty for a third violation of this chapter shall be permanent prohibition from participating in any WIAA member school athletic program.

NEW SECTION

WAC 392-183-030 STATE BOARD OF EDUCATION AP-PROVAL. The WIAA shall present any policies or procedures developed as a result of this chapter for the approval of the state board of education prior to their adoption and implementation by the WIAA.

WSR 90-05-037 NOTICE OF PUBLIC MEETINGS UNIVERSITY OF WASHINGTON

[Memorandum—February 9, 1990]

The following is the 1990 meeting schedule for regular meetings to be held by the University of Washington Medical Center:

1990 BOARD/COMMITTEE MEETINGS

UWMC BOARD MEETINGS
Time: 12 noon-2:30 p.m.
Place: Conference Room B-C
January 8, 1990 (Jan 1.-holiday)
February 5
March 5-6 (Retreat at Salish)

April 2 May 7 June 4 July 2 August 6 September 10 (Sept. 3-holiday) October 1 November 5 December 3 JOINT CONFERENCE Time: 12 noon-2:00 p.m. Place: Conference Room B January 16, 1990 February 20 March 20 April 17 May 15 June 19 July 17 August 21 September 18 October 16

PLANNING

November 20

December 18

Time: 12 noon-2:00 p.m. Place: Conference Room B

January 17
February 21
March 21
April 18
May 16
June 20
July 18
August 15
September 19
October 17

October 17 November 21 December 19

FINANCE

Time: 7:30-9:30 a.m. Place: Conference Room B

January 25 March 1 March 29 April 26 May 31 June 28 July 26

August 30 September 27 October 25 November 29 December 27 **FACILITIES**

Time: 12 noon-2:00 p.m.
Place: Conference Room B
January 19
March 16
May 18
July 20
September 21
November 16

WSR 90-05-038 PERMANENT RULES DEPARTMENT OF HEALTH

[Order 034-Filed February 14, 1990, 2:59 p.m.]

Date of Adoption: February 12, 1990.

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

WAC 248-21-005, required by section 95, chapter 175, Laws of 1989; WAC 248-33-040, subsection (5) required by section 95, chapter 175, Laws of 1989; WAC 248-33-060, housekeeping, provisions moved to WAC 248-33-040(3); WAC 248-33-080, housekeeping, provisions moved to WAC 248-33-040(4); and WAC 248-140-200, required by section 95, chapter 175, Laws of 1989.

Citation of Existing Rules Affected by this Order: Repealing WAC 248-33-060 and 248-33-080; and amending WAC 248-21-005, 248-33-040 and 248-140-200.

Statutory Authority for Adoption: Chapter 34.05 RCW; RCW 43.20.050 for WAC 248-21-005, 248-33-040, 248-33-060 and 248-33-080; and RCW 42.20.050 for WAC 248-140-200.

Pursuant to notice filed as WSR 89-23-102 on November 22, 1989.

Effective Date of Rule: Thirty-one days after filing.

February 12, 1990 Pam Campbell Mead for Kristine M. Gebbie Secretary

AMENDATORY SECTION (Amending Order 218, filed 11/6/81)

WAC 248-21-005 LICENSURE—NOTICE OF DECISION—ADJUDICATIVE PROCEEDING. (1) After January 1, 1982, no person acting separately or jointly with any other person shall establish, maintain, conduct or operate a hospice care center in this state or use the words "hospice care center" to describe or identify a place or building which does not have a license as a hospice care center as defined and described herein.

(2) An application for a hospice care center license shall be submitted to the department on forms provided by the department. The application shall be signed by the operator of the facility and the legal representative of the governing body.

- (3) Other requirements related to licensure, fees, and inspection are as stipulated in RCW 70.41.100, 70.41.110, 70.41.120, 70.41.130, ((70.41.140,)) 70.41.150, 70.41.160 and 70.41.170.
- (4) There shall be compliance with other regulations to include:
- (a) Applicable rules and regulations for hospice care centers adopted by the Washington state fire marshal pursuant to RCW 70.41.080 and chapter 48.48 RCW;
- (b) Applicable national, state, and local electrical, fire, zoning, building, and plumbing codes.
- (5)(a) The department's notice of a denial, suspension, modification, or revocation of a license shall be consistent with RCW 43.20A.205. An applicant or license holder has the right to an adjudicative proceeding to contest the decision.
- (b) A license applicant or holder contesting a department license decision shall within twenty-eight days of receipt of the decision:
- (i) File a written adjudicative proceeding application by a method showing proof of receipt with the Office of Appeals, P.O. Box 2465, Olympia, WA 98504; and

(ii) Include in or with the application:

- (A) A specific statement of the issue or issues and law involved;
- (B) The grounds for contesting the department decision; and

(C) A copy of the contested department decision.

(c) The proceeding is governed by the Administrative Procedure Act (chapter 34.05 RCW), this chapter, and chapter 248-08 WAC. If a provision in this chapter conflicts with chapter 248-08 WAC, the provision in this chapter governs.

AMENDATORY SECTION (Amending Order 134, filed 10/21/76)

WAC 248-33-040 APPROVAL PROCESS. (1) A facility which seeks to qualify as an approved eye bank must submit a written request for approval to the secretary. The request must include a statement of the arrangements made for the storage of tissue received, the name and availability of ophthalmologists and the policies to be followed for the distribution of tissue.

(2) Approval may be granted by the secretary when:

- (a) The eye bank meets accepted medical standards for the preservation of eye tissue in a condition suitable for transplantation including, but not limited to, the provision of a storage area for the tissue which is maintained at an appropriate temperature and in which the tissue may be protected from contamination and/or damage, and
- (b) There are one or more board certified or board qualified ophthamologists on the staff of a hospital which seeks approval for its eye bank who are able to, and express a willingness to, perform corneal transplants, and
- (c) The director or administrator of the eye bank declares it to be the intention of those who direct and/or administer the eye bank to distribute available corneal tissue to recipients in a fair and reasonable manner, which means the distribution of corneal tissue to recipients requiring such tissue:

- (i) Without discrimination based on race, creed, ethnic origin, sex, or age, and
- (ii) With consideration of the length of time that the potential recipient has had a medically defined need to receive corneal tissue, and
- (iii) With consideration of the impact of waiting to receive such tissue on the recipient and the resulting economic, educational, or developmental loss to the potential recipient, and
- (iv) With provision made for emergency requests for corneal tissue.
- (3) The department shall deny, suspend, modify, or revoke approval of an eye bank when a facility fails or refuses to comply with legal requirements, including the criteria set forth in chapter 248-08 WAC.
- (4) The secretary may, in the secretary's discretion, reinstate the approval of an eye bank when the facility has corrected the conditions which led to the suspension, modification, or revocation of approval.
- (5)(a) The department's notice of a denial, suspension, modification, or revocation of approval shall be consistent with RCW 43.20A.205. An applicant or approval holder has the right to an adjudicative proceeding to contest the decision.
- (b) An approval applicant or holder contesting a department approval decision shall within twenty-eight days of receipt of the decision:
- (i) File a written application for an adjudicative proceeding by a method showing proof of receipt with the Office of Appeals, P.O. Box 2465, Olympia, WA 98504; and
 - (ii) Include in or with the application:
- (A) A specific statement of the issue or issues and law involved;
- (B) The grounds for contesting the department decision; and
 - (C) A copy of the contested department decision.
- (c) The proceeding is governed by the Administrative Procedure Act (chapter 34.05 RCW), this chapter, and chapter 248-08 WAC. If a provision in this chapter conflicts with chapter 248-08 WAC, the provision in this chapter governs.

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.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 248-33-060 TERMINATION OF APPROVAL.

WAC 248-33-080 REINSTATEMENT OF APPROVAL.

AMENDATORY SECTION (Amending Order 87, filed 6/12/73)

WAC 248-140-200 ((PROCEDURE UPON DENIAL OF APPLICATION FOR CERTIFICATE)) NOTICE OF DECISION—ADJUDICATIVE PROCEEDING. ((Applicants denied approval or persons whose certificates have been revoked shall have recourse

- to review of the decision of the secretary in conformance with the Administrative Procedure Act.)) (1) The department's notice of a denial, suspension, modification, or revocation of a certificate shall be consistent with RCW 43.20A.205. An applicant or certificate holder has the right to an adjudicative proceeding to contest the decision.
- (2) A certificate applicant or holder contesting a department certificate decision shall within twenty-eight days of receipt of the decision:
- (a) File a written application for an adjudicative proceeding by a method showing proof of receipt with the Office of Appeals, P.O. Box 2465, Olympia, WA 98504; and
 - (b) Include in or with the application:
- (i) A specific statement of the issue or issues and law involved:
- (ii) The grounds for contesting the department decision; and
 - (iii) A copy of the contested department decision.
- (3) The proceeding is governed by the Administrative Procedure Act (chapter 34.05 RCW), this chapter, and chapter 248–08 WAC. If a provision in this chapter conflicts with chapter 248–08 WAC, the provision in this chapter governs.

WSR 90-05-039 PERMANENT RULES DEPARTMENT OF HEALTH (Board of Dental Examiners)

[Order 036—Filed February 14, 1990, 3:00 p.m., effective March 1, 1990]

Date of Adoption: February 13, 1990.

Purpose: To implement section 22, chapter 202, Laws of 1989. To establish renewal procedures for dentists; and to repeal WAC 308-40-130.

Citation of Existing Rules Affected by this Order: Repealing WAC 308-40-130.

Statutory Authority for Adoption: Section 22, chapter 202, Laws of 1989.

Pursuant to notice filed as WSR 89-22-095 on October 31, 1989.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: Emergency rules were filed on October 31, 1989, and expire on February 28, 1990. These permanent rules become effective March 1, 1990. This is less than thirty days from their filing. The reason for the shorter period is so the Department of Health has no gap in rules adequate to meet its statutory requirements and to prevent imminent peril to the public safety or welfare.

Effective Date of Rule: March 1, 1990.

February 13, 1990 Pam Campbell Mead for Kristine M. Gebbie Secretary

NEW SECTION

WAC 308-40-135 RENEWAL OF LICENSES. (1) Under the annual birthdate license renewal system, the late payment penalty provision will be applied as follows:

(a) Before the expiration date of the individual's license, as a courtesy, a notice for renewal of license will be mailed to last address on file to every person holding a current license. The licensee must return such notice along with current renewal fees prior to the expiration of said license. Should the licensee fail to renew his or her license prior to the expiration date then the individual is subject to the statutory penalty fee. If the licensee fails to renew his or her license within three years from expiration date thereof, such individual must apply for licensing under the statutory conditions then in force.

REPEALER

The following section of the Washington Administrative Code is hereby repealed:

WAC 308-40-130 RENEWAL OF LICENSES

WSR 90-05-040
PROPOSED RULES
DEPARTMENT OF HEALTH
(Examining Board of Psychology)
[Filed February 14, 1990, 3:01 p.m.]

Original Notice.

Title of Rule: WAC 308-122-500 Continuing education—Purpose and scope.

Purpose: Amending WAC 308-122-500 to require continuing education requirements for psychologists to maintain licensure.

Statutory Authority for Adoption: RCW 18.83.090.

Summary: Amendment of WAC 308-122-500 is to ensure the highest quality of professional work by requiring continuing psychological education of licensed psychologists in Washington state.

Reasons Supporting Proposal: This WAC was previously amended in error. This amendment will correct the error.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Terry J. West, Program Manager, 1300 Quince Street, Olympia, 753–3095.

Name of Proponent: Examining Board of Psychology, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Amendment of rule to bring wording of rule back to the correct wording as it was intended prior to a former rule change which was filed in error. WAC 308-122-500 ensures continuing education of psychologists and ensures the highest quality of professional work.

Proposal Changes the Following Existing Rules: The previous amendments to this rule which were filed in error were housekeeping changes only. This amendment

deletes those housekeeping changes because they were not intended to be adopted at this time.

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

Hearing Location: Ramada Inn, Sea-Tac, 18118 Pacific Highway South, Salon E, Seattle, WA 98188, on May 11, 1990, at 9:30 a.m.

Submit Written Comments to: Terry J. West, Program Manager, Department of Health, P.O. Box 1099, Olympia, WA 98507-1099, by May 1, 1990.

Date of Intended Adoption: May 11, 1990.

February 10, 1990 Nicholas Wiltz, Ph.D. Chair

AMENDATORY SECTION (Amending Order PM 862, filed 9/19/89, effective 10/20/89)

WAC 308-122-500 CONTINUING EDUCATION—PUR-POSE AND SCOPE. The ultimate aim of continuing education is to ensure the highest quality of professional work. Continuing ((psychological)) psychology education consists of educational activities designed to review existing concepts and techniques and to convey information and knowledge about advances in ((the science and applications of)) psychology as ((appropriate)) applied to the work settings. The objectives are to improve and increase the ability of the psychologist ((or psychological associate or affiliate)) to deliver the highest possible quality of psychological work and to keep the professional psychologist ((or associate or affiliate)) abreast of current developments in a rapidly changing field. All psychologists, licensed pursuant to chapter 18.83 RCW, and ((psychological associate or affiliate)) holders of certificates of qualification issued pursuant to RCW 18.83-.105 (((all types hereafter referred to as licensees))), will be required to meet the continuing education requirements set forth in these rules as a prerequisite to license renewal.

WSR 90-05-041 PREPROPOSAL COMMENTS DEPARTMENT OF LICENSING

[Filed February 14, 1990, 3:58 p.m.]

Subject of Possible Rule Making: The department is considering changing the license period for architects from a one-year license to a three-year license as a convenience to licensees and as a cost avoidance effort on the part of the architect unit. The effective date to begin a three-year phase in process will be January 1, 1991.

Persons may Comment on this Subject in the Following Ways: Correspondence either in support of or opposition to the change, to any AIA chapter, the Washington Council of AIA, or directly to Professional Licensing Services, Architect Registration, P.O. Box 9649, Olympia, WA 98504, comments need to be received not later than May 18, 1990.

Other Information or Comments by Agency at this Time, if any: Effective date of the licensing renewal change will be January 1, 1991.

February 13, 1990 James D. Hanson Program Administrator AMENDATORY SECTION (Amending Order PL 517, filed 2/11/85)

WAC 308-12-320 RENEWAL OF LICENSES. (1) The ((annual)) license renewal date for architects shall be the architects birth date. Licensees who fail to pay the license renewal fee within thirty days of license expiration date will be subject to the late payment penalty fee as set forth in ((WAC 308-12-312)) RCW 18-08.430 and WAC 308-12-326. Architects whose renewal fees are delinquent will be listed with the state building officials.

- (2) Effective with the renewal period beginning January 1, 1991, the annual renewal period for architects will be changed to a three-year renewal period. Conversion to the three-year renewal system will be accomplished as follows:
- (a) Current licensees, whose birthdates are in the months of January, February, March or April, will be required to pay a fee equal to one years' renewal fee, or one-third of the current three-year renewal fee, in order to extend their licenses for a period of one year. Subsequent renewals for this group of licensed architects will be for a three-year period.
- (b) Current licensees, whose birthdates are in the months of May, June, July or August, will be required to pay a fee equal to two years' renewal fee, or two-thirds of the current three-year renewal fee, in order to extend their licenses for a period of two years. Subsequent renewals for this group of licensed architects will be for a three-year period.
- (c) Current licensees, whose birthdates are in the months of September, October, November or December, will be required to pay the current three-year renewal fee, in order to extend their licenses for a period of three years. Subsequent renewals for this group of licensed architects will be for a three-year period.
- (3) Effective January 1, 1991, all new architect licenses, initial or reciprocity, will be issued for a three-year period, with subsequent renewals for a three-year period.
- (4) Following completion of the conversion to a threeyear renewal period, licensees will renew every three years on their date of birth.
- (5) Assessment of delinquent fees will be based on the number of years delinquent multiplied by one-third of the three-year renewal fee or the fee for one year. Penalty fees are one-third of the three-year renewal fee or equal to the fee for one year multiplied by the number of years delinquent.

WSR 90-05-042 NOTICE OF PUBLIC MEETINGS CENTRALIA COLLEGE

[Memorandum-February 9, 1990]

This is to notify you of a change in the date of the regular May meeting of the Community College District Twelve board of trustees. The May 10, 1990, meeting has now been scheduled for May 17, 1990. The time and location will be the same, 4:30 p.m., Centralia College Boardroom.

WSR 90-05-043 PERMANENT RULES WHATCOM COMMUNITY COLLEGE

[Filed February 15, 1990, 9:49 a.m.]

Date of Adoption: February 13, 1990.

Purpose: Adopt new chapter on procedure to adopt chapter 10–08 WAC, Model rules of procedure; adopt new rule on organization as required in RCW 34.05.220 (1)(b); and adopt rule on loss of eligibility for student athletes to comply with chapter 69.41 RCW.

Citation of Existing Rules Affected by this Order: Amending WAC 132U-116-030.

Statutory Authority for Adoption: RCW 28B.50.140, chapters 34.05 and 69.41 RCW.

Pursuant to notice filed as WSR 90-01-097 [90-02-032] on December 20 [29], 1989.

Effective Date of Rule: Thirty-one days after filing.
February 13, 1990
Wendy K. Bohlke
Assistant Attorney General

Chapter 132U-03 WAC ORGANIZATION

WAC

132U-03-010 Purpose.

132U-03-020 Organization—Operation—

Information.

132U-03-030 Rules coordinator.

NEW SECTION

WAC 132U-03-010 PURPOSE. The purpose of this chapter is to establish rules implementing RCW 34-.05.220 (1)(b) and 42.17.250 (1)(a) and (b).

NEW SECTION

WAC 132U-03-020 ORGANIZATION—OP-ERATION—INFORMATION. (1) Organization. Whatcom Community College is established in Title 28B RCW as a public institution of higher education. The institution is governed by a five-member board of trustees, appointed by the governor. The board employs a president, who acts as the chief executive officer of the institution. The president establishes the structure of the administration.

(2) Operation. The administrative office of Whatcom Community College is at the following address:

237 West Kellogg Road Bellingham, Washington 98226

The office hours are 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays. Educational operations are also located at the following addresses:

245 Marine Drive Blaine, Washington 98230 1600 Grover Street Lynden, Washington 98264

(3) Information. Additional and detailed information concerning the educational offerings may be obtained from the catalog, copies of which are available at the following address:

Admissions Office Whatcom Community College 237 West Kellogg Road Bellingham, Washington 98226

NEW SECTION

WAC 132U-03-030 RULES COORDINATOR. The rules coordinator for this institution shall have an office located at the office of the president, with the following mailing address:

Office of the President Whatcom Community College 237 West Kellogg Road Bellingham, WA 98226

Chapter 132U-108 WAC PROCEDURE

WAC

132U-108-010 Rules of procedure.

132U-108-020 Brief adjudicative procedure.

132U-108-021 Presiding officer.

132U-108-030 Adjudicative proceedings open.

NEW SECTION

WAC 132U-108-010 RULES OF PROCEDURE. The model rules of procedure adopted by the chief administrative law judge pursuant to RCW 34.05.250, as now or hereafter amended, are hereby adopted for use at this institution. Those rules may be found in chapter 10-08 WAC.

NEW SECTION

WAC 132U-108-020 BRIEF ADJUDICATIVE PROCEDURE. This rule is adopted in accordance with RCW 34.05.482 through 34.05.494, the provisions of which are hereby adopted. Brief adjudicative procedures shall be used in all matters related to:

- (1) Appeals from residency classifications made pursuant to RCW 28B.15.013;
 - (2) Appeals from parking infractions;
- (3) Student conduct or disciplinary proceedings in which the proposed penalty is less than dismissal.

NEW SECTION

WAC 132U-108-021 PRESIDING OFFICER. This rule is adopted in accordance with RCW 34.05.425. The presiding officer in an administrative hearing for this institution shall be an adjudicative law judge or an attorney in good standing with the Washington State Bar Association, and designated by the president.

NEW SECTION

WAC 132U-108-030 ADJUDICATIVE PRO-CEEDINGS OPEN. Adjudicative proceedings shall be open to the public, except for student disciplinary matters, in compliance with 20 U.S.C. Sec. 1232g, the Family Educational Rights and Privacy Act, unless the student chooses to have the hearing open to the public; and faculty and administrative exempt disciplinary proceedings, unless the person subject of the proceedings chooses to have the hearing open to the public.

AMENDATORY SECTION (Amending Order 88-02, filed 3/15/88)

WAC 132U-116-030 PARKING AND TRAFFIC REGULATIONS. (1) All students, faculty members and staff at Whatcom Community College may be issued parking permits upon registration or employment with the college may be required to display those permits on their vehicles in a prominent place.

- (2) People who come upon the campus as guests, and people who lawfully visit the campus for purposes which are in keeping with the college's role as an institution of higher education may park in the campus visitor parking lot
- (3) Students, faculty, staff and visitors shall obey any signs or painted instructions regarding parking regulations on the campus.
- (4) The college reserves the right to have towed from the college premises any abandoned vehicle ((or)), any vehicle blocking a fire lane ((or)), any vehicle parked in a handicapped parking space without the appropriate permit, or any vehicle parked outside of designated parking spaces, or otherwise in violation of college parking and traffic regulations.
- (5) Cars left in excess of 48 hours will be considered abandoned and may be towed at the expense of the owner.
- (6) A student's failure to abide by these regulations shall constitute a conduct violation, subjecting the student to fines as authorized by the board of trustees or to discipline under Chapter 132U-120 WAC.
- (7) Faculty, administration or staff members who fail to abide by these regulations shall be subject to discipline under the system appropriate to the employee's status and classification.

Chapter 132U-400 WAC LOSS OF ELIGIBILITY—STUDENT ATHLETIC PARTICIPATION

WAC

132U-400-010 Immediate suspension.

NEW SECTION

WAC 132U-400-010 IMMEDIATE SUSPEN-SION. Student athletes found to have violated chapter 69.41 RCW, Legend drugs—Prescription drugs, shall, upon conviction, be immediately suspended from participation in school-sponsored athletic events by the director of athletics. The period of loss of eligibility to participate will be determined by the director of athletics at

the conclusion of a brief adjudicative hearing, to be commenced within twenty days of the suspension.

WSR 90-05-044 PERMANENT RULES DEPARTMENT OF REVENUE

[Filed February 15, 1990, 10:07 a.m.]

Date of Adoption: February 15, 1990.

Purpose: Incorporate in Washington Administrative Code Department of Revenue tax reporting frequencies and tax reporting frequency change criteria. Allow tax-payer reporting on forms approved and accepted by the Department of Revenue.

Statutory Authority for Adoption: RCW 82.32.300 and 82.32.045.

Pursuant to notice filed as WSR 90-02-022 on December 27, 1989.

Effective Date of Rule: Thirty-one days after filing.

February 15, 1990 Edward L. Faker Assistant Director

NEW SECTION

WAC 458-20-22801 TAX REPORTING FRE-QUENCY - FORMS. (1) Introduction. Every person liable for an excise tax imposed by the laws of the state of Washington for which the department of revenue has primary or secondary administrative responsibility, i.e., Title 82 RCW and chapters 67.28 RCW (hotel/motel tax), 70.93 RCW (litter tax), 70.95 RCW (tax on tires), and 84.33 RCW (forest excise tax), shall file a tax return with the department of revenue accompanied by a payment of the tax due; PROVIDED, the taxes under chapter 82.24 RCW (tax on cigarettes) shall be collected through sales of revenue stamps.

- (2) Reporting Frequency Forms. Combined Excise Tax returns with payments of the tax due are to be filed monthly. However, the department may relieve any tax-payer or class of taxpayers from this monthly obligation and may require the return to cover other longer reporting periods, but not in excess of one year. See: RCW 82.32.045.
- (a) General Rule. Unless otherwise provided by the department, a taxpayer shall report and pay taxes due according to the following schedule:

IF ANNUAL ESTIMATED TAX LIABILITY IS: Over \$4800.00 per year Between \$1050.00 & \$4800.00 per year Less than \$1050.00 per year REPORTING FREQUENCY Monthly Returns: Quarterly Returns: Annual Returns:

- (b) When requested by a taxpayer or group of taxpayers, the department may approve more frequent or less frequent reporting if, in the opinion of the department, the change assists the department in the efficient and effective administration of the tax laws of this state.
- (c) For the same reasons, the department may require a taxpayer or group of taxpayers to report more frequently or less frequently. Changes in reporting frequency are effective only after the department has consented to or required the change, and notice of the

change has been given by the department to the taxpayer or group of taxpayers.

- (d) Situations when changes in reporting frequency may be approved or required include, but are not limited to, the following:
- (i) An increase or decrease in the estimated annual tax liability of a taxpayer results in a different threshold as provided in section (2)(a) above;
- (ii) A taxpayer or group of taxpayers has substantial periods of no taxable business activity during the calendar year, i.e., seasonal businesses;
- (iii) The department finds a taxpayer or a group of taxpayers has repeatedly failed to comply with tax reporting and/or payment obligations.
- (e) Notice. No change in reporting frequency shall be effective except upon at least thirty (30) days advance written notice from the department to the taxpayer at the taxpayer's last reported business address.
- (f) Forms. Returns shall be made upon forms provided or approved and accepted by the department. Forms provided by the department are mailed to all registered taxpayers prior to the due date of the tax.
- (g) Taxes not reported upon the Combined Excise Tax return, i.e. Forest Excise Tax, etc. shall be reported at such times and upon such forms as are otherwise provided by the department.
- (3) See WAC 458-20-228 for information on returns, remittances, penalties, extensions, stay of collection.

WSR 90-05-045 PERMANENT RULES SKAGIT VALLEY COLLEGE

[Filed February 16, 1990, 9:23 a.m.]

Date of Adoption: February 13, 1990.

Purpose: Place into WAC regulations on student records; adopt new chapter on procedure to adopt chapter 10-08 WAC, Model rules of procedure; adopt new rule on organization as required in RCW 34.05.220 (1)(b); and adopt rule on loss of eligibility for student athletes to comply with chapter 69.41 RCW.

Statutory Authority for Adoption: RCW 28B.50.140, chapter 34.05 RCW, 26 U.S.C. 1232g and chapter 69.41 RCW.

Pursuant to notice filed as WSR 90-01-098 [90-02-031] on December 20 [29], 1989.

Changes Other than Editing from Proposed to Adopted Version: Chapter 132D-400 WAC, Student athletic participation, was changed to provide for more specific substantive due process for student athletes, the rule adopted is similar to that adopted at many other community colleges.

Effective Date of Rule: Thirty-one days after filing.
February 13, 1990
Wendy Bohlke
Assistant Attorney General

Chapter 132D-108 WAC PRACTICE AND PROCEDURE

WAC Adoption of model rules of procedure. 132D-108-010 132D-108-020 Appointment of presiding officers. 132D-108-030 Method of recording. 132D-108-040 Application for adjudicative proceeding. Brief adjudicative procedures. 132D-108-050 132D-108-060 Discovery. 132D-108-070 Procedure for closing parts of the hearings. Recording devices. 132D-108-080

Petitions for stay of effectiveness.

NEW SECTION

132D-108-090

WAC 132D-108-010 ADOPTION OF MODEL RULES OF PROCEDURE. The model rules of procedure adopted by the chief administrative law judge pursuant to RCW 34.05.250, as now or hereafter amended, are hereby adopted for use at this institution. Those rules may be found in chapter 10-08 WAC. Other procedural rules adopted in this title are supplementary to the model rules of procedure. In the case of a conflict between the model rules of procedure and procedural rules adopted in this title, the procedural rules adopted by this institution shall govern. Rules adopted at this institution prior to July 1, 1989, remain in full force and effect unless specifically repealed or amended.

NEW SECTION

WAC 132D-108-020 APPOINTMENT OF PRE-SIDING OFFICERS. The president or president's designee shall designate a presiding officer for an adjudicative proceeding. The presiding officer shall be an administrative law judge, a member in good standing of the Washington State Bar Association, a panel of individuals, the president or his or her designee, or any combination of the above. Where more than one individual is designated to be the presiding officer, one person shall be designated by the president or president's designee to make decisions concerning discovery, closure, means of recording adjudicative proceedings, and similar matters.

NEW SECTION

WAC 132D-108-030 METHOD OF RECORD-ING. Proceedings shall be recorded by a method determined by the presiding officer, among those available pursuant to the model rules of procedure in WAC 10-08-170.

NEW SECTION

WAC 132D-108-040 APPLICATION FOR AD-JUDICATIVE PROCEEDING. An application for an adjudicative proceeding shall be in writing. Application forms are available at the following address:

> President's Office 2405 E. College Way Mount Vernon, WA 98273

Written application for an adjudicative proceeding should be submitted to the above address within twenty days of the agency action giving rise to the application, unless provided for otherwise by statute or rule.

NEW SECTION

WAC 132D-108-050 BRIEF ADJUDICATIVE PROCEDURES. This rule is adopted in accordance with RCW 34.05.482 through 34.05.494, the provisions of which are hereby adopted. Brief adjudicative procedures shall be used in all matters related to:

- (1) Residency determinations made pursuant to RCW 28B.15.013, conducted by the admissions office;
 - (2) Challenges to contents of education records;
- (3) Student conduct proceedings. The procedural rules in chapter 132D-120 WAC apply to these proceedings;
- (4) Parking violations. The procedural rules in chapter 132D-116 WAC apply to these proceedings;
 - (5) Outstanding debts owed by students or employees;
- (6) Loss of eligibility for participation in institution-sponsored athletic events, pursuant to chapter 132D-400 WAC.

NEW SECTION

WAC 132D-108-060 DISCOVERY. Discovery in adjudicative proceedings may be permitted at the discretion of the presiding officer. In permitting discovery, the presiding officer shall make reference to the civil rules of procedure. The presiding officer shall have the power to control the frequency and nature of discovery permitted, and to order discovery conferences to discuss discovery issues.

NEW SECTION

WAC 132D-108-070 PROCEDURE FOR CLOS-ING PARTS OF THE HEARINGS. A party may apply for a protective order to close part of a hearing. The party making the request should state the reasons for making the application to the presiding officer. If the other party opposes the request, a written response to the request shall be made within ten days of the request to the presiding officer. The presiding officer shall determine which, if any, parts of the proceeding shall be closed, and state the reasons therefor in writing within twenty days of receiving the request.

NEW SECTION

WAC 132D-108-080 RECORDING DEVICES. No cameras or recording devices shall be allowed in those parts of proceedings which the presiding officer has determined shall be closed pursuant to WAC 132D-108-010, except for the method of official recording selected by the institution.

NEW SECTION

WAC 132D-108-090 PETITIONS FOR STAY OF EFFECTIVENESS. Disposition of a petition for stay of effectiveness of a final order shall be made by the official, officer, or body of officers, who entered the final order.

Chapter 132D-130 WAC STUDENT RECORDS

WAC	
132D-130-010	Purpose.
132D-130-020	Definitions.
132D-130-030	Access to records.
132D-130-035	Access to records—Limitations on access.
132D-130-040	Right to copy records.
132D-130-045	Request for explanation or interpretation of record.
132D-130-050	Challenges—To content of records— To release of records—Or to denial of access to records.
132D-130-055	Challenges—Informal proceedings.
132D-130-060	Challenges—Hearing before grievance review committee.
132D-130-070	Release of personally identifiable information or education records.
132D-130-075	Release of personally identifiable information or education records— Nature of consent required.
132D-130-080	Release of personally identifiable information or education records— Exceptions to consent requirement.
132D-130-085	Release of information in emergencies.
132D-130-090	Directory information.
132D-130-095	Destruction of student records.
132D-130-100	Notification of rights under this chapter.

NEW SECTION

WAC 132D-130-010 PURPOSE. The purpose of this chapter is to implement 20 U.S.C. Sec. 1232g, the Family Educational Rights and Privacy Act of 1974, by establishing rules and procedures to ensure that information contained in student records is accurate and is handled in a responsible manner by the university and its employees.

NEW SECTION

WAC 132D-130-020 DEFINITIONS. For purposes of this chapter, the following terms shall have the indicated meanings:

- (1) "Student" shall mean any person who is or has been officially registered at and attending Skagit Valley College and with respect to whom the college maintains education records or personally identifiable information.
- (a) "Education records" shall refer to those records, files, documents, and other materials maintained by Skagit Valley College or by a person acting for Skagit Valley College which contain information directly related to a student.
- (b) The term "education records" does not include the following:
- (i) Records of instructional, supervisory, or administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute;

- (ii) If the personnel of the college's department of safety and security do not have access to education records under WAC 132D-130-080, and records and documents of the department which are kept apart from records described in (a) of this subsection, are maintained solely for law enforcement purposes, and are not made available to persons other than law enforcement officials of the same jurisdiction;
- (iii) Records made and maintained by the college in the normal course of business which relate exclusively to a person's capacity as an employee and are not available for any other purpose except that records relating to an individual in attendance at the college who is employed as a result of his or her status as a student are education records not excepted; or
- (iv) Records concerning a student which are created or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional or paraprofessional capacity, or assisting in that capacity, and which are created, maintained, or used only in connection with the provision of treatment to the student and are not available to anyone other than persons providing such treatment, except that such records may be personally reviewed by a physician or other appropriate professional of the student's choice.
- (2) "Personally identifiable information" shall refer to data or information which includes either:
- (a) The name of a student, the student's parent, or other family member;
 - (b) The address of the student;
 - (c) The address of the student's family;
- (d) A personal identifier, such as the student's Social Security number or student number;
- (e) A list of personal characteristics which would make it possible to identify the student with reasonable certainty; or
- (f) Other information which would make it possible to identify the student with reasonable certainty.
- (3) "Dean of administrative and student services" shall refer to the dean of administrative and student services or his or her designee.

NEW SECTION

WAC 132D-130-030 ACCESS TO RECORDS. (1) Except as provided in WAC 132D-130-035, each student at Skagit Valley College shall have access to his or her education records. The right of access shall include the right to inspect, review, and obtain copies of education records.

- (2) The dean of administrative and student services shall prepare a list of the types of student education records which are maintained by Skagit Valley College.
- (3) A student wishing access to his or her education records shall submit a written request for access to the dean of administrative and student services. A request for access shall be acted upon by the dean of administrative and student services within a reasonable period of time, not to exceed twenty days.
- (4) The dean of administrative and student services shall provide students of the college with an opportunity for reasonable access to education records, provided that

the dean of administrative and student services shall be responsible for taking appropriate measures to safeguard and ensure the security and privacy of the institution's records while being inspected by students.

- (5) The dean of administrative and student services will inform in writing a student who has requested access to his or her education records of the nature of any records which are being withheld from the student on the basis of the exceptions set forth in WAC 132D-130-035. A student may challenge a decision by the dean of administrative and student services to withhold certain of the student's records by filing an appeal with the grievance review committee, WAC 132D-120-230.
- (6) This section shall not prohibit the college registrar from providing a student with a copy of the student's academic transcript without prior clearance from the dean of administrative and student services.

NEW SECTION

WAC 132D-130-035 ACCESS TO RECORDS—LIMITATIONS ON ACCESS. (1) Skagit Valley College shall not make available to a student the following types of materials:

- (a) The financial records of the student's parents or any information contained therein.
- (b) Letters or statements of recommendation, evaluation or comment which were provided to the college in confidence, either expressed or implied, prior to January 1, 1975, provided that such letters or statements shall not be used for purposes other than those for which they were originally intended.
- (c) If a student has signed a waiver of the student's right of access in accordance with subsection (2) of this section, confidential records relating to the following:
 - (i) Admission to any educational agency or institution;
 - (ii) An application for employment; or
 - (iii) The receipt of an honor or honorary recognition.
- (2) A student, or a person applying for admission to the college, may waive his or her right of access to the type of confidential records referred to in subsection (1)(c) of this section, provided that such waiver shall apply only if the student is, upon request, notified of the names of all persons making confidential recommendations, and such recommendations are used solely for the specific purpose for which the waiver has been granted. Such a waiver may not be required as a condition for admission to, receipt of financial aid from, or receipt of other services or benefits from the college.
- (3) If any material or document in the education record of a student includes information concerning more than one student, the student shall only have the right either to inspect and review that portion of the material or document which relates to the student or to be informed of the specific information contained in that portion of the material or document.

NEW SECTION

WAC 132D-130-040 RIGHT TO COPY RE-CORDS. (1) The dean of administrative and student services shall, at the request of a student, provide the student with copies of the student's education records. The fees for providing such copies shall not exceed the actual cost to the university of providing the copies.

(2) Official copies of transcripts from other educational institutions, such as high school or other college transcripts, will not be provided to students by the college.

NEW SECTION

WAC 132D-130-045 REQUEST FOR EXPLANATION OR INTERPRETATION OF RECORD. The dean of administrative and student services shall respond to reasonable requests for explanations or interpretations of the contents of student education records.

NEW SECTION

WAC 132D-130-050 CHALLENGES—TO CONTENT OF RECORDS—TO RELEASE OF RECORDS—OR TO DENIAL OF ACCESS TO RECORDS. (1) Any student who believes that inaccurate, misleading, or otherwise inappropriate data is contained within his or her education records shall be permitted to have included within the record a written explanation by the student concerning the content of the records.

- (2) A student shall have the right, in accordance with the procedures set forth in WAC 132D-130-055 and 132D-130-060, to:
- (a) Challenge the content of education records in order to ensure that the records are not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the students;
- (b) Have the opportunity to correct or delete inaccurate, misleading, or otherwise inappropriate data contained within education records;
- (c) Challenge the release of education records to specific persons as contrary to the provisions of this chapter; and
- (d) Challenge a decision by the college to deny the student access to particular types of records.
- (3) A student shall not be permitted under this chapter to challenge the validity of grades given in academic courses, except on the grounds that, as a result of clerical error, the student's records fail to accurately reflect the grades actually assigned by an instructor.

NEW SECTION

WAC 132D-130-055 CHALLENGES—IN-FORMAL PROCEEDINGS. A student wishing to exercise the rights set forth in WAC 132D-130-050(2) shall first discuss with the dean of administrative and student services the nature of the corrective action sought by the student.

NEW SECTION

WAC 132D-130-060 CHALLENGES—HEAR-ING BEFORE GRIEVANCE REVIEW COMMITTEE. (1) If informal proceedings fail to resolve the complaint of a student, the student may file with the dean of administrative and student services a written request for a hearing before the grievance review committee of the college.

(2) Within a reasonable time after submission of a request for hearing, the student rights and responsibilities committee shall conduct a hearing concerning the student's request for corrective action.

The student and the college shall be given a full opportunity to present relevant evidence at the hearing before the student rights and responsibilities committee.

- (3) If a student demonstrates that the student's education records are inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, the student rights and responsibilities committee shall have authority to order the correction or deletion of inaccurate, misleading, or otherwise inappropriate data contained in the records.
- (4) If a student demonstrates that the release of the student's education records would be improper under this chapter, the student rights and responsibilities committee shall have authority to order that the records not be released.
- (5) If a student demonstrates that the student is entitled to access to particular documents under this chapter, the student rights and responsibilities committee shall have authority to order that the student be permitted access to the records.
- (6) The decision of the student rights and responsibilities committee shall be rendered in writing within a reasonable period of time after the conclusion of the hearing.

NEW SECTION

WAC 132D-130-070 RELEASE OF PERSON-ALLY IDENTIFIABLE INFORMATION OR EDU-CATION RECORDS. Except as provided in WAC 132D-130-080, 132D-130-085, or 132D-130-090, the college shall not permit access to or the release of a student's education records or personally identifiable information contained therein to any person without the written consent of the student.

NEW SECTION

WAC 132D-130-075 RELEASE OF PERSON-ALLY IDENTIFIABLE INFORMATION OR EDU-CATION RECORDS—NATURE OF CONSENT REQUIRED. Where the consent of a student is required under WAC 132D-130-070 for the release of education records or personally identifiable materials contained therein, the student's consent shall be in writing, shall be signed and dated by the student, and shall include a specification of the records to be released, the reasons for such release, and the names of the parties to whom the records may be released.

NEW SECTION

WAC 132D-130-080 RELEASE OF PERSON-ALLY IDENTIFIABLE INFORMATION OR EDU-CATION RECORDS—EXCEPTIONS TO CON-SENT REQUIREMENT. (1) The college may permit the access to or release of a student's education records or personally identifiable information contained therein without the written consent of the student to the following parties:

- (a) College officials, including faculty members, when the information is required for a legitimate educational purpose within the scope of the recipient's official responsibilities with the college and will be used only in connection with the performance of those responsibilities;
- (b) Federal or state officials requiring access to education records in connection with the audit or evaluation of federally or state—supported educational programs or in connection with the enforcement of federal or state legal requirements relating to such programs. In such cases, the information required shall be protected by the federal or state officials in a manner which shall not permit the personal identification of students or their parents to other than those officials, and such personally identifiable data shall be destroyed when no longer needed for the purposes for which it was provided;
- (c) Agencies or organizations requesting information in connection with a student's application for, or receipt of, financial aid;
- (d) Organizations conducting studies for or on behalf of the university for purposes of developing, validating or administering predictive tests, administering student aid programs, or improving instruction, if such studies are conducted in a manner which will not permit the personal identification of students by persons other than representatives of such organizations, and the information will be destroyed when no longer needed for the purposes for which it was provided;
- (e) Accrediting organizations in order to carry out their accrediting functions; or
- (f) Any person or entity authorized by judicial order or lawfully issued subpoena to receive such records or information, upon condition that the student is notified of all such orders or subpoenas in advance of compliance therewith by the college. Any college employee or official receiving a subpoena or judicial order for education records or personally identifiable information contained therein shall immediately notify the assistant attorney general representing the college.
- (2) Education records of a student or personally identifiable information contained therein which are released to third parties, with or without the consent of the student involved, shall be accompanied by a written statement indicating that the information cannot subsequently be released in a personally identifiable form to any other party without the written consent of the student involved.
- (3) The college shall maintain a record, kept with the education records of each student, indicating all parties, other than those parties specified in subsection (1)(a) of this section, which have requested or obtained access to the student's education records, and indicating the legit-imate interest that each such party has in obtaining the records or information contained therein. This record of access shall be available only to the student, to the employees of the college responsible for maintaining the records, and to the parties identified under subsection (1)(a) and (c) of this section.

NEW SECTION

WAC 132D-130-085 RELEASE OF INFORMATION IN EMERGENCIES. (1) The dean of administrative and student services or his or her designee may, without the consent of a student, release the student's education records or personally identifiable information contained therein to appropriate parties in connection with an emergency if the knowledge of such information is necessary to protect the health or safety of the student or other persons.

- (2) The following factors should be taken into consideration in determining whether records may be released under this section:
- (a) The seriousness of the threat to the health or safety of the student or other persons;
- (b) The need for personally identifiable information concerning the student to meet the emergency;
- (c) Whether the parties to whom the records or information are released are in a position to deal with the emergency; and
- (d) The extent to which time is of the essence in dealing with the emergency.
- (3) If the college, pursuant to subsection (1) of this section, releases personally identifiable information concerning a student without the student's consent, the college shall notify the student as soon as possible of the identity of the parties and to whom the records or information have been released and of the reasons for the release.

NEW SECTION

WAC 132D-130-090 DIRECTORY INFORMATION. (1) The college may release "directory information" concerning a student to the public unless the student requests in writing of the dean of administrative and student services that the student's directory information not be released except as provided in WAC 132D-130-070, 132D-130-080, or 132D-130-085.

(2) The term "directory information" shall include information relating to the student's name, local and home address, telephone listing, date and place of birth, major field of study, dates of attendance, degrees and awards received, participation in officially-recognized sports and activities, weight and height if a member of an athletic team, and the most recent previous educational institution attended.

NEW SECTION

WAC 132D-130-095 DESTRUCTION OF STU-DENT RECORDS. Except as otherwise provided by law, the college shall not be precluded under this chapter from destroying all or any portion of a student's education records, provided that no education record to which a student has requested access shall be removed or destroyed by the college prior to providing the student with the requested access.

NEW SECTION

WAC 132D-130-100 NOTIFICATION OF RIGHTS UNDER THIS CHAPTER. The college shall

annually notify students currently in attendance of their rights under this chapter and the Family Educational Rights and Privacy Act.

The notice shall include a statement that the student has a right to each of the following:

- (1) Inspect and review the student's education records;
- (2) Request the amendment of the student's education records to ensure that they are not inaccurate, misleading, or otherwise in violation of the student's privacy or other rights;
- (3) Consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that these regulations and the regulations promulgated pursuant to the Family Educational Rights and Privacy Act allow;
- (4) File a complaint with the United States Department of Education under 34 C.F.R. 99.64 concerning alleged failures by the college to comply with the requirements of the act;
- (5) Information concerning the cost to be charged for reproducing copies of the student's records; and
- (6) Obtain a copy of the regulations in this chapter.

 The notice shall indicate the places where copies of these regulations are located.

Chapter 132D-133 WAC ORGANIZATION

WAC

132D-133-020 Organization—Operation— Information.

NEW SECTION

WAC 132D-133-020 ORGANIZATION—OP-ERATION—INFORMATION. (1) Organization. Skagit Valley College, Community College District No. 4, is established in Title 28B RCW as a public institution of higher education. The institution is governed by a five-member board of trustees, appointed by the governor. The board employs a president, who acts as the chief executive officer of the institution. The president establishes the structure of the administration.

(2) Operation. The administrative office is located at the following address:

2405 E. College Way Mount Vernon, WA 98273

The office hours are 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays. Educational operations are also located at the following addresses:

Whidbey Campus 1201 E. Pioneer Way Oak Harbor, WA 98277

South Whidbey Campus 5611 S. Bayview Road Langley, WA 98260

San Juan Center P. O. Box 1432 Friday Harbor, WA 98250 (3) Information. Additional and detailed information concerning the educational offerings may be obtained from the catalog, copies of which are available at the following address:

2405 E. College Way Mount Vernon, WA 98273

Chapter 132D-400 WAC
LOSS OF ELIGIBILITY—STUDENT ATHLETIC
PARTICIPATION

NEW SECTION

WAC 132D-400-010 GROUNDS FOR IN ELI-GIBILITY. Any student found by the college to have violated chapter 69.41 RCW by virtue of a criminal conviction or otherwise insofar as it prohibits the possession, use or sale of legend drugs, including anabolic steroids, will be disqualified from participation in any school-sponsored athletic event or activity.

NEW SECTION

WAC 132D-400-020 SUSPENSION PROCE-DURE—RIGHT TO INFORMAL HEARING. Any student notified of a claimed violation of WAC 132D-400-010 shall have the right to a brief adjudicative hearing if a written request for such a hearing is received by the dean of students within three days of receipt of a declaration of further athletic ineligibility. If no written request is received within three days after receipt of the declaration of athletic ineligibility, the student will be deemed to have waived any right to a brief adjudicative hearing and will be declared ineligible from further participation in school-sponsored athletic events for the remainder of the school year.

NEW SECTION

WAC 132D-400-030 HEARING. If a timely written request for a hearing is made, the dean of students shall designate a hearing officer who shall be a college officer who is not involved with the athletic program to conduct the brief adjudicative hearing. The hearing officer shall promptly conduct the hearing and permit affected parties to explain both the college's view of the matter and the student's view of the matter. The brief adjudicative proceeding shall be conducted in accordance with the Administrative Procedure Act, RCW 34-.05.482-494.

NEW SECTION

WAC 132D-400-040 DECISION. The college official who acts as hearing officer shall issue a written decision which shall include a brief statement of the reasons for the decision and a notice that judicial review may be available. All documents presented, considered or prepared by the hearing officer shall be maintained as the official record of the brief administrative proceeding. A decision must be promptly rendered after the conclusion of the brief adjudicative hearing and in no event later than 20 days after the request for hearing is received by the dean of students.

WSR 90-05-046 NOTICE OF PUBLIC MEETINGS UNIVERSITY OF WASHINGTON

[Memorandum—February 14, 1990]

The following is a schedule for regular meetings to be held by the University of Washington's Department of Classics:

DEPARTMENT OF CLASSICS
University of Washington
SCHEDULE OF DEPARTMENT MEETINGS
(Revised)
1990

All meetings in Denny 210

Winter Quarter	Tuesday and Wednesday	January 2 and 3	12:30 p.m.		
	Tuesday	January 9	12:30 p.m.		
	Tuesday	February 6	12:30 p.m.		
	Tuesday	March 6	12:30 p.m.		
Spring Quarter	Tuesday	April 3	12:30 p.m.		
, , ,	Tuesday	May 1	12:30 p.m.		
	Tuesday	June 5	12:30 p.m.		
Summer Quarter	No meetings				
Autumn Quarter	Tuesday	October 9	12:30 p.m.		
·	Tuesday	November 6	12:30 p.m.		
	Tuesday	December 4	12:30 p.m.		

WSR 90-05-047 NOTICE OF PUBLIC MEETINGS PUGET SOUND WATER QUALITY AUTHORITY

[Memorandum—February 14, 1990]

Listed below are the locations for meetings of the Puget Sound Water Quality Authority through June 1991. The first three meetings have specific locations listed. I will notify you of the addresses of other meetings as they are determined.

All meetings will begin at 9:30 a.m.

March 21, 1990
Gold Room
Building Four
Highline Community College
South 240th Street and
Pacific Highway South
Des Moines

April 18, 1990 Tacoma City Council Chambers Municipal Building, First Floor 748 Market Street Tacoma

May 16, 1990 Council Chambers Port Orchard City Hall 216 Prospect Street Port Orchard

June 20, 1990 Seattle July 18, 1990 Friday Harbor

August 15, 1990 Olympia

September 19, 1990 Federal Way

October 17, 1990

Everett

November 21, 1990

Seattle

December 19, 1990

Coupeville

January 16, 1991

Bellevue

February 20, 1991

Tacoma

March 20, 1991

Olympia

April 17, 1991

Seattle

May 15, 1991

Vashon Island

June 19, 1991

Olympia

WSR 90-05-048 PROPOSED RULES DEPARTMENT OF ECOLOGY

[Filed February 16, 1990, 2:39 p.m.]

Continuance of WSR 90-02-096.

Title of Rule: Chapter 173-166 WAC, Emergency drought relief.

Hearing Location: EFSEC Hearing Room, 4224 6th Avenue S.E., Building #1, Lacey, on February 20, 1990, at 7:00 p.m.

Date of Intended Adoption: April 3, 1990.

February 16, 1990 Fred Olson Deputy Director

WSR 90-05-049 EMERGENCY RULES DEPARTMENT OF AGRICULTURE

[Order 2028-Filed February 16, 1990, 3:07 p.m.]

Date of Adoption: February 16, 1990.

Purpose: To establish the amount and conditions under which indemnity may be paid when the director of agriculture may order the destruction of any sheep or goats affected with or exposed to Scrapie.

Statutory Authority for Adoption: RCW 16.36.096.

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: Federal Scrapie eradication plans have not been successful. The present bloodline program has resulted in an increase in Scrapie nation-wide. Federal indemnity alone has not been sufficient to obtain complete flock depopulation in most areas. To protect the Washington sheep industry from Scrapie, a return to total flock depopulation must be established. Since any state indemnity is tied to a cooperative federal program, in the future, if there is no federal program, the state would not be obligated to operate its own eradication program.

Effective Date of Rule: Immediately.

February 16, 1990 C. Alan Pettibone Director

Chapter 16–86 WAC ((CATTLE, GOATS—))BRUCELLOSIS ((AND)), TUBERCULOSIS, <u>AND SCRAPIE IN CATTLE</u>, GOATS, AND SHEEP

AMENDATORY SECTION (Amending Order 1917, filed 3/25/87)

WAC 16-86-005 DEFINITIONS. For purposes of this chapter:

- (1) "Director" means the director of agriculture of the state of Washington or his duly authorized representative.
- (2) "Department" means the Washington state department of agriculture.
- (3) "Accredited veterinarian" means a veterinarian licensed to practice veterinary medicine, surgery, and dentistry in the state of Washington and approved by the United States Department of Agriculture veterinary services to participate in state-federal cooperative programs.
- (4) "Official calfhood vaccinate" means a female bovine animal vaccinated between the ages of four and twelve months (one hundred twenty days to three hundred sixty-five days) for beef breed cattle and between the ages of four and eight months (one hundred twenty days to two hundred forty days) for dairy breed cattle with an approved brucella vaccine.
- (5) "Approved brucella vaccine" means only those biological products that are approved by and produced under license of the United States Department of Agriculture for injection into cattle for the purpose of enhancing their resistance to brucellosis.
- (6) Registry tattoo means a tattoo identifying the individual as a registered animal within the breed association.
- (7) "Vaccination tattoo" means the United States registered shield and V preceded by a number indicating

the quarter of the year and followed by a number corresponding to the last digit of the year in which vaccination was done.

(8) "Scrapie infected flock" means a flock of sheep or goats in which the disease scrapie has been diagnosed positive in one or more animals by the National Veterinary Service Laboratory (NVSL).

NEW SECTION

WAC 16-86-093 INDEMNITY FOR SCRAPIE INFECTED OR EXPOSED SHEEP OR GOATS. As provided under RCW 16.36.096, the director of agriculture may order the destruction of any sheep or goats affected with or exposed to scrapie. Subject to the availability of sufficient funds, the director may pay an indemnity for any scrapie infected flocks ordered destroyed.

(1) The indemnity paid may not exceed fifty percent of the appraised value of the sheep or goats up to a limit of three hundred dollars per animal.

(2) State indemnity will not be paid for any animal on which federal indemnity has been paid and state indemnity will not exceed the total federal indemnity available for an individual flock under a federal scrapie program.

(3) State indemnity funds will be paid to the owner or owners of a scrapie infected flock only under a total flock depopulation plan.

(4) All destroyed animals shall be disposed of in a manner prescribed by the Washington state veterinarian.

(5) The provision for payment of indemnity will not apply to animals which have been brought into this state for a period of less than six months and have been in this state for a period of less than six months before being ordered destroyed by the director of agriculture.

WSR 90-05-050 NOTICE OF PUBLIC MEETINGS HUMAN RIGHTS COMMISSION

[Memorandum-February 16, 1990]

The Washington State Human Rights Commission will hold its next regular commission meeting in Tacoma on March 21 and 22, 1990. The meeting on March 21, will be held at the Executive Inn, Spinnaker Room, 5700 Pacific Highway East, Tacoma, beginning at 7:00 p.m. and will be a training, planning and work session. The regular business meeting will be held at the same location, beginning at 9:30 a.m. on March 22, 1990.

WSR 90-05-051 PROPOSED RULES DEPARTMENT OF LICENSING

[Filed February 20, 1990, 1:40 p.m.]

Original Notice.

Title of Rule: Amending WAC 460-20A-400 Dual representation and affiliation.

Purpose: Substitutes specific statement of supervisory responsibility of each employing broker—dealer or investment adviser for former requirement of joint and several liability agreement signed by each employer of dually registered salespersons.

Statutory Authority for Adoption: RCW 21.20.450. Statute Being Implemented: RCW 21.20.060.

Summary: Eliminates requirement for dually registered salespersons to have each employing broker—dealer or investment adviser sign an agreement to be jointly and severally liable for certain actions of the salesperson. Clarifies definition of dual registration. Specifies supervisory responsibilities of employing brokers and investment advisers.

Reasons Supporting Proposal: Simplifies registration procedure while still protecting public.

Name of Agency Personnel Responsible for Drafting: Suzanne Sarason, Securities Examiner, 7240 Martin Way, Olympia, 753-6928; Implementation: Ken Mark, Assistant Director, Black Lake, Olympia, 753-1749; and Enforcement: Jack Beyers, Securities Administrator, 7240 Martin Way, 753-6928.

Name of Proponent: Department of Licensing, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The proposed rule amends the requirements for dual registration. It eliminates the requirement of joint and several liability agreements from each employing broker or investment adviser for each dually registered salesperson. Many employers were reluctant to sign such agreements. Their reluctance caused licensing delays for their salespersons. The proposed rule substitutes a statement about the supervisory responsibilities of each employer for all activities of the salesperson. The rule is intended to speed dual registrations and to remind employing brokers and investment advisers of their supervisory responsibilities.

Proposal Changes the Following Existing Rules: Changes definition of dual registration. Eliminates joint and several liability agreement requirement. Adds statement that employing broker or investment adviser is responsible for all securities related activities of its salespersons.

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

Hearing Location: Securities Division Conference Room, 7240 Martin Way, Olympia, WA 98506, on March 27, 1990, at 10:00 a.m.

Submit Written Comments to: Jack L. Beyers, Securities Administrator, P.O. Box 648, Olympia, WA 98504, by March 27, 1990.

Date of Intended Adoption: April 10, 1990.

February 20, 1990 Mary Faulk Director

AMENDATORY SECTION (Amending Order SDO-220-85, filed 11/19/85)

WAC 460-20A-400 DUAL REPRESENTATION AND AF-FILIATION. (1) A person ((may be registered simultaneously in Washington as a security salesperson with more than one brokerdealer, issuer, or owner of securities, may be registered simultaneously in Washington as an investment adviser salesperson with more than one investment adviser or may be registered simultaneously in Washington as a securities salesperson and an investment adviser salesperson if an undertaking in a form acceptable to the administrator is entered into in writing between all employers)) is dually registered for the purpose of this section if that person is simultaneously registered with the securities division, department of licensing with:

(a) More than one broker-dealer;

(b) More than one issuer;

(c) One or more broker-dealers and one or more issuers;

(d) More than one investment adviser;

(e) One or more broker-dealers and one or more investment advisers; or

(f) One or more issuers and one or more investment advisers; as a securities salesperson, investment adviser salesperson, broker-dealer, or investment adviser. A person may be dually registered in this state if all broker-dealers, issuers, or investment advisers employing or engaging such person consent to such dual registration in writing in a form acceptable to the administrator.

(2) The ((undertaking)) consent for subsection (1) of this section

shall contain the following provisions:

(a) The effective date of the dual employment or engagement with the respective ((employers)) broker-dealers, issuers, or investment advisers:

(b) Consent by each ((employer)) broker-dealer, issuer, or investment adviser employing or engaging such person to the employment or engagement of the ((salesperson)) person by all other ((employers)) broker-dealers, issuers, or investment advisers; and

(c) ((An agreement by each employer to assume joint and several liability with all other employers for any act or omission of the salesperson in violation of the Washington securities law during his period of employment and continuing until written notice is given to the administrator of the termination of the employment relationship.

(d)) An agreement that each ((employer)) broker-dealer, issuer, or investment adviser employing or engaging such person will register the ((salesperson)) person with the securities division and pay the applicable registration fee.

(3) A separate application for registration or renewal shall be made by each ((employer)) broker-dealer, issuer, or investment adviser desiring to employ or engage the ((salesperson)) person. An executed copy of the ((undertaking)) consent required by subsection (1) of this section shall accompany the application. The application shall be filed with the administrator and shall contain such exhibits and information as may be required by the administrator, together with the fees required by RCW 21.20.340.

(4) A broker-dealer or investment adviser who employs or engages a securities salesperson or investment adviser salesperson and who consents to the dual registration of that securities salesperson or investment adviser salesperson shall supervise all securities related activities of that salesperson.

WSR 90-05-052 PROPOSED RULES DEPARTMENT OF ECOLOGY

[Order 90-06-Filed February 20, 1990, 2:53 p.m.]

Original Notice.

Title of Rule: Amending chapter 173-400 WAC, General regulations for air pollution sources; chapter 173-405 WAC, Kraft pulping mills; chapter 173-410 WAC, Sulfite pulping mills; chapter 173-415 WAC, Primary aluminum plants; and chapter 173-490 WAC, Emission standards and controls for sources emitting volatile compounds (VOC); and repealing chapter 173-403 WAC, Implementation of regulations for air contaminant sources.

Purpose: To establish technically feasible and reasonably attainable standards and to establish rules generally applicable to the control and/or prevention of the emission of air contaminants.

Statutory Authority for Adoption: RCW 70.94.331. Statute Being Implemented: Chapter 70.94 RCW.

Summary: These changes incorporate housekeeping amendments. Requirements of previous chapter 173-403 WAC are incorporated into chapter 173-400 WAC. These amendments improve clarity, internal consistency, completeness and enforceability.

Reasons Supporting Proposal: The proposed revisions are intended to improve clarify, internal consistency, completeness and enforceability.

Name of Agency Personnel Responsible for Drafting: Daniel A. Radonski, PV-11, R6 #4, (206) 438-7608; Implementation: Michael J. Landon, PV-11, R6 #4, (206) 459-6247; and Enforcement: Joseph R. Williams, PV-11, R6 #4, (206) 459-6256.

Name of Proponent: Department of Ecology, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: These rules are enacted under the provisions of the Washington Clean Air Act as amended (RCW 70.94.395). The purpose of each of these rules is to establish technically feasible and reasonably attainable standards as new information and better technology are developed and become available. It is the purpose of chapters 173-405, 173-410, 173-415 and 173-490 WAC, to assume state jurisdiction over emissions from those sources to provide for the systematic control of air pollution in those industries and for the proper development of the state's natural resources.

Proposal Changes the Following Existing Rules: Housekeeping changes; clarification of rules; removes obsolete sections of rules; makes rules consistent; consolidates definitions into chapter 173-400 WAC; requires monitoring results to be reported within 15 days instead of 30 days in chapters 173-405 and 173-410 WAC; removes old compliance date schedules; and removes "Grandfather" clauses.

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

Small Business Economic Impact Statement: The Washington Regulatory Fairness Act, chapter 19.85 RCW, requires that proposed rules which have an economic impact on more than twenty percent of all industries or more than ten percent of any one industry shall be reviewed to determine if the cost of coming into compliance with the proposed agency rules will create a disproportionately higher economic burden on small business in comparison with the cost of compliance for large business. The act defines a small business as an employer with fifty or fewer employees.

The purpose of amending the air rules is to improve clarity, internal consistency, completeness and enforceability, and to comply with federal requirements. Most changes proposed are editorial. Large businesses bear most of the burden of the air rules, however small businesses do bear some of the costs. The air rules proposed for change have been reviewed. While most of the changes proposed have a negligible impact some changes

are proposed as mitigation. Despite the mitigation proposed, the overall impact of the rule changes is negligible. Shown below is the Small Business Economic Impact Statement to provide more details about the changed rules.

The Department of Ecology determination of negligible impact is on file at Air Programs, Department of Ecology, PV-11, Lacey, Washington 98504-8711. This detailed statement covers each proposed change.

The purpose of amending Title 173 WAC, Air rules, is to reduce the complexity of the rules, reduce duplication, and to comply with federal requirements. Most changes proposed are editorial. The following Small Business Economic Impact Statement considers the impact these changes would have on current regulatory practice.

The Regulatory Fairness Act, chapter 19.85 RCW, requires that rules which have an impact on more than 20 percent of all industry or 10 percent of the businesses in any one industry be reviewed and altered to minimize their impact on small businesses. Large businesses bear most of the burden of the existing air rules; however, small businesses do bear some of the costs. The air rules amendments have been reviewed. Amendments required for federal compliance are automatically considered so [to] have a negligible impact. Emissions must comply with federal rules regardless of their inclusion in state rules. While most of the state amendments proposed have a negligible impact, some amendments are proposed as mitigation under RCW 19.85.050(1). Public advisory workshops were held on April 26, 1989, in Spokane, Washington and on April 28, 1989, in Lacey, Washington. Despite the mitigation proposed, the overall impact of the rules changes is negligible for any entity. This statement reviews all changes which are not clearly editorial. Readers should read it with the draft rule amendment documents.

Chapter 173-400 WAC contains substantial revisions including the consolidation of chapters 173-400 and 173-403 WAC. Most of these amendments have no impact on regulatory practice. Where necessary, WAC references are changed due to a reordering of language from this rule amendment process. Changes which create potential mitigation or potential costs are listed below and described section by section. Substantive changes which may impose costs generally close a potential, seldom used loophole in the rule.

WAC 173-400-030(26)

WAC 173-400-040 (3)(b) and (6)(b)

WAC 173-400-110 (1)(d)

The mitigation proposed, has potentially a broader effect. Its value will depend on the industry and the regulatory situation.

WAC 173-400-030 (43)(b)(iv)

WAC 173-400-040(6)

WAC 173-400-060

Old WAC 173-400-120(6) deletion

New WAC 173-400-131(5)

None of these amendments are expected to have a significant impact on any entity.

WAC 173-400-010, language is changed so as to quote the statute. The proposed change should have no effect.

WAC 173-400-020, the proposed changes are purely editorial.

WAC 173-400-030, the added definitions come from deleted WAC 173-403-030. Small wording changes and added rule references produce no effective change with the following exceptions.

(2) The EPA requested the new definition for Administrator.

(26) The word "device" was added to the definition of "fossil fuel-fired steam generator" in order to close a loophole in the regulation. Should anyone have wished to claim that a generator was not a furnace or boiler, it is no longer possible to claim that the generator is a device and therefore not regulated. The potential cost of this is equal to the cost of compliance with the regulation as a whole. There is however, potential net savings from reduced legal costs since the Webster's definitions of generator and furnace are broad. Furnace (1) an enclosure in which energy in a nonthermal form is converted to heat. (2) an intensely hot enclosed place. Boiler (1) an enclosed vessel in which water is heated and circulated, either as hot water or steam, for heating or power. (2) a container, as a kettle, for boiling liquids. (3) a storage tank for hot water. It is likely that ecology would be able to have required compliance despite any such claim.

In subsection (43)(b)(iv) the determination of net emissions criteria is changed to allow emissions to be "less than or equal to the allowable emissions." It is almost impossible to create emissions identical to the allowable rate. This is not a mitigation since it is part of current regulatory practice.

(37) The definition of "major source" was changed to match federal requirements at EPA's request.

(55) "Potential to emit" was defined in order to comply with federal requirements. It is not expected to increase costs for existing facilities.

(59) EPA required that the RACT definition be changed because RACT is not determined on a case-by-

(72) Part of the definition of visibility impairment has been changed from a "change in visibility" to a "degradation in visibility." While this might appear to be a mitigation it is not, since there is no change in regulatory practice.

(74) The definition of volatile organic compound is changed to comply with 40 CFR 60.2 Subpart A and is an EPA requirement. There is no effective change in

regulatory practice.

WAC 173-400-040, most changes to this section of the air rules are editorial and create no effective change. Some material is added in order to provide a legal reference or add already enforceable statute language or clarify which rule takes precedence for the reader. These include subsections (1)(d) and (5). Neither addition creates an effective change since regulated emissions must comply with the law as well as the rules. Subsections (3)(b) and (6)(b) change the technology required for significant contributors from "reasonably" to "best" available control technology (RACT vs. BACT). Over

time, the RACT criteria has come to match the BACT criteria. Ecology staff are unaware of any regulated entities that would be affected by this change. If economic growth creates additional areas with nonattainment status, new significant contributors may be affected by this change. The potentially affected entities are unlikely to be small businesses. Subsection (6) includes a new description of tests that are already standard and required elsewhere. This creates no effective change. Mitigation is included for the monitoring process with the addition of the words "mutually approved" to the location requirements for monitoring. In the past, ecology could simply specify locations. While this may be a mitigation, it was common practice to work out the location with industry. The potential cost reduction would have to be worked out on a case-by-case basis.

WAC 173-400-050, has editorial changes which have no impact.

WAC 173-400-060, changes are editorial and have no impact on costs with the exception of the following mitigation. The first paragraph has added language for testing.

"Appropriate EPA test methods or approved test procedures on file with Ecology in the Source Test Manual – Procedures For Compliance Testing," will be used to determine compliance. This allows industry to choose between state and EPA approved methods.

WAC 173-400-070, has editorial changes that will have no impact on costs.

WAC 173-400-075, has substantive deletions related to special arrangements for ASARCO (the ASARCO facility has been closed). This language is no longer needed. The deletions have no cost impact. All other changes are editorial.

WAC 173-400-100, has editorial changes that impose no costs. Subsection (30) has new language that requires the report of closure to be filed "within ninety days" rather than "whenever" emissions permanently cease. This amendment creates no change in current costs. Because it was part of current regulatory practice, the new wording does not constitute a mitigation. New subsection (31) requires that sources emitting toxic air pollutants must register. The cost of registration is not significant. Most entities involved will already be registered. There will be no impact from registration until the air toxics rule is promulgated. The Small Business Economic Impact Statement for the air toxics rule will be written at that time.

WAC 173-400-105, contains new language regarding monitoring which has been moved from WAC 173-400-120. Subsection (1) contains a recordkeeping requirement required by federal rules. The requirement was added at EPA's request. Subsections (2) and (3) are deleted because the required recordkeeping and reporting is covered in this new language. Old WAC 173-400-120 (6)(a)(i)(C) and 173-400-120 (6)(a)(ii)(B) are deleted because no sources fit the requirements. Subsection (6)(f) allows special considerations in the event of extreme economic situations. This is not a mitigation because it is part of the language from WAC 173-400-120. This clause does allow mitigation on a case-by-case basis. A note is added to clarify that fossil fired steam

generators with greater than 250 megawatts are governed by Title 463 WAC.

WAC 173-400-110, contains new language transferred from WAC 173-403-030. Most changes are editorial and cause no change. The exception is WAC 173-400-110 (1)(d) that deals with notification requirements. Currently, replacement of equipment is exempt from the notification requirements. With the wording change, only replacement with "identical" equipment is exempt from the notification requirements. This closes an existing loophole in the regulation which was rarely used. It may impose costs of notification on companies which change equipment at the time it is replaced. Notification is not a significant cost. In WAC 173-400-110 (3)(b)(iii) the word allowable is added to the word emissions. This change may loosen the standards. In WAC 173-400-110(6), wording was added to clarify the route of appeals for ecology construction approvals. No costs are associated with this section.

WAC 173-400-115, contains editorial changes and changes required by 40 CFR 60.24(a) Subpart B. In addition, primary copper smelters and primary zinc smelters are deleted from the list of industries required to meet the federal standards. This is not a mitigation, these smelters no longer exist in our state.

WAC 173-400-120, the contents related to monitoring and special reports of this section are moved to WAC 173-400-105. Section 173-400-120 has been retitled Bubble Rules. Subsections (5)(f) and (h)(iii) are deleted entirely since they contain obsolete dates. Part of subsection (6) is also deleted rather than transferred. The requirement that an emissions inventory must include one hour and twenty-four hour estimates is deleted. This mitigation may lower compliance costs since some consistent, or smaller emissions may not need these estimates. The new language in WAC 173-400-120 is transferred from WAC 173-403-060 without change. Subsection (2)(f)(iv) included the definition of a major emissions rather than having the definition listed elsewhere.

New section WAC 173-400-131, is transferred from WAC 173-403-070. Subsection (5), "Approval," includes a possible mitigation. If an emission reduction credit (ERC) is not approved within 30 days, the credit will be automatically approved. Since ERCs are transferable, the guarantee may have value in situations where sale or transfer is desired by the applicant.

New section WAC 173-400-136, is transferred from WAC 173-403-075 with editorial changes only.

New section WAC 173-400-141, is transferred from WAC 173-403-080 with editorial changes only. This part of the rule references specific portions of 40 CFR 51 and 52.

New section WAC 173-400-151, is transferred from WAC 173-403-090 with editorial changes only.

New section WAC 173-400-161, is transferred from WAC 173-403-100. Titles in subsections (2) and (3) are changed. This change imposes no costs.

New section WAC 173-400-171, is transferred from WAC 173-403-110. Subdivision (2)(c) is added at EPA request to match existing federal requirements.

New section WAC 173-400-180, is transferred from WAC 173-403-120 with editorial changes only.

New section WAC 173-400-190, is transferred from WAC 173-403-130 with a change of reference only.

New section WAC 173-400-200, is transferred from WAC 173-403-141. Material related to dispersion is deleted. The allowance was only used by one source. This source no longer exists. This was restructured to be more readable.

New section WAC 173-400-205, is transferred from WAC 173-403-145 without change.

New section WAC 173-400-210, is paraphrased from RCW 70.94.331(6).

New section WAC 173-400-220, is transferred from WAC 173-403-160 with minor editorial changes only.

New section WAC 173-400-230, is transferred from WAC 173-403-170 with minor editorial changes only.

New section WAC 173-400-240, is transferred from WAC 173-403-180 with a clarifying statement for the chapter affected.

New section WAC 173-400-250, is transferred from WAC 173-403-190 with editorial changes and clarifying the PSD appeals procedure.

New section WAC 173-400-260, is added at EPA request in order to conform with federal conflict of interest requirements.

Chapter 173-403 WAC is being deleted. Sections of this rule are being added to chapter 173-400 WAC. Changes in language are reviewed under that section. This chapter will be repealed.

Chapter 173-405 WAC, Rules for kraft mills, amendments are primarily editorial. WAC references are changed due to a reordering of language from this rule amendment process. None of the changes affect compliance costs.

WAC 173-405-012, statement of purpose is changed to include language from chapter 43.21A RCW. This change will not affect compliance costs.

WAC 173-405-021, has editorial changes. Old subsections (2), "new source," and (5) "total reduced sulfur," have been deleted. The definitions are redundant to those in chapter 173-400 WAC. The definition of total reduced sulfur is amended based on 40 CFR 60.281(c) Subpart BB. This change will not affect compliance costs because it is already part of federal compliance.

In WAC 173-405-033 and 173-405-035, most existing language is deleted and replaced by a reference to WAC 173-400-115 and 173-400-075 respectively. These changes will not affect compliance costs.

In WAC 173-405-040, language including old subsections (6) through (9), (14), and (17) is deleted and replaced by references to chapters 173-400 and 173-490 WAC. Editorial changes have been made and language is added to clarify which rule takes precedence. These changes will not affect compliance costs.

In WAC 173-405-045 and 173-405-061, WAC references are changed due to a reordering of language from this rule amendment process. Amendments are editorial, except that monitoring reports are required after 15 rather than 30 days. Because these reports are usually generated by the fifth day of the month, this change will not affect compliance costs.

In WAC 173-405-077 and 173-405-078, most existing language is deleted and replaced by a reference to WAC 173-400-105 (5) and (1) respectively. These changes will not affect compliance costs.

In WAC 173-405-086, language is deleted and replaced by a reference to WAC 173-400-110. The change in language to make all "new and modified sources" covered, rather than all "new major sources and major modifications" is required by EPA. Major sources and major modifications are addressed in WAC 173-405-087.

In WAC 173-405-087, references are changed due to a reordering of language from this rule amendment process. This change will not affect compliance costs.

WAC 173-405-091, amendments are editorial.

Chapter 173-410 WAC, Rules for sulfite pulping mills, amendments are primarily editorial. WAC references are changed due to a reordering of language from this rule amendment process. None of the changes affect compliance costs.

WAC 173-410-012, statement of purpose is changed to include language from chapter 43.21A RCW. This change will not affect compliance costs.

WAC 173-410-021, has editorial changes. Old subsections (5), "new source," and (8) "total reduced sulfur," have been deleted. The definitions are redundant to those in chapter 173-400 WAC. The definition of total reduced sulfur is amended based on 40 CFR 60.281(c) Subpart BB. This change will not affect compliance costs because it is already part of federal compliance.

In WAC 173-410-035, 173-410-067 and 173-410-071, most existing language is deleted and replaced by a reference to WAC 173-400-075 and 173-400-105 (5) and (1) respectively. These changes will not affect compliance costs.

WAC 173-410-040, amendments are primarily editorial. Language is added to clarify which rule takes precedence. WAC references are changed due to a reordering of language from this rule amendment process. Language in old subsections (1)(f), (3) through (6), parts of (7) and (8) to (12) have been deleted because it is redundant to language in chapter 173-400 WAC. Old subsection (16) is replaced by a reference to WAC 173-400-105. None of these changes affect compliance costs.

WAC 173-410-045 and 173-410-087, references are changed due to a reordering of language from this rule amendment process. This change will not affect compliance costs.

WAC 173-410-086, language is deleted and replaced by a reference to WAC 173-400-110. The change in language to make all "new and modified sources" covered, rather than all "new major sources and major modifications" is required by EPA. Major sources and major modifications are addressed in WAC 173-410-087.

WAC 173-410-100, allows ecology to require studies as necessary. This is part of the requirements found in RCW 70.94.097 and will not affect compliance costs or current regulatory practice.

Chapter 173-415 WAC, Rules for aluminum plants, amendments are primarily editorial. WAC references

are changed due to a reordering of language from this rule amendment process. None of the changes affect compliance costs.

WAC 173-415-010, statement of purpose is changed to include language from chapter 43.21A RCW. This change will not affect compliance costs.

WAC 173-415-020, has editorial changes. Old subsection (3), "new source," has been deleted. The definition is redundant to the definition in chapter 173-400 WAC. This change will not affect compliance costs.

WAC 173-415-030, amendments are primarily editorial. Language is added to clarify which rule takes precedence. WAC references are changed due to a reordering of language from this rule amendment process. Old subsection (2)(b) has had obsolete language deleted. Language including old subsections (5), (6), (9) and (11) has been deleted because it is redundant to language in chapters 173-400 and 173-410 WAC. Old subsection (11) is replaced by a reference to WAC 173-400-105. EPA requires that subsection (1) be changed to require limits to be placed in regulatory orders, and subsection (5)(b) be changed to include a time reference. The EPA time reference is "hourly average." This conforms to existing regulations. None of the changes affect compliance costs.

In WAC 173-415-040, 173-415-070 and 173-415-080, most existing language is deleted and replaced by a reference to WAC 173-400-115 and 173-400-105 (5) and (1) respectively. These amendments will not affect compliance costs.

WAC 173-415-045, references are changed due to a reordering of language from this rule amendment process. This change will not affect compliance costs.

WAC 173-415-050, language is deleted and replaced by a reference to WAC 173-400-110. The change in language to make all "new and modified sources" covered, rather than all "new major sources and major modifications" is required by EPA. Major sources and major modifications are addressed in WAC 173-415-

WAC 173-415-060, has editorial changes. This will not affect compliance costs.

Chapter 173-490 WAC, contains substantial revisions, including the deletion of material duplicated in chapter 173-400 WAC. Where necessary, WAC references are changed due to a reordering of language from this rule amendment process. Most of these amendments have no impact on regulatory practice. A change which creates potential mitigation is in WAC 173-490-025(5). In the long run, this may be a valuable mitigation affecting each regulated entity at the time of transition from one technology to another. Its value to industry will depend on the regulatory situation. WAC 173-490-080 was changed to require extending the operations of gas fired incinerators to match federal requirements. This federal requirement already existed. Thus, significant cost changes associated with this change do not exist. None of the state amendments below is expected to have a significant impact on any entity.

WAC 173-490-010, is amended. These editorial changes create no change in compliance costs.

WAC 173-490-020, contains amendments to many definitions. Most of these wording changes are purely editorial. Subsection (1) changes the definition of a bottom loading tank from one with a submerged fill line to one with a line entering the bottom of the tank. This change has no impact on costs. The subsection (10) definition of demonstrate is deleted. While this may appear to be a mitigation it is not since the data, materials, and records described are covered under each applicable section. Subsection (25) exclusions were disallowed by EPA since entities must meet federal requirements. The definitions of gas service, reactor, and separation operation, subsections (15), (31) and (35) respectively, are deleted because the terms are not used. The definition added in subsection (39) "Unit Turnaround" is an EPA definition and is added for clarity. Subsection (41) exclusions were disallowed by EPA since entities must meet federal requirements. The EPA required that the definition of a volatile organic compound, subsection (44) be changed. While the language in the definition is changed, there is no effective change in regulatory practice.

WAC 173-490-025, deletes language which is no longer effective due to reference dates. WAC 173-490-025 contains wording changes which are editorial, or which clarify which rule takes precedence. Subsections (4)(b) and (c) contain exemption language from EPA guidelines. Because the guidelines are a part of current regulatory practice, there is no mitigation. Subsection (5) contains language required by EPA. Because it was not in the regulation prior to the amendment, granting a temporary break-in period exemption to a newly permitted source which is replacing a similar permitted source was illegal. This may be a valuable mitigation.

WAC 173-490-030, contains editorial revisions only. The deletion of old subsection (2) is not a mitigation. The requirements are already contained in chapter 173-400 WAC.

WAC 173-490-040, deletes language, old subsection (1)(b), which is not applicable because the relevant industry practice does not exist in this state. In subsection (2)(a) an exclusion is not allowed under federal rules. Subsection (5)(b) adds bottom fill lines to the list of methods for filling gasoline storage tanks. This is a potential mitigation. Parts of subsection (5)(b), a tank size exemption, is deleted in compliance with EPA requirements. This mitigation has little value since industry could use gallons to describe the tank. In subsection (6) the word "potential" is added to "uncontrolled emissions" in compliance with federal requirements. This is not expected to change costs. Old subsection (8)(f)(ii) is deleted because a refrigerated system is better than a carbon absorption system and is already allowed. There are too many systems allowed to list them in the rule. For similar reasons subsection (10)(f)(iii) is deleted.

WAC 173-490-070, Schedule of control dates and 173-490-071, Alternative schedule of control dates, are deleted. All dates listed have passed and required compliance is part of current regulatory practice.

WAC 173-490-080, contains a significant change in subsection (2). Natural gas fired incinerators must be operated three months longer than was required in the

past. This was changed to comply with federal requirements in 40 CFR part 58 Appendix D.

WAC 173-490-090, language is deleted and replaced with a reference to WAC 173-400-110.

WAC 173-490-200, contains editorial changes. Subsection (2)(a)(ii) is deleted because it is redundant. Monitoring requirements are covered in WAC 173-400-105. Old subsection (3), schedule of control dates, is deleted. All dates listed have passed and required compliance is part of current regulatory practice.

WAC 173-490-201, contains editorial changes. Subsection (2)(a) adds the operators of a petroleum storage vessel to the owners as a party responsible to see that the vessel is in compliance. No cost or mitigation will result to either party as this is current regulatory practice. Old subsection (3), schedule of control dates, is deleted. All dates listed have passed and required compliance is part of current regulatory practice.

WAC 173-490-202, contains editorial changes. Old subsection (3), schedule of control dates, is deleted. All dates listed have passed and required compliance is part of current regulatory practice. Part of subsection (3)(c) is deleted since it is redundant to WAC 173-400-105.

WAC 173-490-203, 173-490-204, 173-490-050 and 173-490-207, contain editorial changes. Old subsection (3), schedule of control dates, is deleted. All dates listed have passed and required compliance is part of current regulatory practice. An exemption in WAC 173-490-203 is deleted in compliance with federal requirements. Parts of WAC 173-490-204 (3)(a), 173-490-205 (3)(c) and 173-490-207 (3)(c) are deleted since they are redundant to WAC 173-400-105. WAC 173-490-205(1) emissions criteria reduces the exemption limit. This EPA required change may impose costs.

WAC 173-490-208, contains editorial changes. Old subsections (6) and (7), schedule of control dates, are deleted. All dates listed have passed and required compliance is part of current regulatory practice.

Hearing Location: EFSEC Hearing Room, Lacey, Washington, on April 10, 1990, at 7 - 9 p.m.; and at the Spokane County Health Department Auditorium, Spokane, Washington, on April 12, 1990, at 7 – 9 p.m.

Submit Written Comments to: Daniel A. Radonski, PV-11, R6 #4, Lacey, Washington 98504, by April 19, 1990.

Date of Intended Adoption: May 23, 1990.

February 20, 1990 Fred Olson Deputy Director

REPEALER

The following chapter of the Washington Administrative Code is repealed:

POLICY AND PURPOSE. WAC 173-403-010

WAC 173-403-020 APPLICABILITY.

WAC 173-403-030 DEFINITIONS.

WAC 173-403-050 **NEW SOURCE REVIEW (NSR).**

WAC 173-403-060 **BUBBLE RULES.**

WAC 173-403-070 ISSUANCE OF EMISSION REDUCTION CREDITS.

USE OF EMISSION REDUCTION WAC 173-403-075 CREDITS.

WAC 173-403-080 PREVENTION OF SIGNIFICANT DETE-RIORATION (PSD).

WAC 173-403-090 RETROFIT REQUIREMENTS FOR VISI-**BILITY PROTECTION**

WAC 173-403-100 COMPLIANCE SCHEDULES.

WAC 173-403-110 PUBLIC INVOLVEMENT.

WAC 173-403-120 VARIANCE.

REQUIREMENTS FOR NONATTAIN-WAC 173-403-130 MENT AREAS.

WAC 173-403-141 CREDITABLE STACK HEIGHT AND DISPERSION TECHNIQUES.

WAC 173-403-145 ADJUSTMENT FOR ATMOSPHERIC CONDITIONS.

MAINTENANCE OF PAY. WAC 173-403-150

WAC 173-403-160 REQUIREMENTS FOR BOARDS AND DIRECTOR.

REGULATORY ACTIONS.

WAC 173-403-170 WAC 173-403-180 CRIMINAL PENALTIES.

WAC 173-403-190 APPEALS.

Chapter 173-400 WAC

GENERAL REGULATIONS FOR AIR POLLUTION SOURCES

WAC 173-400-010 Policy and purpose. 173-400-020 Applicability.

173-400-030 Definitions.

173-400-040 General standards for maximum emissions.

173-400-050 ((Minimum)) Emission standards for combustion and incineration units.

((Minimum)) Emission standards for general pro-173-400-060 cess ((emissions)) units.

173-400-070 ((Minimum)) Emission standards for certain source categories.

Emission standards for sources emitting hazardous 173-400-075 air pollutants.

173-400-100 Registration.

Records, monitoring, and reporting. 173-400-105

173-400-110 New source review (NSR)

173-400-115 Standards of performance for new sources. ((Monitoring and special report)) Bubble rules.

173-400-120 Issuance of emission reduction credits. 173-400-131

173-400-136 Use of emission reduction credits.

Prevention of significant deterioration (PSD). 173-400-141

Retrofit requirements for visibility protection. 173-400-151

173-400-161 Compliance schedules.

173-400-171 Public involvement.

173-400-180 Variance.

173-400-190 Requirements for nonattainment areas.

Creditable stack height and dispersion techniques. 173-400-200

Adjustment for atmospheric conditions. 173-400-205 Emission requirements of prior jurisdictions.

173-400-210 173-400-220 Requirements for board members.

173-400-230 Regulatory actions.

173-400-240 Criminal penalties.

173-400-250 Appeals.

AMENDATORY SECTION (Amending Order DE 83-13, filed 4/15/83)

WAC 173-400-010 POLICY AND PURPOSE. (1) It is the policy of the department of ecology (ecology) under the authority vested in it by chapter 43.21A RCW to provide for the systematic control of air pollution from air contaminant sources and ((progressive reduction where needed)) for the proper development of the state's natural resources.

(2) It is the purpose of this chapter to establish ((standards deemed to be)) technically feasible and reasonably attainable standards and ((revise such standards as new information and better technology are developed and become available)) to establish rules generally applicable to the control and/or prevention of the emission of air contaminants.

AMENDATORY SECTION (Amending Order DE 83-13, filed 4/15/83)

WAC 173-400-020 APPLICABILITY. (1) The provisions of this chapter shall apply state-wide.

(2) An ((activated air pollution control)) authority may enforce this chapter and may ((in addition)) also adopt standards or requirements ((which are equivalent to or more stringent than)). These standards or requirements ((on the same subject matter established by this chapter. This regulation is applicable to all sources of air contaminants except)) may not be less stringent than the current state air quality rules. Unless properly delegated by ecology, authorities do not have jurisdiction over the following sources:

(((1))) (a) Specific source categories over which the state, by separate regulation, has assumed or hereafter does assume jurisdiction.

(((2))) (b) Automobiles, trucks, aircraft.

(((3))) (c) Those sources under the jurisdiction of the energy facility site evaluation council.

((The requirements of chapter 173-403 WAC shall apply to all sources that are subject to the requirements of chapter 173-400

AMENDATORY SECTION (Amending Order 84-48, filed 3/6/85)

WAC 173-400-030 DEFINITIONS. The following definitions will apply unless a different meaning is clearly required by context ((words and phrases used in this chapter shall have the following meanings; general terms common with other chapters as defined in chapter 173-403 WAC, and terms specific to this chapter only as defined below)):

(1) "Actual emissions" relating to a particular date means the average rate, in weight per unit time of emitted pollutant during the immediately preceding two-year period of normal operation. Ecology or the authority may allow or require the use of an alternative time period if it is more representative of normal operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or burned during the selected time period.

Ecology or the authority may presume that source-specific allowable emissions, which incorporate limits on hours of operation or production rate, are equivalent to the actual emissions of the unit.

(2) "Administrator" shall refer to ecology or the authority unless

specifically defined otherwise.

- (3) "Adverse impact on visibility" means visibility impairment which interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the Federal Class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency, and time of visibility impairment, and how these factors correlate with (a) times of visitor use of the Federal Class I area, and (b) the frequency and timing of natural conditions that reduce visibility. This term does not include effects on integral vistas.
- (4) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance, or any combination thereof. "Air pollutant" means the same as "air contaminant."
- (5) "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities, and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably inter-
- feres with enjoyment of life and property.

 (6) "Allowable emissions" means the emission rate calculated using the maximum rated capacity of the source (unless the source is limited in production rate or hours of operation, or both, by an applicable federally enforceable regulatory order) and the most stringent of (a), (b), or (c) of this subsection. Physical and process limitations must be considered in determining maximum rated capacity.

 (a) Standards as set forth in 40 CFR Part 60 and Part 61, if appli-

cable to the source; or

(b) The applicable state implementation plan emission limitation; or (c) The emission rate specified by an applicable federally enforceable regulatory order.

(7) "Ambient air" means the surrounding outside air.

- (8) "Ambient air quality standard" means an established concentra-tion, exposure time, and frequency of occurrence of air contaminant(s) in the ambient air which shall not be exceeded.
- (9) "Authority" means an air pollution control authority activated pursuant to chapter 70.94 RCW that has jurisdiction over the subject source. (This may be delegated by ecology.)
- (10) "Best available control technology (BACT)" means an emission limitation (including a visible emission standard) based on the maximum degree of reduction for each air pollutant subject to this regulation which would be emitted from any proposed new or modified source which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other

costs, determines is achievable for such sources or modification through application of production processes, available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such air pollutant. In no event shall application of the best available technology result in emissions of any air pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR Part 60 and Part 61. If the reviewing authority determines that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an emission standard infeasible, it may instead prescribe a design, equipment, work practice or operational standard, or combination thereof, to meet the requirement of BACT. Such standard shall, to the degree possible, set forth the emission reduction achievable by implementation of such design, equipment, work practice or operation and shall provide for compliance by means which achieve equivalent results. The requirement of RCW 70.94.152 that a new source will provide "all known available and reasonable methods of emission control" is interpreted to mean the same as best available control technology.

(11) "Best available retrofit technology (BART)" means any emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant which is emitted by source. The emission limitation must be established, on a case-by-case basis, taking into consideration the technology available, the costs of compliance, the energy and nonair quality environmental impacts of compliance, any pollution control equipment in use or in existence at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. If an emission limitation is not feasible, a design, equipment, work practice, operational standard, or combination thereof, may be required. Such standards shall, to the degree possible, set forth the emission reductions achieved and provide for compliance by prescribing appropriate conditions in a regulatory order.

(12) "Bubble" means a set of emission limits which allows an in-

crease in emissions from a given emissions unit(s) in exchange for a decrease in emissions from another emissions unit(s), pursuant to RCW 70.94.155 and WAC 173-400-120.

(13) "Capacity factor" means the ratio of the average load on ((a machine or)) equipment or a machine for the period of time considered, to the manufacturer's capacity rating of the machine or equipment.

- (((2))) (14) "Class I area" means any federal, state, or Indian land which is classified Class I.
- (15) "Combustion and incineration sources" means sources using combustion for waste disposal, steam production, chemical recovery or
- other process requirements; but excludes open burning.

 (((3+))) (16) "Commenced construction" means that the owner or operator has all the necessary preconstruction approvals or permits and
- (a) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or
- (b) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

 (17) "Concealment" means any action taken to reduce the observed
- or measured concentrations of a pollutant in a gaseous effluent while, in fact, not reducing the total amount of pollutant discharged.
- (((4) "Excess emissions" means emissions of an air pollutant in excess of an emission standard.
- (5))) (18) "Director" means director of the Washington state department of ecology or duly authorized representative.
- (19) "Dispersion technique" means a method which attempts to affect the concentration of a pollutant in the ambient air (see WAC 173-400-200).
 - (20) "Ecology" means the Washington state department of ecology.
- (21) "Emission" means a release of air contaminants into the ambient air.
- (22) "Emission reduction credit (ERC)" means a credit granted pursuant to WAC 173-400-131. This is a voluntary reduction in
- (23) "Emission standard" means an allowable rate of emissions, level of opacity, or prescribing equipment or operating conditions or maintenance procedures as set forth in a regulation or regulatory order to assure continuous emission reduction.

- (24) "Emissions unit" means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation.
- (25) "Excess stack height" means that portion of a stack which exceeds the greater of sixty-five meters or the calculated stack height described in WAC 173-400-200(2).
- (26) "Fossil fuel-fired steam generator" means a device, furnace, or boiler used in the process of burning fossil fuel for the primary purpose of producing steam by heat transfer.
- (((6))) (27) "Fugitive dust" means a ((type of)) particulate emission made airborne by forces of wind, man's activity, or both((, such as)). Unpaved roads, construction sites, ((or)) and tilled land are examples of areas that originate fugitive dust. ((Two major categories are anthropogenic sources (those which result directly from and during human activities) and wind erosion sources (those resulting from erosion

of soil by wind).)) Fugitive dust is a type of fugitive emission.

(((7))) (28) "Fugitive emissions" means emissions which do not pass and which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

- (29) "General process unit" means an emissions unit using a procedure or a combination of procedures for the purpose of causing a change in material by either chemical or physical means, excluding
- (((8))) (30) "Good engineering practice (GEP)" refers to a calculated stack height based on the equation specified in WAC 173-400-200 (2)(a)(ii).
- (31) "Incinerator" means a furnace used primarily for the thermal destruction of waste.
- (((9))) (32) "In operation" means engaged in activity related to the
- primary design function of the source.

 (33) "Integral vista" means a view perceived from within the Class I area of a specific landmark or panorama located outside the boundary
- of the Class I area.
 (34) "Land manager" means the secretary of the federal department or head of the state department or Indian governing body with author-
- ity over the Class I area.
 (35) "Lowest achievable emission rate (LAER)" means for any source that rate of emissions which reflects:
- (a) The most stringent emission limitation which is contained in the implementation plan of any state for such class or category of source, unless the owner or operator of the proposed new or modified source demonstrates that such limitations are not achievable; or
- (b) The most stringent emission limitation which is achieved in practice by such class or category of source, whichever is more stringent.
- In no event shall the application of this term permit a proposed new or modified source to emit any pollutant in excess of the amount allowable under applicable new source performance standards.

 (36) "Major modification" means any physical change or change in
- the method of operation as defined in WAC 173-400-141.
 - (37) "Major source" means:
- (a) Any source which emits or has the potential to emit one hundred tons per year or more of any pollutant regulated by state or federal law; or
- (b) Any addition to, enlargement, or modification not covered by (a) of this subsection which emits or has the potential to emit one hundred tons per year or more of any pollutant regulated by state or federal law.
- (38) "Masking" means the mixing of a chemically nonreactive control agent with a malodorous gaseous effluent to change the perceived odor((, usually to a less offensive odor)).
- (((10))) (39) "Materials handling" means the handling, transporting, loading, unloading, storage, and transfer of materials with no significant chemical or physical alteration ((of the chemical or physical properties of the material)).
- (((++))) (40) "National Emission Standards for Hazardous Air Pollutants (NESHAPS)" means the federal regulations set forth in 40 CFR Part 61, as in effect on July 1, 1988.
- (41) "Natural conditions" means naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast, or coloration
- (42) "Net emissions increase" means any emissions increase as defined in WAC 173-400-141.
- (43) "New source" means a source which commences construction after the effective date of this chapter. Any addition to, enlargement,

- modification, replacement, restart after a period of five years of nonoperation, or any alteration of any process or source which may increase emissions or ambient air concentrations of any contaminant for which federal or state ambient or emission standards have been established shall be construed as construction or installation or establishment of a new source.
- (44) "New source performance standards (NSPS)" means the federal regulations set forth in 40 CFR Part 60, as in effect on July 1, 1988.
- (45) "Nonattainment area" means a clearly delineated geographic area which has been designated by EPA promulgation as exceeding a national ambient air quality standard or standards for one or more of the criteria pollutants.
- (46) "Notice of construction" means a written application to permit construction of a new source or modification of an existing source.
- (47) "Opacity" means the degree to which an object seen through a plume is obscured, stated as a percentage.
- (48) "Open burning" means the combustion of material in an open fire or in an outdoor container, without providing for the control of combustion or the control of the emissions from the combustion. Wood waste disposal in wigwam burners is not considered open burning.
- (((12))) (49) "Particulate matter" or "particulates" means any airborne finely divided solid or liquid material with an aerodynamic di-
- ameter smaller than 100 micrometers.

 (50) "Particulate matter emissions" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 CFR Part 60 or by a test method specified in the Washington state implementation plan.
- (51) "Parts per million (ppm)" means parts of a contaminant per
- million parts of gas, by volume, exclusive of water or particulates.

 (52) "Person" means an individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency.
- (53) "PM-10" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on 40 CFR Part 50 Appendix J and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53.

 (54) "PM-10 emissions" means finely divided solid or liquid materi-
- al, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternate method, specified in 40 CFR Part 60 or by a test method specified in the Washington state implementation plan.
- (55) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.
- (56) "Prevention of significant deterioration (PSD)" means the program set forth in WAC 173-400-141.
- (57) "Projected width" means that dimension of a structure determined from the frontal area of the structure, projected onto a plane perpendicular to a line between the center of the stack and the center of the building.
- (58) "Reasonably attributable" means attributable by visual observation or any other technique the state deems appropriate
- (59) "Reasonably available control technology (RACT)" means the lowest emission limit that a particular source or source category is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.
- RACT requirements for any source or source category may be adopted as an order or regulation after public involvement per WAC 173-400-171.
- (60) "Regulatory order" means an order issued by ecology or an authority to an air contaminant source which approves a notice of construction and/or limits emissions and/or establishes other air pol-
- lution control requirements. Ecology could limit emissions to zero.

 (61) "Significant emission" means a rate of emission equal to or greater than any one of the following rates:

Pollutant	Tons/Year	Pounds/Day	Pounds/Hour
Carbon monoxide	100		
Nitrogen oxides	40		
Sulfur dioxide	40	800	80
Volatile organic compounds	40		
Particulate matter	25	500	50
PM-10	15		
Lead			
Total reduced sulfur (as H ₂ S)	10		
Total fluoride	3		

(62) "Significant visibility impairment" means visibility impairment which interferes with the management, protection, preservation, or enjoyment of visitor visual experience of the Class I area. The determination must be made on a case-by-case basis, taking into account the geographic extent, intensity, duration, frequency, and time of the visibility impairment, and how these factors correlate with the time of visitor use of the Class I area and frequency and timing of natural conditions that reduce visibility.

(63) "Source" means all of the emissions unit(s) including quantifiable fugitive emissions, which are located on one or more contiguous or adjacent properties under the control of the same person(s) and those activities that are secondary to the production of a single product or

functionally related group of products.

(64) "Source category" means all sources of the same type or classification.

(65) "Stack" means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct.

(66) "Stack height" means the height of an emission point measured

from the ground-level elevation at the base of the stack.

(67) "Standard conditions" means a temperature of 20°C (68°F)

and a pressure of 760mm (29.92 inches) of mercury.

- (68) "Sulfuric acid plant" means any facility producing sulfuric acid by the contact process by burning elemental sulfur, alkylation acid, hydrogen sulfide, or acid sludge.
- (69) "Total reduced sulfur, (TRS)" means the sum of the sulfur compounds hydrogen sulfide, mercaptans, dimethyl sulfide, dimethyl disulfide, and any other organic sulfides emitted and measured by EPA method 16 or an approved equivalent method and expressed as hydrogen sulfide
- (70) "Total suspended particulate" means particulate matter as measured by the method described in 40 CFR Part 50 Appendix B as in effect on July 1, 1988.
- (71) "United States Environmental Protection Agency, (USEPA)"
- shall be referred to as EPA.

 (72) "Visibility impairment" means any perceptible degradation in visibility (visual range, contrast, coloration) not caused by natural conditions

(73) "Visibility impairment of Class I areas" means visibility impairment within the area and visibility impairment of any formally designated integral vista associated with the area.

(74) "Volatile organic compound, (VOC)" means any organic compound which participates in atmospheric photochemical reactions; that is, any organic compound other than those which the USEPA administrator designates as having negligible photochemical reactivity. VOC may be measured by a reference method, an equivalent method, an alternative method or by procedures specified under 40 CFR Part 60. A reference method, an equivalent method, or an alternative method, however, may also measure nonreactive organic compounds. In such cases, an owner or operator may exclude the nonreactive organic compounds when determining compliance with a standard. This reactivity policy exempts the following compounds per the Federal Register: Methane, ethane, trichlorofluoromethane, dichlorodifluoromethane, chlorodifluoromethane, trifluoromethane, trichlorotrifluoroethane, dichlorotetrafluoroethane, chloropentafluoroethane, methylene chloride, and 1,1,1-trichloroethane (methyl chloroform).

AMENDATORY SECTION (Amending Order DE 83-13, filed 4/15/83)

WAC 173-400-040 GENERAL STANDARDS FOR MAXI-MUM EMISSIONS. All sources and emissions units are required to meet the emission standards of this chapter. Specific emissions standards listed in another chapter will take precedence over the general emission standards of this chapter. When two or more emissions units are connected to a common stack and the operator elects not to provide the means or facilities to sample emissions from the individual emissions units, and the relative contributions of the individual emissions units to the common discharge are not readily distinguishable, then the emissions of the common stack must meet the most restrictive standard of any of the connected emissions units. Further, all emissions units are required to use reasonably available control technology (RACT) which may be determined for some sources or source categories to be more stringent than the applicable emission limitations of ((this)) any chapter of Title 173 WAC. ((In cases)) Where current controls are determined to be less than ((reasonably available control technology ())RACT(())), ecology or the ((department or cognizant local)) authority shall, on a case-by-case basis, define RACT for each source or source category and issue a regulatory order to the source or sources for installation of RACT.

(1) Visible emissions. No person shall cause or permit the emission for more than three minutes, in any one hour, of an air contaminant from any emissions unit which at the emission point, or within a reasonable distance of the emission point, exceeds twenty percent opacity

- (a) When the emissions occur due to soot blowing/grate cleaning and the operator can demonstrate that the emissions will not exceed twenty percent opacity for more than fifteen minutes in any eight consecutive hours. The intent of this provision is to permit the soot blowing and grate cleaning necessary to the operation of boiler facilities. ((As such,)) This practice, except for testing and trouble shooting, is to be scheduled for the same approximate times each day and ecology or the ((department or cognizant local)) authority be advised of the schedule.
- (b) When the owner or operator of a source supplies valid data to show that the presence of uncombined water is the only reason for the opacity to exceed twenty percent.
- (c) When two or more sources are connected to a common stack, ((an adjusted time limit may be allowed at the discretion of the department or cognizant local authority)) ecology or the authority may allow or require the use of an alternate time period if it is more representative of normal operations.

(d) When an alternate opacity has been established per RCW 70-.94.331 (2)(c).

- (2) ((Preventing particulate matter from being deposited)) Fallout. No person shall cause or permit the emission of particulate matter from any source to be deposited beyond the property under direct control of the owner(s) or operator(s) of the source in sufficient quantity to interfere unreasonably with the use and enjoyment of the property upon which the material is deposited.
- (3) Fugitive emissions. The owner or operator of any emissions unit ((involving)) engaging in materials handling, construction, demolition or any other operation which is a source of fugitive emission:
- (a) If located in an attainment area and not impacting any nonattainment area, shall take reasonable precautions to prevent the release of air contaminants from the operation.
- (b) If the emissions unit has been identified as a significant contributor to the nonattainment status of a designated nonattainment area, shall be required to use ((reasonably)) best available control technology (BACT) to control emissions of the contaminants for which nonattainment has been designated. Significance will be determined by EPA interpretive ruling for PSD and offsets on file with ((the department)) ecology
- (4) Odors. Any person who shall cause or allow the generation of any odor from any source which may unreasonably interfere with any other property owner's use and enjoyment of his property must use recognized good practice and procedures to reduce these odors to a reasonable minimum.
- (5) Emissions ((of air contaminants)) detrimental to persons or property. No person shall cause or permit the emission of any air contaminant from any source, including ((any air contaminant whose emission is not otherwise prohibited by this chapter, if the air contaminant causes detriment)) water droplets, if it is detrimental to the health, safety, or welfare of any person, plant or animal, or causes damage to property or business.

(6) Sulfur dioxide.

No person shall cause or permit the emission of a gas containing sulfur dioxide from any emissions unit in excess of one thousand ppm of sulfur dioxide on a dry basis, corrected to seven percent oxygen for combustion sources, and based on the average of any period of sixty consecutive minutes, except ((as follows)):

(((a))) When the owner or operator of an emissions unit supplies emission data and can demonstrate to ecology or the ((department or cognizant local)) authority that there is no feasible method of reducing the concentration to less than one thousand ppm (on a dry basis, corrected to seven percent oxygen for combustion sources) and that the

state and federal ambient air quality and PSD incremental standards for sulfur dioxide will not be exceeded. In such cases, ecology or the ((department or)) authority may require specific ambient air monitoring stations be established, operated, and maintained by the owner or operator ((to equip, operate, and maintain continuous ambient air monitoring stations)) at mutually approved locations ((approved by the department or authority and using equipment approved by the department or authority)). All sampling results will be made available upon request and a monthly summary will be submitted to ecology or the ((department or)) authority.

- (((tb) When a source limits such emission by a combination of constant emission controls and dispersion techniques approved by the department or cognizant local authority, as permitted by WAC 173=403-140.))
- (7) Concealment and masking. No person shall cause or permit the installation or use of any means which conceals or masks an emission of an air contaminant which would otherwise violate any provisions of this chapter.
 - (8) Fugitive dust sources.
- (a) The owner or operator of a source of fugitive dust shall take reasonable precautions to prevent fugitive dust from becoming airborne and shall maintain and operate the source to minimize emissions.
- (b) The owner(s) or operator(s) of any existing source(s) of fugitive dust that has been identified as a significant contributor to ((the non-attainment status of a designated nonattainment)) a Category I PM-10 area shall be required to use ((reasonably available control technology)) BACT to control emissions. Significance will be determined by an EPA interpretive ruling for PSD and offsets ((as)) on file with ((the department)) ecology.

AMENDATORY SECTION (Amending Order DE 83-13, filed 4/15/83)

WAC 173-400-050 ((MINIMUM)) EMISSION STANDARDS FOR COMBUSTION AND INCINERATION UNITS. (1) Combustion and incineration emissions units must meet all requirements of WAC 173-400-040 and, in addition, no person shall cause or permit emissions of particulate matter in excess of 0.23 gram per dry cubic meter at standard conditions (0.1 grain/dscf), except, for an emissions unit ((utilizing the combustion of wood)) combusting wood derived fuels for the production of steam((;)). No person shall allow or permit the emission of particulate matter in excess of 0.46 gram per dry cubic meter at standard conditions (0.2 grain/dscf), as measured by EPA method 5 or by procedures on file at ((the department)) ecology.

(2) For any incinerator, no person shall cause or permit emissions in excess of one hundred ppm of total carbonyls as measured by applicable EPA methods or acceptable procedures contained in "Source Test Manual - Procedures for Compliance Testing," state of Washington, department of ecology, on file at ((the department)) ecology. Incinerators shall be operated only during daylight hours unless written permission to operate at other times is received from ecology or the ((department or cognizant local)) authority.

(3) Measured concentrations for combustion and incineration sources shall be adjusted for volumes corrected to seven percent oxygen, except when ecology or the ((department or cognizant local)) authority ((may)) determines that an alternate oxygen correction factor is ((appropriate)) more representative of normal operations.

AMENDATORY SECTION (Amending Order DE 83-13, filed 4/15/83)

WAC 173-400-060 ((MINIMUM)) EMISSION STANDARDS FOR GENERAL PROCESS ((EMISSIONS)) UNITS. General process units shall be required to meet all applicable provisions of WAC 173-400-040 ((above)) and ((in addition)), no person shall cause or permit the emission of particulate material from any general process operation in excess of 0.23 grams per dry cubic meter at standard conditions (0.1 grain/dscf) of exhaust gas. Appropriate EPA test methods or approved test procedures on file with ecology in the "Source Test Manual - Procedures For Compliance Testing," will be used to determine compliance.

AMENDATORY SECTION (Amending Order DE 83-13, filed 4/15/83)

WAC 173-400-070 ((MINIMUM)) EMISSION STANDARDS FOR CERTAIN SOURCE CATEGORIES. ((The department)) Ecology finds that the reasonable regulation of sources within certain

categories requires separate standards applicable to such categories. The standards set forth in this section shall be the ((minimum)) maximum allowable standards for emissions units within the categories listed. Except as specifically provided in this section, such emissions units shall not be required to meet the provisions of WAC 173-400-040, 173-400-050 and 173-400-060.

- (1) Wigwam burners.
- (a) All wigwam burners shall meet all provisions of WAC 173-400-040 (2), (3), (4), (5), (6), and (7).
- (b) All wigwam burners shall use ((reasonably available control technology)) RACT. All emissions units shall be operated and maintained to minimize emissions. These requirements may include a controlled tangential vent overfire air system, an adequate underfire system, elimination of all unnecessary openings, a controlled feed and other modifications determined necessary by ecology or the ((department or cognizant local)) authority.
- (c) It shall be unlawful to install or increase the existing use of any burner that does not meet all requirements for new sources including those requirements specified in WAC 173-400-040 and 173-400-050, except operating hours.
- (d) ((The department)) Ecology may establish additional requirements for wigwam burners located((, or proposed for location,)) in sensitive areas as defined by chapter ((18-06)) 173-440 WAC. These requirements may include but shall not be limited to:
- (i) A requirement to meet all provisions of WAC 173-400-040 and 173-400-050. Wigwam burners will be considered to be in compliance ((with WAC 173-400-040(1))) if they meet the requirements contained ((therein except during)) in WAC 173-400-040(1). An exception is made for a startup period not to exceed thirty minutes in any eight consecutive hours.
- (ii) A requirement to apply ((best available control technology ())BACT(())).
- (iii) A requirement to reduce or eliminate emissions if ((the department)) ecology establishes that such emissions unreasonably interfere with the use and enjoyment of the property of others or are a cause of violation of ambient air standards.
 - (2) Hog fuel boilers.
- (a) Hog fuel boilers shall meet all provisions of WAC 173-400-040 and 173-400-050(1), except that emissions may exceed twenty percent opacity for up to fifteen consecutive minutes once in any eight hours. The intent of this provision is to permit the soot blowing and grate cleaning necessary to the operation of these units. ((As such,)) This practice is to be scheduled for the same specific times each day and ecology or the ((department or cognizant local)) authority shall be notified ((as to)) of the schedule or any changes.
- (b) All hog fuel boilers shall utilize ((reasonably available control technology. All emissions units)) RACT and shall be operated and maintained to minimize emissions.
 - (3) Orchard heating.
- (a) Burning of rubber materials, asphaltic products, crankcase oil or petroleum wastes, plastic, or garbage is prohibited.
- (b) It ((shall be)) is unlawful to burn any material or operate any orchard-heating device that causes a visible emission exceeding twenty percent opacity, except during the first thirty minutes after such device or material is ignited.
 - (4) Grain elevators.

Any grain elevator which is primarily classified as a materials handling operation shall meet all the provisions of WAC 173-400-040 (2), (3), (4), and (5).

- (5) Catalytic cracking units.
- (a) All existing catalytic cracking units shall meet all provisions of WAC 173-400-040 (2), (3), (4), (5), (6), and (7) and ((in addition)):
- (i) No person shall cause or permit the emission for more than three minutes, in any one hour, of an air contaminant from any catalytic cracking unit which at the emission point, or within a reasonable distance of the emission point, exceeds forty percent opacity.
- (ii) No person shall cause or permit the emission of particulate material in excess of 0.46 grams per dry cubic meter at standard conditions (0.20 grains/dscf) of exhaust gas.
- (b) All new catalytic cracking units shall meet all provisions of WAC 173-400-115.
 - (6) Other wood waste burners.
- (a) Wood waste burners not specifically provided for in this section shall meet all provisions of WAC 173-400-040.
- (b) Such wood waste burners shall utilize ((reasonably available control technology. All emissions units)) RACT and shall be operated and maintained to minimize emissions.

(7) Sulfuric acid plants.

No person shall cause to be discharged into the atmosphere from a sulfuric acid plant, any gases which contain acid mist, expressed as H_2SO_4 , in excess of 0.15 pounds per ton of acid produced((, the)). Sulfuric acid production ((being)) shall be expressed as one hundred percent H_2SO_4 .

AMENDATORY SECTION (Amending Order 84-48, filed 3/6/85)

WAC 173-400-075 EMISSION STANDARDS FOR SOURCES EMITTING HAZARDOUS AIR POLLUTANTS. (1) The emission standards for ((asbestos, benzene from fugitive emission sources, beryllium, beryllium rocket motor firing, mercury and vinyl chloride)) hazardous air pollutants promulgated by the United States Environmental Protection Agency (EPA) prior to ((October 1, 1984)) July 1, 1989, as contained in Title 40, Code of Federal Regulations, Part 61, are ((by this reference adopted and incorporated herein. For the purpose of state administration of the federal regulations)) adopted by reference ((hereby, the term "administrator" as used therein shall refer to the department or cognizant local authority)).

- (2) ((The department or cognizant local authority, at any time after the effective date of this section,)) Ecology or the authority may conduct source tests and require access to records, books, files and other information specific to the control, recovery or release of ((asbestos, benzene from fugitive emission sources, beryllium, mercury, or vinyl chloride)) those pollutants applicable to 40 CFR Part 61 in order to determine the status of compliance of sources of these contaminants and to carry out its enforcement responsibilities.
- (3) Source testing, monitoring and analytical methods for sources ((of)) such as: Asbestos, benzene from fugitive emission sources, beryllium, mercury, or vinyl chloride shall conform with the requirements of Title 40, Code of Federal Regulations, Part 61, as promulgated prior to ((October 1, 1984)) July 1, 1989.
- (4) This section shall not apply to any source operating pursuant to a waiver granted by ((the United States Environmental Protection Agency)) EPA or an exemption granted by the president of the United States during the effective life of such waiver or exemption.
 - (((5) Arsenic standards.
- (a) The owner or operator of any source which emits five tons or more of arsenic per year shall:
- (i) Use best available technology (BAT) to control fugitive emissions of arsenic, so that community exposure standards are not exceeded outside of the property controlled by the owner or operator of the

As used herein BAT means the best controls and work practices available considering economic, energy and environmental impacts. The level of control that represents BAT may be different for new and existing sources within a source category because of higher costs associated with retrofitting controls on existing sources, or differences in control technology for new vs. existing sources.

(ii) Establish and operate monitoring facilities for arsenic at sites approved by the department or cognizant local authority. Such sites shall be representative of areas of potential maximum concentrations to which the public may be exposed.

(iii) Report as soon as possible but within thirty days, or in accordance with an approved work plan, to the department or cognizant local authority any exceedance of the following interim community exposure standards at any arsenic monitoring site:

Maximum 24-hour concentration - 2.0 micrograms arsenic (expressed as As) per cubic meter.

Maximum annual arithmetic mean - 0.3 micrograms arsenic (expressed as As) per cubic meter.

(iv) Maintain daily logs and records of the time and nature of activities that may release fugitive emissions of arsenic.

(v) Complete an evaluation of the cause of such exceedance within thirty days of the report of such exceedance.

(vi) Submit a work plan to the department for the identification and evaluation of fugitive arsenic emissions that is satisfactory to the department or cognizant local authority. The plan is required within thirty days after the effective date of this regulation. The work plan shall include but not be limited to an identification and evaluation of fugitive emission sources, including operating and maintenance procedures, sitting of arsenic monitoring stations, a description of sampling equipment, analytical techniques, quality assurance, schedules of sampling, a program to record meteorological conditions at time of sampling, techniques used to evaluate and determine causes of exceedances, and quarterly reports of progress toward implementing the plan. For the arsenic manufacturing process as a whole, this shall

include an evaluation of the feasibility of producing As₂0₃ through a chemical leaching process rather than roasting. The work plan shall be implemented within one year: Subparagraphs (ii), (iii), (iv), and (v) shall not impose additional requirements on the source to the extent that such requirements are included in the work plan.

(b) The standards set forth in (a)(iii) of this subsection are intended as interim community exposure standards. As more information becomes available it is anticipated that these standards will be reviewed:

- (c) During this interim period the department shall periodically review all monitoring records and plant logs to determine the need for and practicability of additional emission controls, monitoring stations or adjustment to the above standards. Whenever the cause of any exceedance can be attributed to a specific source, process, operation or work practice, the owner or operator thereof shall install or adopt corrective measures which constitute best available technology as soon as possible, to prevent a recurrence. The department or cognizant local authority shall determine if additional measures can be taken to control fugitive emissions of arsenic, and if so shall establish additional BAT requirements and a compliance program. Thereafter the department shall establish such final standards as appropriate to require, monitor and regulate the application of BAT for fugitive emissions of arsenic.
- (d) Failure of a source to comply with any provision of subsection (5) of this section or any order issued by the department or cognizant local authority pursuant to WAC 173-400-075, shall constitute cause for enforcement action per WAC 173-403-170 or 173-403-180.
- (e) Nothing in these regulations shall relieve the owner or operator of any source to which any part of these regulations may apply from complying with any other rule, regulation, order, statute, or ordinance to which said source may be subject.))

AMENDATORY SECTION (Amending Order 84-48, filed 3/6/85)

WAC 173-400-100 REGISTRATION. The owner or operator of each source within the following source categories shall register the source with ((the department unless such registration is required by the cognizant local)) ecology or an authority:

- (1) Agricultural drying and dehydrating operations;
- (2) Asphalt plants;
- (3) Beverage can surface coating operations;
- (4) Bulk gasoline terminals;
- (5) Cattle feedlots with facilities for one thousand or more cattle;
- (6) Chemical plants;
- (7) Ferrous foundries;
- (8) Fertilizer plants;
- (9) Flexible vinyl and urethane coating and printing operations;
- (10) Grain handling, seed processing, pea and lentil processing facilities;
 - (11) Metallic mineral processing plants;
 - (12) Mineralogical processing plants;
 - (13) Nonferrous foundries;
 - (14) Other metallurgical processing plants;
 - (15) Petroleum refineries;
- (16) Power boilers using coal, hog fuel, oil, or other solid or liquid fuel;
 - (17) Pressure sensitive tape and label surface coating operations;
 - (18) Rendering plants;
 - (19) Scrap metal operations;
 - (20) Synthetic organic chemical manufacturing industries;
 - (21) Sulfuric acid plants;
 - (22) Synthetic fiber production facilities;
 - (23) Veneer dryers;
 - (24) Wood waste incinerators including wigwam burners;
- (25) Other incinerators designed for a capacity of one hundred pounds per hour or more;
- (26) Stationary internal combustion engines rated at five hundred horse power or more;
- (27) Sawmills, including processing for lumber, plywood, shake, shingle, pulpwood insulating board, or any combination thereof;
- (28) Any category of stationary sources to which a federal standard of performance (NSPS) applies;
- (29) Any source which emits a contaminant subject to a National Emission Standard for Hazardous Air Pollutants (NESHAPS);
 - (30) Any major source ((or major emissions unit));
 - (31) Any source emitting toxic air pollutants.

Registration shall be on forms to be supplied by ((the department or local)) ecology or the authority within the time specified ((thereon)) on the form.

A report of closure shall be filed ((with the department whenever)) within ninety days with ecology when operations producing emissions ((are)) permanently ((ceased)) cease at any source within the above categories.

AMENDATORY SECTION (Amending Order 87-12, filed 9/30/87)

WAC 173-400-105 RECORDS, MONITORING, AND RE-PORTING. (((1))) The owner or operator of a stationary source ((listed in a source category of WAC 173-400-100)) shall upon notification by the director of ecology, maintain records on the type and quantity of emissions from the source and other information deemed necessary ((by the director)) to determine whether the source is in compliance with applicable emission limitations and control measures.

(((2) The information recorded pursuant to subsection (1) of this

section shall be reported to the department as directed.

- (3) When the director determines that recordkeeping and reporting of emission data from any stationary source not listed in WAC 173-400-100 is needed for the investigation or control of air pollution or otherwise necessary to effectuate the purposes of the Washington Clean Air Act (chapter 70.94 RCW), the director shall notify the owner or operator of the source. This notification shall constitute an order to maintain records and submit reports on emissions as set forth in subsections (1) and (2) of this section.))
- (1) Emission inventory. The owner(s) or operator(s) of any air contaminant source shall submit an inventory of emissions from the source each year. The inventory may include stack and fugitive emissions of particulate matter, PM-10, sulfur dioxide, carbon monoxide, total reduced sulfur compounds (TRS), fluorides, lead, VOCs, and other contaminants, and shall be submitted (when required) no later than one hundred five days after the end of the calendar year. The owner(s) or operator(s) shall maintain records of information necessary to substantiate any reported emissions, consistent with the averaging times for the applicable standards.

(2) Monitoring. Ecology shall conduct a continuous surveillance program to monitor the quality of the ambient atmosphere as to concentrations and movements of air contaminants.

As a part of this program, the director of ecology or an authorized representative may require any source under the jurisdiction of ecology to conduct stack and/or ambient air monitoring and to report the results to ecology.

(3) Investigation of conditions. Upon presentation of appropriate credentials, for the purpose of investigating conditions specific to the control, recovery, or release of air contaminants into the atmosphere, personnel from ecology or an authority shall have the power to enter at reasonable times upon any private or public property, excepting nonmultiple unit private dwellings housing one or two families.

- (4) Source testing. To demonstrate compliance, ecology may conduct or require that a test be conducted of the source using approved EPA methods from 40 C.F.R. 60 Appendix A which are adopted by reference, or approved procedures contained in "Source Test Manual -Procedures for Compliance Testing," state of Washington, department of ecology, on file at ecology. The operator of a source may be required to provide the necessary platform and sampling ports for ecology personnel or others to perform a test of an emissions unit. Ecology shall be allowed to obtain a sample from any emissions unit. The operator of the source shall be given an opportunity to observe the sampling and to obtain a sample at the same time.
- (5) Report of startup, shutdown, breakdown or upset condition(s). If a startup, shutdown, breakdown or upset condition occurs which could result in an emissions violation or a violation of an ambient air quality standard, the owner(s) or operator(s) of the source(s) shall take the following actions as applicable:

(a) For a planned condition, such as a startup or shutdown, the condition shall be reported to ecology or the authority in advance of its

(b) For an unplanned condition, such as a breakdown or upset, the condition shall be reported to ecology or the authority as soon as

Upon request by ecology or the authority, the owner(s) or operator(s) of the source(s) shall submit a full written report including the known causes, the corrective actions taken, and the preventive measures to be taken to minimize or eliminate the chance of recurrence.

Compliance with the requirements of WAC 173-400-105(5) does not relieve the owner or operator of the source from the responsibility to maintain continuous compliance with all the requirements of this chapter or an applicable chapter nor from the resulting liabilities for failure to comply.

- (6) Continuous monitoring and recording. Owners and operators of the following categories of sources shall install, calibrate, maintain and operate equipment for continuously monitoring and recording those emissions specified.
 - (a) Fossil fuel-fired steam generators.

(i) Opacity, except where:

(A) Steam generator capacity is less than two hundred fifty million BTU per hour heat input; or

(B) Only gaseous fuel is burned.

- (ii) Sulfur dioxide, except where steam generator capacity is less than two hundred fifty million BTU per hour heat input.
- (iii) Percent oxygen or carbon dioxide where such measurements are necessary for the conversion of sulfur dioxide continuous emission monitoring data.
- (iv) General exception. These requirements do not apply to a fossil fuel-fired steam generator with an annual average capacity factor of less than thirty percent, as reported to the Federal Power Commission for calendar year 1974, or as otherwise demonstrated to ecology or the authority by the owner(s) or operator(s).

(b) Sulfuric acid plants.
Sulfur dioxide where production capacity is more than three hundred tons per day, expressed as one hundred percent acid, except for those facilities where conversion to sulfuric acid is utilized primarily as a means of preventing emissions to the atmosphere of sulfur dioxide or other sulfur compounds.

(c) Fluid bed catalytic cracking units catalyst regenerators at petro-

leum refineries.

Opacity where fresh feed capacity is more than twenty thousand barrels per day.

(d) Wood residue fuel-fired steam generators.

(i) Opacity, except where steam generator capacity is less than one hundred million BTU per hour heat input.

(ii) Continuous monitoring equipment. The requirements of WAC

173-400-105 (6)(e) do not apply to wood residue fuel-fired steam generators, but continuous monitoring equipment required by WAC 173-400-105 (6)(d) shall be subject to approval by ecology.

(e) Owners and operators of those sources required to install continuous monitoring equipment under this chapter shall demonstrate to ecology or the authority, compliance with the equipment and performance specifications and observe the reporting requirements contained in 40 CFR Part 51, Sections 3, 4 and 5, promulgated October 6, 1975, which is adopted by reference

(f) Special considerations. If for reason of physical plant limitations or extreme economic situations, ecology determines that continuous monitoring is not a reasonable requirement, alternative monitoring and reporting procedures will be established on an individual basis. These will generally take the form of stack tests conducted at a frequency sufficient to establish the emission levels over time and to monitor deviations in these levels

(g) Exemptions. This subsection (6) does not apply to any source which is:

(i) Subject to a new source performance standard. These sources will be governed by WAC 173-400-115.

(ii) Not subject to an applicable emission standard.

(h) Monitoring system malfunctions. A source may be temporarily exempted from the monitoring and reporting requirements of this chapter during periods of monitoring system malfunctions provided that the source owner(s) or operator(s) shows to the satisfaction of ecology or the authority that the malfunction was unavoidable and is being repaired as expeditiously as practicable.

(7) Change in raw materials or fuels. Any change or series of changes in raw material or fuel which will result in a cumulative increase in emissions of sulfur dioxide of forty tons per year or more over that stated in the initial inventory required by WAC 173-400-105(1) shall require the submittal of sufficient information to ecology or the authority to determine the effect of the increase upon ambient concentrations of sulfur dioxide. Ecology or the authority may issue regulatory orders requiring controls to reduce the effect of such increases. Cumulative changes in raw material or fuel of less than 0.5 percent increase in average annual sulfur content over the initial inventory shall not require such notice.

AMENDATORY SECTION (Amending Order DE 83-13, filed 4/15/83)

WAC 173-400-110 NEW SOURCE REVIEW (NSR). ((Construction shall not commence, on any new source that is required to register per WAC 173-400-100, until a notice of construction has been approved per WAC 173-403-050.))

(1) Applicability.

- (a) A notice of construction must be approved by ecology or the authority prior to the construction, installation, or establishment of a new source or emissions unit which is required to register per WAC 173-400-100.
- (b) Ecology or the authority may require a notice of construction prior to the construction, installation, or establishment of any other new source, other than a single family or duplex dwelling.
- (c) The notice of construction and new source review shall apply only to the emission unit(s) affected and the contaminants involved.
- (d) The owner(s) or operator(s) of any source that is required to register per WAC 173-400-100 shall notify ((the department or cognizant local)) ecology or the authority prior to replacement of air pollution control equipment or process equipment other than identical replacement for routine maintenance and repair. ((The department or)) ecology or the authority may determine that a notice of construction is required.
- (2) Additional information. Within thirty days of receipt of a notice of construction, ecology or the authority may require the submission of additional plans, specifications, and other information necessary for the review of the proposed new or modified source.
- (3) Requirements for new sources. Ecology or the authority shall review notice(s) of construction, plans, specifications, and other associated information to determine that:
- (a) The new source will be in accord with applicable federal and state rules and regulations, including NSPS and NESHAPS and the new source will use BACT for emissions control; and

(b) Requirements for nonattainment areas;

(i) If the new source is a major source or the proposed change is a major modification, it will comply with LAER for emissions of the contaminants for which nonattainment has been designated; and

(ii) If the new source is a major source or the proposed change is a major modification and is located in an area that is not in attainment for carbon monoxide or ozone and the source will emit carbon monoxide or VOCs, it is required that there be an analysis of alternative sites, sizes, and production processes and environmental control techniques for the proposed new source which demonstrates that benefits of the proposed new source significantly outweigh the environmental and social costs imposed as a result of its location, construction, and modification. This analysis is the responsibility of the applicant, who may use an environmental impact statement prepared under the State Environmental Policy Act (SEPA) or the National Environmental Policy Act (NEPA) as a source of information; and

(iii) The proposed new source will not violate the requirements for reasonable further progress established by the state implementation plan. If the new source is a major source or the proposed change is a major modification, the total new allowable emissions from all sources existing at the time of application for notice of construction plus proposed allowable emissions for the new source, of the contaminants for which nonattainment has been designated, shall be no greater than the total allowable emissions from existing sources, except that: (A) Ecology or the authority may require that new total allowable emissions be reduced to less than existing total allowable emissions, as necessary to achieve air quality attainment goals stated in an approved plan of attainment, and (B) the emissions from the proposed new source may be approved without an offsetting reduction from existing sources if an adequate emissions growth allowance is included in an approved plan of attainment. The above requirements must be met by reducing emissions from existing source(s). Arrangements for such offsetting reduction(s) of actual emissions must be made by the owner(s) or operator(s) of the proposed new source. The proposed new source may be constructed only after the issuance of a regulatory order(s) to the proposed new source and to all the source(s) that provided the offset. The said orders shall include new allowable emissions limits for all the affected sources; and

(iv) If the new source is a major source or the proposed change is a major modification, the owner(s) or operator(s) shall demonstrate that all major sources owned or operated by such person (or persons under common control with such person) in the state which are subject to emission limitations are in compliance or on a schedule for compliance

with applicable emission limitations and standards under the Federal Clean Air Act; and

(v) In a locality that does not meet national ambient air quality standards and has not been designated a nonattainment area, a proposed new major source or major modification must reduce the impact of its emissions upon air quality by obtaining sufficient emissions reductions to, at a minimum, compensate for its adverse ambient impact. An ecology approved air quality model shall be used to demonstrate a net air quality benefit where the source would otherwise cause or contribute to a violation of any national ambient air quality standard.

(c) Requirements for attainment areas. If the proposed new source is located in an area that is in attainment for contaminants that would be emitted by the source and the source is located in an ozone attain-

ment area if the source would emit VOCs;

(i) The allowable emissions from the proposed new source will not delay the attainment date for an area not in attainment nor cause or contribute to a violation of any national ambient air quality standard. This requirement will be considered to be met if the impact at any location within a nonattainment area or a locality exceeding the applicable standard does not exceed the following levels:

	Annual	24–Hour	8-Hour	3-Hour	1-Hour
Pollutant	Average	Average	Average	Average	Average
CO			0.5 mg/m ³		2 mg/m ³
TSP	1.0 ug/m ³	5 ug/m ³			
SO ₂	1.0 ug/m ³	5 ug/m ³	_	25 ug/m ³	30 ug/m ³
PM-10	1.0 ug/m ³	5 ug/m ³	-	-	
NO ₂	1.0 ug/m ³				

(ii) The proposed new source will not cause a violation of any ambient air quality standard.

(iii) An offsetting emissions reduction that satisfies the requirements of WAC 173-400-110 (3)(e) may be used to satisfy the requirements of WAC 173-400-110 (4)(c) and (d) and (9) if required.

(d) Visibility requirements. Any new major source or new major modification shall evaluate the visibility impairment per 40 CFR 52.21(e) for all Class I areas in Washington and neighboring states. The evaluation shall comply with the following:

(i) When the land manager has officially designated visibility to be an important attribute, the owner(s) or operator(s) of the new source shall demonstrate that the potential emissions in combination with emissions from all other sources permitted after January 1, 1982, shall not cause or contribute to a significant visibility impairment.

(ii) Ecology shall upon receipt of an application for a notice of construction notify the land managers of potentially affected areas. Notification shall be in writing and include a copy of all information relevant to the application including the information developed for this section. This information shall be transmitted to the land manager within thirty days of receipt of the application and at least sixty days prior to public hearing on the application for permit to construct.

(iii) All evaluations of visibility impairment required under this section shall use the models on file with ecology or equivalent models ap-

proved by ecology or EPA.

(iv) The results of the evaluation shall be sent to the land manager of the affected areas for review and recommendation. The review shall consider the degree of visibility impairment, duration, geographic extent, frequency, and time. The recommendation of the land managers concerning adverse impact on visibility shall be sent to ecology within thirty days of receipt of the evaluation results.

(v) Should ecology concur with the recommendation of the land manager, the notice of construction shall be approved or disapproved according to the recommendation. Ecology may find the review of a land manager inadequate and make its own determination. A finding of significant visibility impairment shall require a disapproval of the notice of construction, unless sufficient mitigating measures are developed.

(vi) Ecology or land managers may demonstrate that the new source would cause impairment of an integral vista officially designated at least six months before the new source submitted a complete application. The protection of an integral vista by controls on the source shall consider the time necessary for compliance, the energy and nonair quality environmental effects of compliance and the productive life of the source.

(vii) Ecology may require visibility monitoring at the site of the new source or potentially affected areas as a part of the applicable regulatory order. The monitoring period may be before or after construction or both.

Subpart Ka

- (4) Preliminary determination. Within thirty days after receipt of all information required, ecology or the authority shall:
- (a) Make preliminary determinations on the matters set forth in subsection (3), (4), or (9) of this section whichever is applicable; and (b) Initiate compliance with the provisions of WAC 173-400-171

relating to public notice and public comment, as applicable.

(5) Final determination. If, after review of all information received including public comment, ecology or the authority finds that all the conditions in subsection (3) of this section are satisfied, whichever is applicable, the authority will issue a regulatory order to approve the notice of construction for the proposed new source or modification.

(6) Appeal of approval. A notice of construction approval can be appealed to the state pollution control hearings board per RCW

70.94.025

(7) Portable sources. For portable sources which locate temporarily at particular sites, the owner(s) or operator(s) shall be allowed to operate at the temporary location without filing a notice of construction, providing that the owner(s) or operator(s) notifies ecology or the authority of intent to operate at the new location at least thirty days prior to starting the operation, and supplies sufficient information to enable ecology or the authority to determine that the operation will comply with the emission standards for a new source, and will not cause a violation of applicable ambient air quality standards and, if in a nonattainment area, will not interfere with scheduled attainment of ambient standards. The permission to operate shall be for a limited period of time (one year or less) and ecology or the authority may set specific conditions for operation during that period. A temporary source shall be required to comply with all applicable emission standards.

(8) Commencement of construction. The owner(s) or operator(s) of the new source shall not commence construction until the applicable notice of construction has been approved.

AMENDATORY SECTION (Amending Order 84-48, filed 3/6/85)

WAC 173-400-115 STANDARDS OF PERFORMANCE FOR NEW SOURCES. Title 40, Code of Federal Regulations, Part 60 (standards of performance for new sources), as promulgated prior to ((October 1, 1984)) July 1, 1989, is adopted by ((this)) reference ((adopted and incorporated herein with the exception of)) except for sections 60.5 (determination of construction or modification) and 60.6 (review of plans). ((For the purpose of state administration of the federal regulations adopted by reference hereby, the term "administrator" as used therein shall refer to the department or cognizant local authority:))

- (1) Sections 60.5 and 60.6 of Title 40, Code of Federal Regulations, are not incorporated herein because they provide for preconstruction review of new sources only on request. ((By virtue of WAC 173-403-050,)) Such review under the state program is mandatory and an order of approval is required ((before the)) prior to construction, installation or establishment of a new source ((may commence)).
- (2) As of ((October 1, 1984)) July 1, 1989, the federal regulations adopted by reference hereby set standards of performance affecting facilities for the following described subparts of 40 CFR Part 60:
 - Fossil fuel fired steam generators for which con-Subpart D struction commenced after August 17, 1971, and prior to September 19, 1978, which have a heat input greater than 73 megawatts but not greater than 250 megawatts
 - Subpart Da Electric utility steam generating units for which construction commenced after September 18, 1978, which have a heat input greater than 73 megawatts but not greater than 250 megawatts
 - Industrial-commercial-institutional steam generat-Subpart Db ing units for which construction commenced after June 19, 1984, and prior to June 19, 1986, which have a heat input greater than 29 megawatts but less than 73 megawatts
 - Subpart E Incinerators
 - Subpart F Portland cement plants Subpart G
 - Nitric acid plants Subpart H
 - Sulfuric acid plants Subpart I Asphalt concrete plants
 - Subpart J Petroleum refineries which produce less than 25,000 barrels per day of refined products
 - Subpart K Storage vessels for petroleum liquid constructed after June 11, 1973, and prior to May 19, 1978, which have a capacity greater than 40,000 gallons

after May 18, 1978, which have a capacity greater than 40,000 gallons Volatile organic liquid storage vessels (including Subpart Kb petroleum liquid storage vessels) constructed, reconstructed, or modified after July 23, 1984 Subpart L Secondary lead smelters Subpart M Brass and bronze ingot production plants Subpart N Iron and steel plants

Storage vessels for petroleum liquids constructed

- Subpart O Sewage treatment plants ((Subpart P Primary copper smelters Primary zinc smelters Subpart Q
- Subpart -R Primary lead smelters))
- Subpart S Primary aluminum reduction plants Subpart T Phosphate fertilizer industry: Wet process phospho-
- ric acid plants Phosphate fertilizer industry: Superphosphoric acid Subpart U plants
- Phosphate fertilizer industry: Diammonium phos-Subpart V phate plants
- Subpart W Phosphate fertilizer industry: Triple superphosphate plants
- Phosphate fertilizer industry: Granular triple super-Subpart X
- phosphate storage facilities Subpart Y Coal preparation plants Subpart Z Ferroalloy production facilities Subpart AA Steel plants: Electric arc furnaces Subpart BB Kraft pulp mills
- Subpart CC Glass manufacturing plants
- Subpart DD Grain elevators
- Subpart EE Industrial surface coating: Metal furniture Subpart GG Stationary gas turbines
- Subpart HH Lime manufacturing plants
- Subpart KK Lead acid batteries
- Subpart LL Metallic mineral processing plants
- Subpart MM Automobile and light duty truck surface coating operations
- Subpart NN Phosphate rock plants
- Subpart PP Ammonium sulfate manufacture
- Subpart QQ Publication rotogravure printing
- Subpart RR Pressure sensitive tape and label surface coating operations
- Subpart SS Industrial surface coating: Large appliances Subpart TT Industrial surface coating: Metal coils
- Subpart UU Asphalt processing and asphalt roofing manufacture
- Subpart VV SOCMI equipment leaks (VOC)
- Subpart WW Beverage can surface coating operations
- Subpart XX Bulk gasoline terminals
- New residential wood heaters Subpart AAA Subpart FFF Flexible vinyl and urethane coating and printing
- Subpart GGG Petroleum refineries - compressors and fugitive emission sources
- Subpart HHH Synthetic fiber production facilities
- Subpart JJJ Petroleum dry eleaners
- Subpart PPP Wool fiberglass insulation manufacturing plants

Compliance with the standards for affected facilities within these source categories shall be determined by performance tests and visual observations of opacity as set forth in the regulations adopted by reference ((hereby)).

For fossil fired steam generators referenced by Subpart D above, units greater than 250 megawatts are governed by the energy facility site evaluation council (EFSEC) in Title 463 WAC.

AMENDATORY SECTION (Amending Order 88-39, filed 1/3/89)

WAC 173-400-120 ((MONITORING AND SPECIAL RE-PORT)) BUBBLE RULES. (((1) Monitoring. The department shall conduct a continuous surveillance program to monitor the quality of the ambient atmosphere as to concentrations and movements of air contaminants:

As a part of this program, the director or his authorized representative may require any source under the jurisdiction of the department to conduct stack and/or ambient air monitoring and to report the results to the department.

(2) Investigation of conditions. Upon presentation of appropriate eredentials, for the purpose of investigating conditions specific to the control, recovery, or release of air contaminants into the atmosphere,

the director or authorized personnel from a cognizant local authority shall have the power to enter at reasonable times upon any private or public property, excepting nonmultiple unit private dwellings housing one or two families.

- (3) Source testing. In order to demonstrate compliance with this chapter, the department, may require that a test be made of the source using procedures contained in "Source Test Manual " Procedures for Compliance Testing," state of Washington, department of ecology, on file at the department. The operator of a source may be required to provide the necessary platform and sampling ports for the department personnel to perform a test of an emissions unit. The department shall be allowed to obtain a sample from any emissions unit. The operator of the source shall be given an opportunity to observe the sampling and to obtain a sample at the same time.
- (4) Report of startup, shutdown, breakdown or upset condition. If a startup, shutdown, breakdown or upset condition occurs which could result in an emissions violation or a violation of an ambient air quality standard, the owner or operator of the source shall take the following actions as applicable:
- (a) For a planned condition, such as a startup or shutdown, the condition shall be reported to the department or cognizant local authority in advance of its occurrence.
- (b) For an unplanned condition, such as a breakdown or upset, the condition shall be reported to the department or cognizant local authority as soon as possible.

Upon request of the department or cognizant local authority, the owner or operator of the source shall submit a full written report including the known causes, the corrective actions taken, and the preventive measures to be taken to minimize or climinate the chance of recurrence:

Compliance with the requirements of WAC 173-400-120(4) docs not relieve the owner or operator of the source from the responsibility to maintain continuous compliance with all the requirements of this chapter nor from the resulting liabilities for failure to comply.

- (5) Continuous monitoring and recording. Owners and operators of the following categories of sources shall install, calibrate, maintain and operate equipment for continuously monitoring and recording those emissions specified.
 - (a) Fossil fuel-fired steam generators.
 - (i) Opacity, except where:
- (A) Steam generator capacity is less than two hundred fifty million BTU per hour heat input; or
 - (B) Only gascous fuel is burned; or
- (C) Only oil or a mixture of oil and gas is burned and opacity and particulate regulations can be met without using particulate collection equipment; and, the source has never, through any administrative or judicial procedure, been found in violation of any visible emission standard.
 - (ii) Sulfur dioxide, except where:
- (A) Steam generator capacity is less than two hundred fifty million BTU per hour heat input, or
- (B) Sulfur dioxide control equipment has not been installed.
- (iii) Percent oxygen or carbon dioxide where such measurements are necessary for the conversion of sulfur dioxide continuous emission monitoring data:
- (iv) General exception. These requirements do not apply to a fossil fuel-fired steam generator with an annual average capacity factor of less than thirty percent, as reported to the Federal Power Commission for calendar year 1974, or as otherwise demonstrated to the department or cognizant local authority by the owner or operator.
- (b) Sulfuric acid plants.
- Sulfur dioxide where production capacity is more than three hundred tons per day, expressed as one hundred percent acid, except for those facilities where conversion to sulfuric acid is utilized primarily as a means of preventing emissions to the atmosphere of sulfur dioxide or other sulfur compounds.
- (c) Fluid bed catalytic cracking units catalyst regenerators at petroleum refineries.
- Opacity where fresh feed capacity is more than twenty thousand barrels per day:
 - (d) Wood residue fuel-fired steam generators.
 - (i) Opacity, except where:
- Steam generator capacity is less than one hundred million BTU per hour heat input:
- (ii) Continuous monitoring equipment. The requirements of WAC 173-400-120 (5)(e) do not apply to wood residue fuel-fired steam

- generators, but continuous monitoring equipment required by WAC 173-400-120 (5)(d) shall be subject to approval by the department.
- (c) Owners and operators of those sources required to install continuous monitoring equipment under this chapter shall demonstrate to the department or cognizant local authority compliance with the equipment and performance specifications and observe the reporting requirements contained in Title 40, Code of Federal Regulations, respectively. The specific products of th
- (f) All sources subject to this chapter shall procure and install equipment and commence monitoring and recording activities no later than eighteen months after adoption of this chapter by the department. Any extension to this time requirement shall be negotiated through the variance procedure of WAC 173-400-150.
- (g) Special considerations. If for reason of physical plant limitations or extreme economic situations, the department determines that continuous monitoring is not a reasonable requirement, alternative monitoring and reporting procedures will be established on an individual basis. These will generally take the form of stack tests conducted at a frequency sufficient to establish the emission levels over time and to monitor deviations in these levels.
- (h) Exemptions. This subsection (5) does not apply to any source which is:
- (i) Subject to a new source performance standard. These sources will be governed by WAC 173-400-115.
 - (ii) Not subject to an applicable emission standard.
- (iii) Scheduled for retirement within five years after inclusion of monitoring equipment requirements in this chapter, provided that adequate evidence and guarantees are provided that clearly show that the source will cease operations prior to that date.
- (i) Monitoring system malfunctions. A source may be temporarily exempted from the monitoring and reporting requirements of this chapter during periods of monitoring system malfunctions provided that the source owner or operator shows to the satisfaction of the department or cognizant local authority that the malfunction was unavoidable and is being repaired as expeditiously as practicable.
- (6) Emission inventory. The owner or operator of any air contaminant source shall submit an inventory of emissions from the source each year upon a form and according to instructions received from the department of ecology or cognizant local authority. The inventory may include stack and fugitive emissions of particulate matter, PM-10, sulfur dioxide, carbon monoxide, total reduced sulfur compounds (TRS), fluorides, lead, volatile organic compounds, and other contaminants, and shall be submitted when required no later than one hundred five days after the end of the calendar year. The inventory shall include total emissions for the year in tons per year and an estimate of the percentage of the total emitted each quarter. An estimate shall be made of the one hour and twenty-four hour emissions while operating at maximum capacity. The report shall include the average sulfur content of any fuel or raw material used which will result in emissions of more than twenty-five tons per year of sulfur dioxide.
- (7) Change in raw materials or fuels. Any change or series of changes in raw material or fuel which will result in a cumulative increase in emissions of sulfur dioxide of forty tons per year or more over that stated in the initial inventory required by WAC 173-400-120(6) shall require the submittal of sufficient information to the department or authority to determine the effect of the increase upon ambient concentrations of sulfur dioxide. The department or cognizant local authority may issue regulatory orders requiring controls to reduce the effect of such increases. Cumulative changes in raw material or fuel of less than 0.5 percent increase in average annual sulfur content over the initial inventory shall not require such notice.))
- (1) Applicability. The owner(s) or operator(s) of any source(s) may apply for a bubble for any contaminant regulated by state or federal law for which the emission requirement may be stated as an allowable limit in weight of contaminant per unit time for the emissions units involved.
- (2) Conditions. A bubble may be authorized provided the following conditions have been demonstrated to the satisfaction of ecology or the authority.
- (a) The contaminants exchanged must be of the same type, that is, particulates for particulates, sulfur dioxide for sulfur dioxide, etc.
- (b) The bubble will not interfere with the attainment and maintenance of air quality standards.
- (c) The bubble will not result in a delay in compliance by any source, nor a delay in any existing enforcement action.

- (d) The bubble will not supersede NSPS, NESHAPS, BACT, or LAER. The emissions of hazardous (NESHAPS) contaminants shall not be increased.
- (e) The bubble will not result in an increase in the sum of actual emission rates of the contaminant involved from the emissions units involved.
- (f) A bubble may not be authorized only for opacity limits. However, if the emission limit for particulates for a given emissions unit is increased as part of a bubble, the opacity limit for the given emissions unit may be increased subject to the following limitations:

(i) The new opacity limit shall be specific for the given emissions unit:

unit;
(ii) The new opacity limit shall be consistent with the new particu-

lates limit;

(iii) An opacity greater than sixty percent shall never be authorized;

(iv) If the given emissions unit emits or has the potential to emit 100

tons per year or more of particulate matter, the opacity shall be monitored continuously.

(g) The emission limits of the bubble are equivalent to existing limits in enforceability.

(h) Concurrently with or prior to the authorization of a bubble, each affected source shall receive or have received a regulatory order that establishes total allowable emissions from the source of the contaminant being bubbled, expressed as weight of the contaminant per unit time. The new total allowable emissions shall be considered RACT.

(i) There will be no net adverse impact upon air quality from the establishment of new emission requirements for a specific source or emissions unit. Determination of net adverse impact shall include but not be limited to public perception of opacity and public perception of odorous contaminants.

(j) Specific situations may require additional demonstration as re-

quested by ecology or the authority.

(3) Jurisdiction. Whenever a bubble application involves emissions units, some of which are under the jurisdiction of ecology and some of which are under the jurisdiction of an authority, approval will require concurrence by both authorities. The new emission limits for each emissions unit will be enforced by the authority of original jurisdiction.

(4) Additional information. Within thirty days, after the receipt of a

(4) Additional information. Within thirty days, after the receipt of a bubble application and all supporting data and documentation, ecology or the authority may require the submission of additional information

needed to review the application.

(5) Approval. Within thirty days after all the required information has been received, ecology or the authority shall approve or deny the application, based on a finding that conditions in subsection (2)(a) through (j) of this section have been satisfied or not. If the application is approved, a regulatory order or equivalent document shall be issued which includes new allowable emissions expressed in weight of pollutant per unit time for each emissions expressed in the application. The order or equivalent document must include all requirements necessary to assure that conditions in subsection (2)(a) through (j) of this section will be satisfied. If the bubble depends in whole or in part upon the shutdown of equipment, the regulatory order or equivalent document must prohibit the operation of the affected equipment.

NEW SECTION

WAC 173-400-131 ISSUANCE OF EMISSION REDUCTION CREDITS. (1) Applicability. The owner(s) or operator(s) of any source(s) may apply to ecology or the authority for an emission reduction credit (ERC) if the source proposes to reduce its actual emissions rate for any contaminant regulated by state or federal law for which the emission requirement may be stated as an allowable limit in weight of contaminant per unit time for the emissions unit(s) involved.

(2) Time of application. The application for an ERC must be made prior to or within one hundred eighty days after the emission reduction

has been accomplished.

- (3) Conditions. An ERC may be authorized provided the following conditions have been demonstrated to the satisfaction of ecology or the authority.
- (a) The quantity of emissions in the ERC shall be less than or equal to the old allowable emissions rate or the old actual emissions rate, whichever is the lesser, minus the new allowable emissions rate.
- (b) The ERC application must include a description of all the changes that are required to accomplish the claimed emissions reduction, such as, new control equipment, process modifications, limitation of hours of operation, permanent shutdown of equipment, specified control practices, etc.

- (c) The ERC must be large enough to be readily quantifiable relative to the source strength of the emissions unit(s) involved, but in no case shall the ERC be for less than one ton per year.
- (d) No part of the emission reductions claimed for credit shall have been used as part of a determination of net emission increase, nor as part of an offsetting transaction under WAC 173-400-110 (3)(e), nor as part of a bubble transaction under WAC 173-400-120, nor to satisfy NSPS, BACT, or LAER.
- (e) Concurrently with or prior to the authorization of an ERC, the applicant shall receive (have received) a regulatory order that establishes total allowable emissions from the source of the contaminant for which the ERC is requested, expressed as weight of contaminant per unit time. The new allowable emissions shall be considered RACT.

(f) The use of any ERC shall be consistent with all other federal, state, and local requirements of the program in which it is used.

- (4) Additional information. Within thirty days after the receipt of an ERC application and all supporting data and documentation, ecology or the authority may require the submission of additional information needed to review the application.
- (5) Approval. Within thirty days after all the required information has been received, ecology or the authority shall approve or deny the application, based on a finding that conditions in subsection (3)(a) through (e) of this section have been satisfied or not. If the ERC application has not been approved or denied within thirty days, the ERC will be automatically approved. If the application is approved, ecology or the authority shall:
- (a) Issue a regulatory order or equivalent document to assure that the emissions from the source will not exceed the proposed new allowable emission rate(s) claimed in the ERC application, expressed as weight of pollutant per unit time. The regulatory order or equivalent document must include all requirements that are necessary to provide such assurance. If the ERC depends in whole or in part upon the shutdown of equipment, the regulatory order or equivalent document must prohibit the startup of the affected equipment; and,
- (b) Issue a certificate of emission reduction credit. The certificate shall specify the issue date, the contaminant(s) involved, the nonattainment area involved, if applicable, and the person to whom the certificate is issued.

NEW SECTION

WAC 173-400-136 USE OF EMISSION REDUCTION CREDITS. (1) Permissible use. An ERC may be used to satisfy the requirements for authorization of a bubble under WAC 173-400-120, as a part of a determination of "net emissions increase," as an offsetting reduction to satisfy the requirements for new source review per WAC 173-400-110 (3)(e), to satisfy requirements for PSD review per WAC 173-400-110 (4)(c), or to satisfy requirements for visibility review per WAC 173-400-110 (4)(e).

(2) Surrender of ERC certificate. When an ERC is used under subsection (1) of this section, the certificate for the ERC must be surrendered to the issuing authority. If only a portion of the ERC is used, the

amended certificate will be returned to the owner.

(3) Conditions of use. An ERC may be used only for the contaminant(s) for which it was issued. Ecology or the authority may impose additional conditions of use to account for temporal and spatial differences between the emissions unit(s) that generated the ERC and the emissions unit(s) that use the ERC.

(4) Sale of an ERC. An ERC may be sold or otherwise transferred to a person other than the person to whom it was originally issued. Within thirty days after the transfer of ownership, the certificate must be surrendered to the issuing authority. After receiving the certificate, the issuing authority shall reissue the certificate to the new owner.

(5) Time of use. An unused ERC and any unused portion thereof shall expire ten years after date of original issue.

(6) Discount due to change in SIP. If reductions in emissions beyond those identified in the state implementation plan are required to meet an ambient air quality standard, if the standard cannot be met through controls on operating sources, and if the plan must be revised, an ERC may be discounted by ecology or the authority after public involvement per WAC 173-400-171. Any such discount shall not exceed the percentage of additional emission reduction needed to reach attainment.

NEW SECTION

WAC 173-400-141 PREVENTION OF SIGNIFICANT DETERIORATION (PSD). Section 40 CFR 52.21, Subparts (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (r), (t), (v), and

- (w), Prevention of Significant Deterioration of Air Quality, as in effect on July 1, 1989, are incorporated by reference with the following additions and modifications:
- (1) Construction of "administrator." In 40 CFR 52.21 (b)(17), federally enforceable, (f)(l)(v), (f)(3), and (f)(4)(i), exclusions from increment consumption, (g), redesignation, (l) and (2), air quality models, (p)(2), federal land manager, and (t), disputed permits or redesignations, the word "administrator" shall be construed in its original meaning. In 40 CFR 52.21 (b)(3)(iii) administrator shall mean both the administrator of EPA and the director of ecology.
- (2) Contemporaneous. Subpart 40 CFR 52.21 (b)(3)(ii) is changed to read: "An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs at the same time or within ten years prior to the change. If a decrease occurred more than one year prior to the change it can only be credited if the decrease has been documented by an emission reduction credit."
- (3) Public participation. Subpart 40 CFR 51.166(q) public participation, as in effect July 1, 1988, is hereby incorporated by reference, with the following modifications:
- (a) In 40 CFR 51.166 (q)(2)(iv), the word "administrator" shall be construed in its original meaning.
- (b) In 40 CFR 51.166 (q)(2)(iv), the phrase "specified time period" shall mean thirty days.
- (4) Section 40 CFR 51.166 Subpart (p)(1) Sources Impacting Federal Class I areas additional requirements Notice to EPA, as in effect on July 1, 1989, is herein incorporated by reference.
- (5) Secondary emissions. Subpart 40 CFR 52.21 (b)(18) is changed to read:

Emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this section, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions may include, but are not limited to:

- (a) Emissions from ships or trains coming to or from the new or modified stationary source; and
- (b) Emissions from any offsite support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification.
- (6) List of Class I areas. The following areas are the Class I areas in Washington state as of January 1, 1989:

Mount Rainier National Park North Cascade National Park Olympic National Park Alpine Lakes Wilderness Area Glacier Peak Wilderness Area Goat Rocks Wilderness Area Mount Adams Wilderness Area Pasayten Wilderness Area.

NEW SECTION

WAC 173-400-151 RETROFIT REQUIREMENTS FOR VISIBILITY PROTECTION. (1) Determination of best available retrofit technology (BART). Ecology shall identify and analyze each source which may reasonably be anticipated to cause or contribute to impairment of visibility in any mandatory Class I area in Washington and any adjacent state and to determine BART for the contaminant of concern and those additional air pollution control technologies that are to be required to reduce impairment from the source.

(2) Initially defined BART. The owner(s) or operator(s) of any source(s) to which significant visibility impairment of a mandatory Class I area is reasonably attributable shall apply BART for each contaminant contributing to visibility impairment that is emitted at more than 250 tons per year. Each source for which BART is required must install and operate BART as expeditiously as possible, but in no case later than five years after the conditions are included in a regulatory order.

(3) Future definitions of BART. The owner(s) or operator(s) of any source(s) to which significant visibility impairment of a mandatory Class I area is reasonably attributable shall apply BART as new technology becomes available for a contaminant if:

(a) The source emits more than 250 tons per year of the contaminant; and,

- (b) The controls representing BART have not previously been required in this section.
- (4) Appeal. Any source owner or operator required by this section to install, operate, and maintain BART, may apply to ecology for an exception from that requirement pursuant to 40 CFR 51.303.

NEW SECTION

- WAC 173-400-161 COMPLIANCE SCHEDULES. (1) Issuance. Whenever a source is found to be in violation of an emission standard or other provision of this chapter, ecology or the authority may issue a regulatory order requiring that the source be brought into compliance within a specified time. The order shall contain a schedule for installation, with intermediate benchmark dates and a final completion date, and shall constitute a compliance schedule. Requirements for public involvement (WAC 173-400-171) must be met.
- (2) Effect. A source shall be considered to be in compliance with this chapter if all the provisions of its individual compliance schedule included with a regulatory order are being met. A source is not considered to be in compliance with the state implementation plan (SIP) until the schedule is submitted to and approved by EPA as a SIP revision.
- (3) Penalties for delayed compliance. Sources on a compliance schedule but not meeting emissions standards may be subject to penalties as provided in the Federal Clean Air Act.

NEW SECTION

- WAC 173-400-171 PUBLIC INVOLVEMENT. (1) Applicability. Ecology or the authority shall provide public notice prior to the approval or denial of any of the following types of applications or other actions:
- (a) Notice of construction for any new or modified source or emissions unit, if a net significant emissions increase for any pollutant regulated by state or federal law would result; or
- (b) Any application or other proposed action for which a public hearing is required by PSD rules; or
 - (c) Any order to determine RACT; or
 - (d) An order to establish a compliance schedule or a variance; or
- (e) The establishment or disestablishment of a nonattainment area, or the changing of the boundaries thereof; or
- (f) An order to demonstrate the creditable height of a stack which exceeds the GEP formula height and sixty-five meters, by means of a fluid model or a field study, for the purposes of establishing an emission limitation; or
 - (g) An order to authorize a bubble; or
- (h) Any application or other proposed action made pursuant to this chapter in which there is a substantial public interest according to the discretion of ecology or the authority.
- (2) Public notice. Public notice shall be made only after all information required by ecology or the authority has been submitted and after applicable preliminary determinations, if any, have been made. The cost of providing public notice shall be borne by the applicant or other initiator of the action. Public notice shall include:
- (a) Availability for public inspection in at least one location near the proposed project, of the nonproprietary information submitted by the applicant and of any applicable preliminary determinations, including analyses of the effect(s) on air quality.
- (b) Publication in a newspaper of general circulation in the area of the proposed project of notice:
 - (i) Giving a brief description of the proposal;
- (ii) Advising of the location of the documents made available for public inspection;
- (iii) Advising of a thirty-day period for submitting written comment to ecology or the authority;
- (iv) Advising that a public hearing may be held if ecology or the authority determines within a thirty-day period that significant public interest exists.
- (c) A copy of the notice will be sent to the EPA regional administrator.
- (3) Public comment. No final decision on any application or action of any of the types described in subsection (1) of this section, shall be made until the public comment period has ended and any comments received have been considered. Unless a public hearing is held, the public comment period shall be the thirty—day period for written comment published as provided above. If a public hearing is held the public comment period shall extend through the hearing date and thereafter for such period, if any, as the notice of public hearing may specify.

- (4) Public hearings. The applicant, any interested governmental entity, any group or any person may request a public hearing within the thirty-day period published as above. Any such request shall indicate the interest of the entity filing it and why a hearing is warranted. Ecology or the authority may, in its discretion, hold a public hearing if it determines significant public interest exists. Any such hearing shall be held upon such notice and at a time(s) and place(s) as ecology or the authority deems reasonable.
- (5) Other requirements of law. Whenever procedures permitted or mandated by law will accomplish the objectives of public notice and opportunity for comment, such procedures may be used in lieu of the provisions of this section.
- (6) Public information. Copies of notices of construction, orders, and modifications thereof which are issued hereunder shall be available for public inspection on request at ecology or the authority.

NEW SECTION

- WAC 173-400-180 VARIANCE. Any person who owns or is in control of a plant, building, structure, establishment, process, or equipment may apply to ecology for a variance from provisions of this chapter governing the quality, nature, duration, or extent of discharges of air contaminants in accordance with the provisions of RCW 70.94.181.
- (1) Jurisdiction. Sources in any area over which a local air pollution control authority has jurisdiction shall make application to that authority rather than ecology. Ecology or the authority may grant such variance, but only after public involvement per WAC 173-400-171.
- (2) Full faith and credit. Variances granted by an authority for sources under their jurisdiction will be accepted as variances to this regulation if in compliance with state and federal laws.
- (3) EPA concurrence. No variance or renewal shall be construed to set aside or delay any requirements of the Federal Clean Air Act except with the approval and written concurrence of the USEPA.

NEW SECTION

WAC 173-400-190 REQUIREMENTS FOR NONATTAIN-MENT AREAS. The development of specific requirements for nonattainment areas shall include consultation with local government in the area and shall include public involvement per WAC 173-400-171.

NEW SECTION

WAC 173-400-200 CREDITABLE STACK HEIGHT AND DISPERSION TECHNIQUES. (1) Applicability. These provisions shall apply to all stationary sources except:

- (a) Stacks for which construction had commenced on or before December 31, 1970, except where pollutants are being emitted from such stacks used by sources which were constructed, or reconstructed, or for which major modifications were carried out after December 31, 1970;
- (b) Coal-fired steam electric generating units subject to the provisions of Section 118 of the Federal Clean Air Act, which commenced operation before July 1, 1957, and for whose stacks construction commenced before February 8, 1974;
 - (c) Flares;
- (d) Open burning for agricultural or silvicultural purposes as covered under the smoke management plan;
- (e) Residential wood combustion and open burning for which episodic restrictions apply.

These provisions shall not be construed to limit the actual stack

- (2) Prohibitions. No source may use dispersion techniques or excess stack height to meet ambient air quality standards or PSD increment limitations.
- (a) Excess stack height. Excess stack height is that portion of a stack which exceeds the greater of:
- (i) Sixty-five meters, measured from the ground level elevation at the base of the stack; or
- (ii) $H_g = H + 1.5L$ where: $H_g = "good engineering practice"$ (GEP) stack height, measured from the ground level elevation at the base of the stack,
- H = height of nearby structure(s) measured from the ground level elevation at the base of the stack,
- L = lesser dimension, height or projected width, of nearby structure(s), subject to the proviso below.

- "Nearby," as used in this subsection for purposes of applying the GEP formula means that distance up to five times the lesser of the height or the width dimension of a structure, but not greater than 0.8 kilometer (1/2 mile).
- (b) Dispersion techniques. Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise. This does not include:
- (i) The reheating of a gas stream, following the use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream;
 - (ii) The merging of gas streams where:
- (A) The source was originally designed and constructed with such merged gas streams, as demonstrated by the source owner(s) or
- (B) Such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion shall apply only to the emission limitation for the pollutant affected by such change in operation.
- (C) Before July 8, 1985, such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons, and not primarily motivated by an intent to gain emissions credit for greater dispersion.
- (3) Exception. EPA, ecology, or an authority may require the use of a field study or fluid model to verify the creditable stack height for the source. This also applies to a source seeking credit after the effective date of this rule for an increase in existing stack height up to that established by the GEP formula. A fluid model or field study shall be performed according to the procedures described in the EPA Guideline for Determination of Good Engineering Practice Height (Technical Support Document of the Stack Height Regulations). The creditable height demonstrated by a fluid model or field study shall ensure that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures or nearby terrain
- (a) "Nearby," as used in this subsection for conducting a field study or fluid model, means not greater than 0.8 km, except that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to ten times the maximum height of the feature, not to exceed two miles if such feature achieves a height 0.8 km from the stack that is at least forty percent of the GEP stack height or twentysix meters, whichever is greater, as measured from the ground-level elevation at the base of the stack. The height of the structure or terrain feature is measured from the ground-level elevation at the base of the stack.
- (b) "Excessive concentration" is defined for the purpose of determining creditable stack height under this subsection and means a maximum ground-level concentration owing to a significant downwash effect which contributes to excursion over an ambient air quality standard. For sources subject to PSD review (WAC 173-400-141 and 40 CFR 52.21) an excessive concentration alternatively means a maximum ground-level concentration owing to a significant downwash effect which contributes to excursion over a PSD increment. The emission rate used in this demonstration shall be the emission rate specified in the state implementation plan, or in the absence of such, the actual emission rate of the source. "Significant downwash effect" means a maximum ground-level concentration due to emissions from a stack due in whole or in part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least forty percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.

NEW SECTION

WAC 173-400-205 ADJUSTMENT FOR ATMOSPHERIC CONDITIONS. Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant is prohibited, except as directed according to air pollution episode regulations.

NEW SECTION

WAC 173-400-210 EMISSION REQUIREMENTS OF PRIOR JURISDICTIONS. Any emissions unit that was under the jurisdiction of an authority and now is under the jurisdiction of ecology, shall meet all emission requirements that were applicable prior to transfer of jurisdiction if those standards are more stringent than the standards of this chapter.

NEW SECTION

WAC 173-400-220 REQUIREMENTS FOR BOARD MEMBERS. (1) Public interest. A majority of the members of any ecology or authority board shall represent the public interest. A majority of the members of such boards, shall not derive any significant portion of their income from persons subject to enforcement orders pursuant to the state and federal clean air acts. An elected public official and the board shall be presumed to represent the public interest. In the event that a member derives a significant portion of his/her income from persons subject to enforcement orders, he/she shall delegate sole responsibility for administration of any part of the program which involves these persons to an assistant.

(2) Disclosure. Each member of any ecology or authority board shall adequately disclose any potential conflict of interest in any matter prior to any action or consideration thereon, and the member shall remove themselves from participation as a board member in any action or voting on such matter.

(3) Define significant income. For the purposes of this section, "significant portion of income" shall mean twenty percent of gross personal income for a calendar year. In the case of a retired person, "significant portion of income" shall mean fifty percent of income in the form of pension or retirement benefits from a single source other than Social Security. Income derived from employment with local or state government shall not be considered in the determination of "significant portion of income."

NEW SECTION

WAC 173-400-230 REGULATORY ACTIONS. Ecology may take any of the following regulatory actions to enforce this chapter to meet the provisions of RCW 43.21B.300 which is incorporated by reference.

- (1) Notice of violation. Whenever ecology has reason to believe that any provision of this chapter has been violated, it may cause written notice (either by certified mail with return receipt requested or by personal service) to be served on the alleged violator or violators. The notice shall specify the provision of this chapter alleged to be violated and the facts alleged to constitute a violation thereof, and may include an order that necessary corrective action be taken within a reasonable time.
- (2) Civil penalty. Any person who violates any of the provisions of this chapter or a regulatory order issued by ecology, shall be subject to a penalty in the form of a fine in an amount not to exceed one thousand dollars per day for each violation. Each such violation shall be separate and distinct and, for a continuing violation, each day's continuance shall be a separate and distinct violation. The penalty shall be imposed by a notice in writing from personnel of ecology or an authority, describing the violation with reasonable detail. Further, the person is subject to a fine of up to five thousand dollars to be levied by the director if requested by the board of a local authority or if the director determines that the penalty is needed for effective enforcement of this chapter. The maximum daily fine imposed for violation of standards by a specific emissions unit is five thousand dollars. Upon written application submitted to ecology within fifteen days after notice has been received the director may remit or mitigate the penalty upon such terms as the director deems proper and when deemed in the best interest to carry out the purpose of this chapter. The mitigation shall not affect or reduce the penalty imposed by the local board. The maximum daily fine that may be imposed upon any emissions unit for violation of any opacity standard is four hundred dollars.
- (3) Assurance of discontinuance. Personnel of ecology or an authority may accept an assurance of discontinuance of any act or practice deemed in violation of this chapter. Any such assurance shall specify a time limit during which discontinuance is to be accomplished. Failure to perform the terms of any such assurance shall constitute prima facie proof of a violation of this chapter which make the alleged act or practice unlawful for the purpose of securing an injunction or other relief from the superior court.

- (4) Restraining orders, injunctions. Whenever any person has engaged in, or is about to engage in, any acts or practices which constitute or will constitute a violation of any provision of this chapter, the director, after notice to such person and an opportunity to comply, may petition the superior court of the county wherein the violation is alleged to be occurring or to have occurred for a restraining order or a temporary or permanent injunction or another appropriate order.
- (5) Emergency episodes. Ecology may issue such orders as authorized by chapter 173-435 WAC via chapter 70.94 RCW, whenever an air pollution episode forecast is declared.
- (6) Compliance orders. Ecology may issue a compliance order in conjunction with a notice of violation. The order shall require the recipient of the notice of violation either to take necessary corrective action or to submit a plan for corrective action and a date when such action will be initiated.

NEW SECTION

WAC 173-400-240 CRIMINAL PENALTIES. Persons in violation of Title 173 WAC may be subject to the provisions of RCW 70.94.430.

NEW SECTION

WAC 173-400-250 APPEALS. Decisions and orders of ecology or an authority may be appealed to the pollution control hearings board pursuant to chapter 43.21B RCW and chapter 371-08 WAC. PSD permits issued by ecology are appealable only to the EPA administrator, pursuant to 40 CFR Part 124.

NEW SECTION

WAC 173-400-260 CONFLICT OF INTEREST. All board members and officials acting or voting on decisions affecting air pollution sources, must meet the requirements of the Federal Clean Air Act, as it pertains to conflict of interest, per 40 CFR 103(d) which is incorporated by reference.

AMENDATORY SECTION (Amending Order DE 80-15, filed 8/20/80)

WAC 173-405-012 STATEMENT OF PURPOSE. These rules are enacted under the provisions of the Washington Clean Air Act \underline{as} amended (RCW 70.94.395) to:

(1) Assume state jurisdiction over emissions from kraft pulping mills ((in order)) to provide for the systematic ((reduction and)) control of air pollution in ((the kraft pulping)) this industry and for the proper development of the state's natural resources; and

(2) Establish ((standards deemed to be)) technically feasible and reasonably attainable standards and revise such standards as new information and better technology are developed and become available.

AMENDATORY SECTION (Amending Order 84-50, filed 3/6/85)

WAC 173-405-021 DEFINITIONS. The definitions of terms contained in chapter 173-400 are incorporated into this chapter by reference. Unless a different meaning is clearly required by context, the following words and phrases as used in this chapter shall have the following meanings((; general terms common with other chapters as defined in chapter 173-403 WAC, and terms specific to kraft pulping mills as defined below:)):

- (1) "Kraft mill" means any manufacturing facility which uses an alkaline solution containing sodium hydroxide and/or sodium sulfide, and any other chemical pulping facility, except those covered by chapter 173-410 WAC, to produce pulp and/or paper products from wood fibers. For the purposes of this regulation "kraft mill" is equivalent to "source."
- (2) (("New source" means a source which commences construction after September 24, 1976. Addition to, enlargement, modification, replacement, or any alteration of any process or source which may increase emissions or ambient air concentrations of any contaminant for which federal or state ambient or emissions standards have been established shall be construed as construction or installation or establishment of a new source. In addition every major modification (as defined in WAC 173-403-030) shall be construed as construction or installation or establishment of a new source.
- (3))) "Noncondensibles" means gases and vapors from the digestion and evaporation processes of a mill that are not condensed with the equipment used in those processes.

- (((4))) (3) "Recovery furnace stack" means the stack from which the products of combustion from the recovery furnace are emitted to the ambient air.
- (((5) "Total reduced sulfur, (TRS)" means hydrogen sulfide, merecaptans, dimethyl sulfide, dimethyl disulfide, and any other organic sulfides present, expressed as hydrogen sulfide.))

AMENDATORY SECTION (Amending Order DE 83-13, filed 4/15/83)

WAC 173-405-033 STANDARDS OF PERFORMANCE. ((For kraft mills which commenced construction after September 24, 1976, Title 40, Code of Federal Regulations Part 60, subparts A, and BB and appendix A, B, C and D as promulgated prior to December 1, 1982, is by this reference adopted and incorporated herein with the exception of sections 60.5 (determination of construction or modification) and 60.6 (review of plans). For the purpose of state administration of the federal regulations adopted by reference hereby, the term "administrator" as used therein shall refer to the department of ecology:)) All the provisions of WAC 173-400-115 "Standards of performance for new sources" shall apply to all sources to which this chapter is applicable.

AMENDATORY SECTION (Amending Order DE 83-22, filed 8/26/83)

WAC 173-405-035 EMISSION STANDARDS FOR SOURCES EMITTING HAZARDOUS AIR POLLUTANTS. (((1) The national emissions standards for hazardous air pollutants (NESHAPS) are by this reference adopted and incorporated herein.

- (2) The department, at any time after the effective date of this section, may conduct source tests and require access to records, books, files, and other information specific to the control, recovery, or release of asbestos, beryllium, mercury, or vinyl chloride in order to determine the status of compliance of sources of these contaminants and to carry out its enforcement responsibilities. Source testing, monitoring, and analytical methods for sources of the above-named contaminants shall conform with the requirements of NESHAPS.
- (3) This section shall not apply to any source operating pursuant to a waiver granted by the United States Environmental Protection Agency or an exemption granted by the president of the United States during the effective life of such waiver or exemption.)) All the provisions of WAC 173-400-075 "Emission standards for sources emitting hazardous air pollutants" shall apply to all sources to which this chapter is applicable.

AMENDATORY SECTION (Amending Order DE 83-13, filed 4/15/83)

WAC 173-405-040 EMISSION STANDARDS. In addition to the general applicability of chapters 173-400 and 173-490 WAC to all emission sources; no kraft pulp mill shall cause or permit air contaminant emissions in excess of the limits ((described in this section, as modified by chapter 173-403 WAC if applicable. Further, all kraft pulp mills are required to use reasonably available control technology which may be determined for some mills to be more stringent than the emission limitations of this chapter. In cases where current controls are determined to be less than reasonably available control technology (RACT), the department shall, on a case-by-case basis, define RACT for each source and issue a regulatory order to the mill for installation of RACT. The order will contain a schedule for installation, with intermediate benchmark dates and a final completion date and shall constitute a compliance schedule)) listed below. Specific emission standards listed in this chapter will take precedence over the general emission standards of chapter 173-400 WAC.

- (1) Recovery furnaces.
- (a) The particulate emissions from each recovery furnace stack shall not exceed 0.23 grams of particulate per dry cubic meter at standard conditions (0.10 grains/dscf) corrected to eight percent oxygen.
- (b) The TRS emissions from each recovery furnace stack constructed before January 1, 1970, and for recovery furnaces that have direct contact evaporators, shall not exceed 17.5 ppm corrected to eight percent oxygen for a daily average.
- (c) The TRS emissions from each recovery furnace constructed after January 1, 1970, which does not have a contact evaporator, shall not exceed 5.0 ppm corrected to eight percent oxygen for a daily average.

- (2) Smelt dissolver tank vent. The particulate emissions from smelt dissolver tank vents shall not exceed 0.15 grams per kilogram (0.30 pounds per ton) of solids fired at the associated recovery furnace.
- (3) Lime kilns.
- (a) The particulate emission from each lime kiln stack shall not exceed 0.30 grams of particulate per dry cubic meter (0.13 grains/dscf) at standard conditions corrected to ten percent oxygen.
- (b) The TRS emissions from any lime kiln stack shall not exceed eighty ppm expressed as hydrogen sulfide for more than two consecutive hours in any one day.
- (c) The average daily emission of TRS from any lime kiln stack shall not exceed fifty ppm. After January 1, 1985, TRS emissions from each lime kiln stack shall not exceed twenty ppm corrected to ten percent oxygen for a daily average.
- (4) Other TRS emissions units. Noncondensibles from digesters, multiple-effect evaporators and condensate stripper system shall at all times be treated to reduce the emissions of TRS equal to the reduction achieved by thermal oxidation in a lime kiln. ((After January 1, 1982,)) A backup treatment system or equivalent approved by ((the department)) ecology must be installed to assure continual treatment.
- (5) Other particulate emissions units. The emission of particulates from emissions units other than kraft recovery furnaces, lime kilns, or smelt dissolving tank vents, shall not exceed the following maximums:
- (a) 0.46 grams per dry cubic meter at standard conditions (0.2 grains/dscf) corrected to seven percent oxygen, for units which combust wood and wood by-products to produce steam and which commenced construction prior to January 1, 1983.
- (b) 0.12 grams per dry cubic meter at standard conditions (0.05 grains/dscf) corrected to seven percent oxygen, for units which combust fuel other than wood and wood by-products to produce steam, and which commenced construction after January 1, 1983.
- (c) 0.23 grams per dry cubic meter at standard conditions (0.1 grains/dscf) corrected to seven percent oxygen in the case of combustion units, for units not classified under (a) or (b) of this subsection.
- (6) ((Fugitive emissions. Each kraft mill shall take reasonable precautions to prevent fugitive emissions.
- (7) Masking. No kraft mill shall cause or permit the installation or use of any device, or the use of any means which, without resulting in a reduction in the total amount of air contaminant emitted, conceals an emission of an air contaminant which would otherwise violate any provisions of this chapter.
- (8) Fallout. No kraft mill shall cause or permit the emission of particulate matter from any emissions unit which becomes deposited beyond the property under direct control of the owner or operator of the kraft mill in such quantities or of such character or duration as is, or likely to be, injurious to human health, plant or animal life, or property, or will interfere unreasonably with the use and enjoyment of the property upon which the material is deposited.
- (9) Other contaminants. No kraft mill shall cause or permit the emission of an air contaminant or water droplets including an air contaminant whose emission is not otherwise prohibited by this chapter, in such quantities or of such characteristics or duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interferes with use or enjoyment of property.
- (10))) Opacity. No person shall cause or allow the emission of a plume from any kraft recovery furnace, smelt dissolver tank, or lime kiln, which has an average opacity greater than thirty-five percent for more than six consecutive minutes in any sixty minute period, except as described in WAC 173-405-040((111)) (7).

No person shall cause or allow the emission of a plume, from any emissions unit other than a kraft recovery furnace, smelt dissolver tank, or lime kiln, which has an average opacity greater than twenty percent for more than six consecutive minutes in any sixty minute period, except that these provisions do not apply when the emissions occur due to soot blowing/grate cleaning and the operator can demonstrate that the emissions will not exceed twenty percent opacity for more than fifteen minutes in any eight consecutive hours. The intent of this provision is to permit soot blowing and grate cleaning necessary to the operation of the boiler facility. As such, this practice, except for testing and trouble shooting, is to be scheduled for the same approximate times each day and ((the department)) ecology shall be advised of the schedule.

There shall be no more than one violation notice issued in any sixty minute period.

These provisions (of WAC 173-405-040(6)) shall not apply when the presence of uncombined water is the only reason for the opacity of the plume to exceed the applicable maximum.

- (((111))) (7) Each mill may petition for, and ((the department)) ecology may establish by regulatory order, other opacity limits for a specific kraft recovery furnace or lime kiln, providing:
- (a) Compliance with all other applicable emission limits can be demonstrated; and
- (b) Best practicable operation and maintenance procedures, as approved by ((the department)) ecology, are continuously employed.
- (((12))) (8) Any person electing to apply for exceptions per the provisions of WAC 173-405-040(((11))) (7) shall submit a program acceptable to ((the department of)) ecology. The program shall include the following information: The amount and concentration of suspended particulate material emitted during best practicable operating procedures, opacity recorded at such emission level, the type of equipment and procedures which will be used to demonstrate compliance and the time required for installation of the equipment.
- (((13) The opacity provisions of this chapter shall apply until)) (9) If an application is received by ((the department)) ecology, petitioning for a revised limit as allowed by WAC 173-405-040(((11). After a petition is received, enforcement of the)) (7), existing opacity provisions of this chapter will be ((stayed)) enforced until ((the application is rejected or)) a new limit is established.
- (((14) Odors. No kraft pulping mill shall cause or permit the emission of odors in such quantities or of such duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interferes with the use or enjoyment of property.
- (15))) (10) Operation and maintenance. At all times, including periods of abnormal operation and upset conditions, owners and operators shall, to the extent practicable, maintain and operate any affected facility, including associated air pollution control equipment, in a manner consistent with good air pollution control practice. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to ((the department)) ecology which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.

 $((\frac{(16)}{(11)}))$ (11) SO_2 .

- (a) The emission of sulfur dioxide from any recovery furnace or lime kiln shall not exceed five hundred ppm for an hourly average, corrected to eight percent oxygen for a recovery furnace or to ten percent oxygen for a lime kiln.
- (b) The emission of sulfur dioxide from any emissions unit other than a recovery furnace or lime kiln shall not exceed one thousand ppm for an hourly average, corrected to seven percent oxygen for combustion units.
- (((17))) (12) Source testing. ((In order)) To demonstrate compliance with this chapter, ((the department may require that a test be made of any emissions unit using procedures contained in Source Test Manual Procedures for Compliance Testing, state of Washington, department of ecology, on file at the department. The operator of a source may be required to provide the necessary platform and sampling ports for the department personnel to perform a test of an emissions unit. The department shall be allowed to obtain a sample from any emissions unit. The operator of the source shall be given an opportunity to observe the sampling and to obtain a sample at the same time)) refer to WAC 173-400-105.

AMENDATORY SECTION (Amending Order 87-50, filed 12/16/87)

WAC 173-405-045 CREDITABLE STACK HEIGHT AND DISPERSION TECHNIQUES. The conditions of WAC (($\frac{173-403-141}{173-403-145}$)) $\frac{173-400-200}{173-400-200}$ shall apply to all sources covered by this chapter.

AMENDATORY SECTION (Amending Order DE 83-13, filed 4/15/83)

WAC 173-405-061 MORE RESTRICTIVE EMISSION STANDARDS. ((The department)) Ecology may establish more restrictive emission standards for new mills or for mills expanding existing facilities pursuant to WAC ((173-403-050)) 173-400-110.

WAC 173-405-072 MONITORING REQUIREMENTS. Each ((kraft)) mill shall conduct routine monitoring of emissions in accordance with a program that has been approved by ((the department))

- ecology. Results of the monitoring shall be reported within ((thirty)) fifteen days of the end of each calendar month and shall include data as follows:
- (1) Particulate((7)): The results of particulate measurements made on each source during the month.
 - (2) TRS((-)):
- (a) The average TRS concentration expressed in units of the standard for each recovery furnace and lime kiln stack.
- (b) The date, time and concentration of TRS for each TRS emissions violation and the total numbers of hours that exceed the standard.
 - (3) Opacity or other continuous monitor((-)):
 - (a) The date and time of opacity in excess of the standard.
- (b) If equipment for continuous monitoring of opacity is not available, continuous monitoring of operating parameters may be required by a regulatory order as an alternate. If an alternate is approved, the date and time of each occurrence in excess of the regulatory order must be reported.
- (4) Production((-)): The average daily production of air-dried unbleached pulp.
- (5) Other data((:)): Each kraft mill shall furnish, upon request of ((the department)) ecology, such other pertinent data ((as the department may require)) required to evaluate the mill's emissions or emission control program.

AMENDATORY SECTION (Amending Order DE 83-13, filed 4/15/83)

WAC 173-405-077 REPORT OF STARTUP, SHUTDOWN, BREAKDOWN OR UPSET CONDITIONS. ((If a startup; shutdown, breakdown or upset condition occurs which could result in an emission violation or a violation of an ambient air quality standard, the owner or operator of the source shall take the following actions as applicable:

(1) For a planned condition, such as a startup or shutdown, the condition shall be reported to the department, or its delegated authority, in advance of its occurrence.

(2) For an unplanned condition, such as a breakdown or upset, the condition shall be reported to the department, or its delegated authority as soon as possible:

Upon request of the department or its delegated authority, the owner or operator of the source shall submit a full written report including the known causes, the corrective actions taken, and the preventive measures to be taken to minimize or eliminate the change of recurrence.

Compliance with the requirements of WAC 173-405-077, does not relieve the owner or operator of the source from the responsibility to maintain continuous compliance with all the requirements of chapter 173-405 WAC nor from the resulting liabilities for failure to comply.)) To determine compliance with this chapter, refer to WAC 173-400-105(5).

AMENDATORY SECTION (Amending Order 88-39, filed 1/3/89)

WAC 173-405-078 EMISSION INVENTORY. ((The owner or operator of any kraft pulp mill shall submit an inventory of emissions from the source each year upon a form and according to instructions received from the department of ecology. The inventory may include stack and fugitive emissions of particulate matter, PM-10, sulfur dioxide, carbon monoxide, volatile organic compounds, TRS, and other contaminants, and shall be submitted when required no later than one hundred five days after the end of the calendar year. The inventory shall include total emissions for the year in tons per year and an estimate of the percentage of the total emitted each quarter. An estimate shall be made of the one hour and twenty-four hour emissions while operating at capacity. The report shall include the average sulfur content of any fossil fuel used which will result in emissions of more than twenty-five tons per year of sulfur dioxide.)) To determine compliance with this chapter, refer to WAC 173-400-105(1).

AMENDATORY SECTION (Amending Order DE 83-13, filed 4/15/83)

WAC 173-405-086 NEW SOURCE REVIEW (NSR). ((Construction shall not commence on any new source until a notice of construction has been approved by the department pursuant to WAC 173-403-050. The owner or operator of any source shall notify the department prior to replacement of air pollution control equipment or process

equipment other than replacement for routine maintenance and repair:
The department may determine that a notice of construction is required.)) The conditions of WAC 173-400-110 shall apply to all new and modified sources covered by this chapter.

AMENDATORY SECTION (Amending Order 87-50, filed 12/16/87)

WAC 173-405-087 PREVENTION OF SIGNIFICANT DETE-RIORATION (PSD). The conditions of WAC ((173-403-080)) 173-400-141 shall apply to all new ((and modified)) major sources and major modifications covered by this chapter.

AMENDATORY SECTION (Amending Order DE 76-35, filed 12/28/76)

WAC 173-405-091 SPECIAL STUDIES. ((The department)) Ecology may require such additional special studies relevant to process emissions and establish completion dates as it determines necessary.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 173-405-041 EMISSION REQUIREMENTS OF PRIOR JURISDICTIONS.

AMENDATORY SECTION (Amending Order DE 80-16, filed 8/20/80)

WAC 173-410-012 STATEMENT OF PURPOSE. These rules are enacted under the provisions of the Washington Clean Air Act as amended (RCW 70.94.395) to:

(1) Assume state jurisdiction over emissions from sulfite pulping mills ((in order)) to provide for the systematic ((reduction and)) control of air pollution in ((the sulfite pulping)) this industry and for the proper development of the state's natural resources; and

(2) Establish ((standards deemed to be)) technically feasible and reasonably attainable standards and revise such standards as new information and better technology are developed and become available.

AMENDATORY SECTION (Amending Order 84-50, filed 3/6/85)

WAC 173-410-021 DEFINITIONS. The definitions of terms contained in chapter 173-400 WAC are incorporated into this chapter by reference. Unless a different meaning is clearly required by context, the following words and phrases as used in this chapter, shall have the following meanings((; general terms common with other chapters as defined in chapter 173-403 WAC, and terms specific to sulfite pulping mills as defined below.)):

- (1) "Acid plant" means the facility in which the cooking liquor is either manufactured or fortified when not associated with a recovery
- (2) "Average daily emission" means total weight of an air contaminant emitted in each month, divided by the number of days of production that month.
- (3) "Average daily production" means air dried tons of unbleached pulp produced in a month, divided by the number of days of production in that month.
- (4) "Blow system" includes the storage chest, tank or pit to which the digester pulp is discharged following the cook.
- (5) (("New source" means a source which commences construction after January 1972. Addition to, enlargement, modification, replacement, or any alteration of any process or source which may increase emissions or ambient air concentrations of any contaminant for which federal or state ambient or emissions standards have been establishment of shall be construed as construction or installation or establishment of a new source. In addition every major modification (as defined in WAC 173-403-030) shall be construed as construction or installation or establishment of a new source.
- (6))) "Recovery system" means the process by which all or part of the cooking chemicals may be recovered, and cooking liquor regenerated from spent cooking liquor, including evaporation, combustion, dissolving, fortification, storage facilities, and emission control equipment associated with the recovery cycle.
- (((77))) (6) "Sulfite pulping mill" means any manufacturing facility which uses a cooking liquor consisting of sulfurous acid, a sulfite or bisulfite salt alone or in any combination, with or without additional

mechanical refining or delignification to produce pulp, pulp products or cellulose from wood fibers. For the purposes of this regulation "sulfite pulping mill" is equivalent to "source."

(((8) "Total reduced sulfur (TRS)" means hydrogen sulfide, mercaptans, dimethyl sulfide, dimethyl disulfide, and other organic sulfides present, expressed as hydrogen sulfide.))

AMENDATORY SECTION (Amending Order DE 83-22, filed 8/26/83)

WAC 173-410-035 EMISSION STANDARDS FOR SOURCES EMITTING HAZARDOUS AIR POLLUTANTS. (((1) The national emissions standards for hazardous air pollutants (NESHAPS) are by this reference adopted and incorporated herein:

(2) The department, at any time after the effective date of this section, may conduct source tests and require access to records, books; files, and other information specific to the control, recovery, or release of asbestos, beryllium, mercury, or vinyl chloride in order to determine the status of compliance of sources of these contaminants and to carry out its enforcement responsibilities. Source testing, monitoring, and analytical methods for sources of the above-named contaminants shall conform with the requirements of NESHAPS.

(3) This section shall not apply to any source operating pursuant to a waiver granted by the United States Environmental Protection Agency or an exemption granted by the president of the United States during the effective life of such waiver or exemption.)) All the provisions of WAC 173-400-075 "Emission standards for sources emitting hazardous air pollutants" shall apply to all sources to which this chapter is applicable.

AMENDATORY SECTION (Amending Order DE 83-13, filed 4/15/83)

WAC 173-410-040 EMISSION STANDARDS. In addition to the general applicability of chapters 173-400 and 173-490 WAC to all emission sources; no sulfite pulping mill shall cause or permit air contaminant emissions in excess of the limits listed below. ((All sulfite pulping mills are required to meet the emission standards of this chapter, as modified by chapter 173-403 WAC if applicable. Further, all point sources are required to use reasonably available control technology which may be determined for some sources or source categories to be more stringent than the emission limits of this chapter. In cases where current controls are determined to be less than reasonably available control technology (RACT), the department shall, on a caseby-case basis, define RACT for each source or source category and issue a regulatory order to the operator of the source defining RACT: The order will contain a schedule for installation, with intermediate benchmark dates, and a final completion date and shall constitute a compliance schedule.)) Specific emission standards listed in this chapter will take precedence over the general emission standards of chapter 173-400 WAC.

- (1) Sulfur dioxide.
- (a) The total average daily emissions from a sulfite pulping mill, or a portion of a sulfite pulping mill which practices incineration of the spent sulfite liquor, shall not exceed ten grams of sulfur dioxide per kilogram (twenty pounds per ton) of air dried, unbleached pulp produced.
- (b) The total average daily emissions from a sulfite pulping mill, or a portion of a sulfite pulping mill that does not incinerate the spent sulfite liquor, shall not exceed two grams of sulfur dioxide per kilogram (four pounds per ton) of air dried, unbleached pulp produced.
- (c) The blow system emissions shall not exceed 0.1 grams of sulfur dioxide per minute, on a fifteen minute average, per kilogram (0.2 pounds per ton) of air dried, unbleached pulp discharged from the digester.
- (d) Emissions from the recovery system and acid plant shall not exceed 800 ppm of sulfur dioxide for any hourly average.
- (e) Emissions from recovery systems constructed after January 24, 1972, shall not exceed 300 ppm of sulfur dioxide for any hourly average.
- (f) Emissions from any emissions unit, other than a recovery system, a blow system or an acid plant, shall not exceed 1000 ppm of sulfur dioxide, corrected to seven percent oxygen in the case of combustion unit, for any hourly average.
 - (2) Particulate.

- (a) Emissions of particulate from recovery systems constructed before January 24, 1972, shall not exceed 0.23 grams per dry cubic meter of exhaust at standard conditions (0.10 grains/dscf) corrected to eight percent oxygen.
- (b) Emissions of particulate matter from recovery systems constructed after January 24, 1972, shall not exceed 0.14 grams per dry cubic meter of exhaust at standard conditions (0.06 grains/dscf) corrected to eight percent oxygen.
- (c) The emission of particulates from emissions units other than acid plants or recovery systems shall not exceed the following maximums:
- (i) 0.46 grams per dry cubic meter at standard conditions (0.2 grains/dscf) corrected to seven percent oxygen, for units which combust wood to produce steam and which commenced construction prior to January 1, 1983.
- (ii) 0.12 grams per dry cubic meter at standard conditions (0.05 grains/dscf) corrected to seven percent oxygen, for units which combust fuel other than wood to produce steam, and which commenced construction after January 1, 1983.
- (iii) 0.23 grams per dry cubic meter at standard conditions (0.1 grains/dscf) corrected to seven percent oxygen in the case of combustion units, for units not classified under ((subsections)) (c) (i) or (ii) of this ((section)) subsection.
- (3) ((Each sulfite mill shall take reasonable precautions to prevent fugitive emissions from becoming airborne and if located in a nonattainment area shall be required to use reasonably available control technology (RACT) to control fugitive emissions of nonattainment contaminants.
- (4) Masking. No sulfite mill shall cause or permit the installation or use of any device, or the use of any means which, without resulting in a reduction in the total amount of air contaminant emitted, conceals an emission of an air contaminant which would otherwise violate any provisions of this chapter.
- (5) Fallout. No sulfite mill shall cause or permit the emission of particulate matter to be deposited beyond the property under direct control of the owner or operator of the sulfite mill in sufficient quantity to interfere unreasonably with the use and enjoyment of the property upon which the material was deposited.
- (6) Other contaminants. No sulfite mill shall cause or permit the emission of an air contaminant or water droplets, including an air contaminant whose emission is not otherwise prohibited by this chapter, in such quantities or of such characteristics or duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interferes with enjoyment of life or property.
- (7))) Opacity. No person shall cause or allow the emission of a plume from a recovery system or acid plant which has an average opacity greater than thirty-five percent, for more than six consecutive minutes in any sixty minute period, except as ((described in WAC 173-410-040(9))) allowed per RCW 70.94.331 (2)(c).
- ((No person shall cause or allow the emissions of a plume, from any emissions unit other than a recovery system or an acid plant, which has an average opacity greater than twenty percent for more than six consecutive minutes in any sixty-minute period, except that these provisions do not apply when the emissions occur due to soot blowing/grate cleaning and the operator can demonstrate that the emissions will not exceed twenty percent opacity for more than fifteen minutes in any eight consecutive hours. The intent of this provision is to permit soot blowing and grate cleaning necessary to the operation of the boiler facility. As such, this practice, except for testing and trouble shooting, is to be scheduled for the same approximate times each day and the department be advised of the schedule. There shall be no more than one violation for any sixty-minute period.
- (8) The provisions of WAC 173-410-040(7) shall not apply when the presence of uncombined water is the only reason for the opacity of the plume to exceed the applicable maximum.
- (9) Each mill may petition for, and the department may establish by regulatory order, other opacity limits for a specific recovery system or acid plant providing.
- (a) Compliance with all other applicable emission limits can be demonstrated; and
- (b) Best practicable operation and maintenance procedures, as approved by the department, are continuously employed.
- (10) Any person electing to apply for exceptions per the provisions of WAC 173-410-040(9) shall submit a program acceptable to the department. The program shall include the following information: The amount and concentration of suspended particulate material emitted during best practicable operating procedures, opacity recorded at such emission level, the type of equipment and procedures which will be

- used to demonstrate compliance and the time required for installation of the equipment.
- (11) The opacity provisions of this chapter shall apply until an application is received by the department petitioning for a revised limit as allowed by WAC 173-410-040(9).
- After a petition is received, enforcement of the opacity provisions will be stayed until the application is rejected or a new limit is established.
- (12) Odors. No sulfite pulping mill shall cause or permit the emission of odors in such quantities of or such characteristics or duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interfere with enjoyment of life and property.
- (13)) (4) Operation and maintenance. At all times, including periods of abnormal operations and upset conditions, owners and operators shall, to the extent practicable, maintain and operate any affected facility, including associated air pollution control equipment, in a manner consistent with good air pollution control practice. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to ((the department)) ecology which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.
- (((14))) (5) No recovery system shall emit total reduced sulfur (TRS) gases in excess of 17.5 ppm for a daily average.
- (((15))) (6) More restrictive limits. ((Not withstanding the specific emission limits set forth in this chapter, the department may, after notice and hearing, establish more restrictive emission limits if the department has)) Ecology may set more restrictive emissions limits than the specific limits set in this chapter (after public involvement and hearing), if there is reason to believe that the emission(s) from ((the)) a source is a cause of public nuisance or a cause of violation of ambient air quality standards. The source shall, within ninety days from notification of ((such occurrence)) the more restrictive limits, achieve operation that will prevent further recurrence of the nuisance or violation.
- (((16))) (7) Source testing. ((In order)) To demonstrate compliance with this chapter, ((the department may require that a test be made of the source using procedures contained in Source Test Manual Procedures for Compliance Testing, state of Washington, department of ecology, on file at the department. The operator of a source may be required to provide the necessary platform and sampling ports for the department personnel to perform a test of the source. The department shall be allowed to obtain a sample from any source. The operator of the source shall be given an opportunity to observe the sampling and to obtain a sample at the same time)) refer to WAC 173-400-105.

AMENDATORY SECTION (Amending Order 87-50, filed 12/16/87)

WAC 173-410-045 CREDITABLE STACK HEIGHT AND DISPERSION TECHNIQUES. The conditions of WAC ((173-403-141 and 173-403-145)) 173-400-200 shall apply to all sources covered by this chapter.

AMENDATORY SECTION (Amending Order DE 80-16, filed 8/20/80)

- WAC 173-410-062 MONITORING REQUIREMENTS. (((++))) Each mill shall conduct routine monitoring of emissions in accordance with a program that has been approved by ((the department)) ecology. Results of monitoring shall be reported within ((thirty)) fifteen days of the end of each calendar month and shall include data as follows:
 - (((a))) (1) For the recovery system and acid plant:
- (((i))) (a) The average daily emissions of sulfur dioxide expressed as grams SO_2 per kilogram of air dried, unbleached pulp produced and the kilograms of SO_2 per day.
 - (((ii))) (b) Daily average concentration of sulfur dioxide.
- (((iii))) (c) The date, time and concentration for each sulfur dioxide emission violation and the total number of hours that exceed the standard.
- $((\frac{(iv)}{iv}))$ (d) The results of particulate tests conducted during the month.
 - ((b)) (2) For the blow system((;)):
- (a) The grams of sulfur dioxide per minute, on a fifteen minute average, per kilogram of air dried, unbleached pulp discharged from the digester.

- (((c))) (b) The average daily production of air dried, unbleached pulp.
- (((2))) (3) Each mill shall furnish, upon request of ((the department)) ecology, such other pertinent data ((as the department may require)) required to evaluate the mill's emission control program.

(((23))) (4) All measurements shall be made in accordance with ((techniques approved by the department)) WAC 173-400-105.

(((4))) (5) Each mill shall be required to establish a program approved by ((the department)) ecology for continuous opacity monitoring to demonstrate compliance with WAC 173-410-040(((7))(3) and to report the results to ((the department)) ecology in a format and on a schedule set by regulatory order. If equipment for continuous monitoring of opacity is not available, continuous monitoring of operating parameters may be required as an alternate until continuous opacity monitoring equipment is available.

AMENDATORY SECTION (Amending Order DE 83-13, filed 4/15/83)

WAC 173-410-067 REPORT OF STARTUP, SHUTDOWN, BREAKDOWN OR UPSET CONDITIONS. ((If a startup, shutdown, breakdown or upset condition occurs which could result in an emission violation or a violation of an ambient air quality standard, the owner or operator of the source shall take the following actions as applicable:

(1) For a planned condition, such as a startup or shutdown, the condition shall be reported to the department, or its delegated authority; in advance of its occurrence.

(2) For an unplanned condition, such as a breakdown or upset, the condition shall be reported to the department, or its delegated authority as soon as possible.

Upon request of the department or its delegated authority, the owner or operator of the source shall submit a full written report including the known causes, the corrective actions taken, and the preventive measures to be taken to minimize or eliminate the chance of recurrence.

Compliance with the requirements of WAC 173-410-067, does not relieve the owner or operator of the source from the responsibility to maintain continuous compliance with all the requirements of chapter 173-410 WAC nor from the resulting liabilities for failure to comply:)) To demonstrate compliance with this chapter, refer to WAC 173-400-105(5).

AMENDATORY SECTION (Amending Order 88-39, filed 1/3/89)

WAC 173-410-071 EMISSION INVENTORY. ((The owner or operator of any sulfite pulping mill shall submit an inventory of emissions from the source each year upon a form and according to instructions received from the department of ecology. The inventory may include stack and fugitive emissions of particulate matter, PM-10, sulfine dioxide, carbon monoxide, volatile organic compounds, TRS, and other contaminants, and shall be submitted when required no later than one hundred five days after the end of the calendar year. The inventory shall include total emissions for the year in tons per year and an estimate of the percentage of the total emitted each quarter. An estimate shall be made of the one hour and twenty-four hour emissions while operating at capacity. The report shall include the average sulfur content of any fossil fuel which will result in emissions of more than twenty-five tons per year of sulfur dioxide.)) To demonstrate compliance with this chapter, refer to WAC 173-400-105(1).

AMENDATORY SECTION (Amending Order DE 83-13, filed 4/15/83)

WAC 173-410-086 NEW SOURCE REVIEW (NSR). ((Construction shall not commence on any new source until a notice of construction has been approved by the department pursuant to WAC 173-403-050. The owner or operator of any source shall notify the department prior to replacement of air pollution control equipment or process equipment other than replacement for routine maintenance and repair. The department may determine that a notice of construction is required:)) The conditions of WAC 173-400-110 shall apply to all new and modified sources covered by this chapter.

AMENDATORY SECTION (Amending Order 87-50, filed 12/16/87)

WAC 173-410-087 PREVENTION OF SIGNIFICANT DETERIORATION (PSD). The conditions of WAC ((173-403-080)) 173-

400-141 shall apply to all new ((and modified)) major sources and major modifications covered by this chapter.

NEW SECTION

WAC 173-410-100 SPECIAL STUDIES. Ecology may require such additional special studies relevant to process emissions and establish completion dates as it finds necessary.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 173-410-042 EMISSION REQUIREMENTS OF PRIOR JURISDICTIONS.

Chapter 173-415 WAC PRIMARY ALUMINUM PLANTS

WAC

173-415-010 Statement of purpose.

173-415-020 Definitions.

173-415-030 Emission standards.

173-415-040 Standards of performance.

173-415-045 Creditable stack height and dispersion techniques.

173-415-050 New source review (NSR).

173-415-051 Prevention of significant deterioration (PSD).

173-415-060 Monitoring and reporting.

173-415-070 Report of startup, shutdown, breakdown or upset conditions.

173-415-080 Emission inventory.

AMENDATORY SECTION (Amending Order DE 80-17, filed 8/14/80)

WAC 173-415-010 STATEMENT OF PURPOSE. These rules are enacted under the provisions of ((the 1969 amendments to)) the Washington Clean Air Act as amended (RCW 70.94.395) to:

(1) Assume state jurisdiction over emissions from primary aluminum reduction plants ((in order)) to provide for the systematic ((reduction and)) control of air pollution in ((the primary aluminum reduction)) this industry and for the proper development of the state's natural resources; and

(2) Establish ((standards deemed to be)) technically feasible and reasonably attainable standards and revise such standards as new information and better technology are developed and become available.

AMENDATORY SECTION (Amending Order 84-50, filed 3/6/85)

WAC 173-415-020 DEFINITIONS. The definitions of terms contained in chapter 173-400 WAC are incorporated into this chapter by reference. Unless a different meaning is clearly required by context, the following words and phrases as used in this chapter, shall have the following meanings((, general terms common with other chapters as defined in chapter 173-403 WAC, and terms specific to primary aluminum mills as defined below.)):

- (1) "Fluorides" means compounds of the element fluorine.
- (2) "Forage" means grasses, pasture and other vegetation that is normally consumed or is intended to be consumed by livestock.
- (3) (("New source" means a source which commences construction after June 17, 1970. Addition to, enlargement, modification, replacement, or any alteration of any process or source which may increase emissions or ambient air concentrations of any contaminant for which federal or state ambient or emissions standards have been established shall be construed as construction or installation or establishment of a new source. In addition every major modification (as defined in WAC 173-403-030) shall be construed as construction or installation or establishment of a new source:
- (4))) "Primary aluminum plant" or "primary aluminum reduction plant" or "primary aluminum mill" means a plant which produces aluminum metal from aluminum oxide (alumina). For the purposes of this regulation "primary aluminum plant" is equivalent to "source."
- (((5))) (4) "Potline primary emission control system" means the equipment and procedures designed to collect and remove contaminants from the exhaust gases which are captured at the pot.

AMENDATORY SECTION (Amending Order DE 83-13, filed 4/15/83)

WAC 173-415-030 EMISSION STANDARDS. (((++))) In addition to the general applicability of chapters 173-400 and 173-490 WAC to all emission sources; all primary aluminum plants are required to meet the emission standards of this chapter((, as modified by chapter 173-403 WAC if applicable. Further, all primary aluminum plants are required to use reasonably available control technology which may be determined for some primary aluminum plants to be more stringent than the emission limitations of this chapter. In cases where current controls are determined to be less than reasonably available control technology (RACT), the department shall, on a caseby-case basis, define RACT for each plant and issue a regulatory order to the primary aluminum plant for installation of RACT. The order will contain a schedule for installation, with intermediate benchmark dates and a final completion date and shall constitute a compliance schedule)). Specific emissions standards listed in this chapter will take precedence over the general emission standards of chapter 173-400 WAC.

(((2))) (1) Fluoride.

(a) The emission of gaseous ((fluorides)) and particulate fluorides for all emissions units within a primary aluminum plant shall be restricted so that the plant's emissions will not cause ambient air and forage standards for fluorides established by chapter ((18-48)) 173-481 WAC ((are not)) to be exceeded outside the property controlled

by the aluminum plant owner(s) or operator(s).

- (b) ((By January 1, 1984, the)) Each potline primary emission control system ((for each potline)) shall be designed so that the control of fluoride emissions will be equivalent to a total fluoride collection efficiency of: (i) Eighty percent for vertical stud soderberg and side worked prebake pots, (ii) eighty-five percent for horizontal stud soderberg pots, and (iii) ninety-five percent for center worked prebake pots ((and)). A primary emission control system with a design removal efficiency of at least ninety-five percent of the fluoride collected is required. ((A potline near the end of its useful life and scheduled for replacement or shutdown in a reasonable time period may not be required to retrofit provided ambient fluoride standards are being met.
- (3)) (2) Particulate. The total emission of particulate matter to the atmosphere from the reduction process (potlines) shall be reduced to the lowest level consistent with reasonably available control technology (RACT) for primary aluminum plants((, but in no case shall)). The emission of solid particulate shall not exceed 7.5 grams per kilogram (fifteen pounds per ton) of aluminum produced on a daily basis. ((Compliance shall be determined by measurement methods contained in the Source Test Manual - Procedures for Compliance Testing on file with the department of ecology
- (4))) (3) Visible emissions. Visible emissions from any emissions unit in a primary aluminum plant shall not exceed an average twenty percent opacity for more than six consecutive minutes in any sixty minute period. This provision shall not apply:
- (a) When the presence of uncombined water is the only reason for the opacity of the plume to exceed twenty percent; or
- When an alternate opacity limit has been established under RCW 70.94.331(2)(c).
- (((5) Fallout. No primary aluminum plant shall cause or permit the emission of particulate matter to be deposited beyond the property under direct control of the owner or operator of the plant in such quantity or of such character or duration as is or is likely to be injurious to human health, plant or animal life, or property or will interfere unreasonably with the use and enjoyment of the property upon which the material is deposited.
- (6) Other contaminants. No primary aluminum plant shall cause or permit the emission of any air contaminant or water droplets, including any air contaminant whose emission is not otherwise regulated by this chapter, as is or is likely to be injurious to human health, plant or animal life, or property or which unreasonably interferes with enjoyment of life or property.
- (7))) (4) Fugitive emissions. Each primary aluminum plant shall use ((reasonably available control technology)) RACT to prevent fugitive emissions.
 - (((8))) <u>(5)</u> Sulfur dioxide.
- (a) Total emissions of sulfur dioxide from all emissions units shall not exceed thirty grams of sulfur dioxide per kilogram of aluminum produced on a monthly average (sixty pounds per ton). Those primary aluminum plants which were in excess of the above sulfur dioxide limit on January 1, 1978, will be allowed to emit at the January 1, 1978,

level of emissions provided that the owners or operators did demonstrate to ((the department)) ecology by July 1, 1981, by use of modeling and ambient measurements, that the emissions will not cause the ambient standard to be exceeded, and that the limits are placed in a regulatory order(s).

(b) In no case shall any plant cause or permit the emission of a gas containing sulfur dioxide in excess of one thousand parts per million corrected to dry standard conditions for an hourly average. ((A lower limit may be established by an order defining RACT for a specific emissions unit or process.

(9) Odors. Any owner or operator of a primary aluminum plant who shall cause or allow the generation of any odor from any emissions unit which may unreasonably interfere with any person's use and enjoyment of his property must use recognized good practice and procedure to re-

duce these odors to a reasonable minimum:

(10)) (6) Operation and maintenance. At all times, including periods of abnormal operation and upset, owners and operators shall, to the extent practicable, maintain an affected facility, and operate and maintain air pollution control equipment associated with such facility in a manner consistent with good air pollution control practice. A plant may elect to establish a program, subject to the approval of ((the department)) ecology, for monitoring each potroom in order to demonstrate good operation and maintenance.

 $((\frac{11}{11}))$ To demonstrate compliance with this chapter, ((the department may require that a test be made of the plant using procedures contained in Source Test Manual - Procedures for Compliance Testing, state of Washington, department of ecology, on file at the department. The operator of the plant may be required to provide the necessary platform and sampling ports for the department personnel to perform a test of the emissions unit. The department shall be allowed to obtain a sample from any emissions unit. The operator of the plant shall be given an opportunity to observe the sampling and to obtain a sample at the same time)) refer to WAC 173-400-105.

AMENDATORY SECTION (Amending Order DE 82-21, filed 7/27/82)

WAC 173-415-040 STANDARDS OF PERFORMANCE. ((For primary aluminum plants which commenced construction after September 24, 1976, Title 40, the Code of Federal Regulations, Part 60, subparts A and S and appendix A, B, C and D (standards of performance for new stationary sources) as promulgated prior to July 1, 1982, is by this reference adopted and incorporated herein with the exception of sections 60.5 (determination of construction or modification) and 60.6 (review of plans): For the purpose of state administration of the federal regulations adopted by reference hereby, the term "administrator" as used therein shall refer to the department of ecology:)) All the provisions of WAC 173-400-115 "Standards of performance for new sources" shall apply to all sources to which this chapter is applicable.

AMENDATORY SECTION (Amending Order 87-50, filed 12/16/87)

WAC 173-415-045 CREDITABLE STACK HEIGHT AND DISPERSION TECHNIQUES. The conditions of WAC ((173-403-141 and 173-403-145)) 173-400-200 shall apply to all sources covered by this chapter.

AMENDATORY SECTION (Amending Order DE 83-13, filed 4/15/83)

WAC 173-415-050 NEW SOURCE REVIEW (NSR). ((Construction shall not commence on any new source until a notice of construction has been approved by the department pursuant to WAC 173-403-050. This owner or operator of any source shall notify the department prior to replacement of air pollution control equipment or process equipment other than replacement for routine maintenance and repair. The department may determine that a notice of construction is quired.)) The conditions of WAC 173-400-110 shall apply to all new and modified sources covered by this chapter.

AMENDATORY SECTION (Amending Order 87-50, filed 12/16/87)

WAC 173-415-051 PREVENTION OF SIGNIFICANT DETE-RIORATION (PSD). The ((conditions)) requirements of WAC ((173-403-080)) 173-400-141 shall apply to all new ((and modified sources covered)) major sources and major modifications covered by this chapter.

AMENDATORY SECTION (Amending Order DE 80-17, filed 8/14/80)

WAC 173-415-060 MONITORING AND REPORTING. (1) Each primary aluminum plant shall conduct routine monitoring of emissions, ambient air, and forage in accordance with a program that has been approved by ((the department)) ecology. Results of monitoring shall be reported within thirty days of the end of each calendar month and shall include data as follows:

- (a) Ambient air: Twenty-four hour concentrations of gaseous fluoride in the ambient air expressed in micrograms of hydrogen fluoride per cubic meter of ambient air.
- (b) Forage: Concentrations of fluoride in forage expressed in parts per million of fluoride on a dried weight basis.
- (c) Particulate emissions: Results of all emission sampling conducted during the month for particulates, expressed in grains per standard dry cubic foot, in pounds per day, and in pounds per ton of aluminum produced. The method of calculating pounds per ton shall be as specified in the approved monitoring programs. Particulate data shall be reported as total particulates and percentage of fluoride ion contained therein.

Compliance with WAC 173-415-030(((3))) (2) shall be determined by measurements of emissions from the potline primary control system plus measurements of emissions from the roof monitor.

- (d) Fluoride emissions: Results of all sampling conducted during the month for fluoride emissions. All results shall be expressed as hydrogen fluoride in parts per million on a volume basis and pounds per day of hydrogen fluoride.
- (e) Other emission and ambient air data as specified in the approved monitoring program.
- (2) Other data: For ecology to evaluate a plant's emissions or emission control program, each primary aluminum plant shall furnish((; upon request of the department, such)) other data ((as the department may require to evaluate the plant's emissions or emission control program)) requested by ecology.
- (3) Change in raw materials or fuel: Any change or series of changes in raw material or fuel which results in a cumulative increase in emissions of sulfur dioxide of five hundred tons per year or more over that stated in the 1979 inventory required by WAC 173-415-080 shall require the submittal of sufficient information to ((the department to determine)) ecology so that the effect ((of the increase)) upon ambient concentrations of sulfur dioxide can be determined. ((The department)) Ecology may issue regulatory orders requiring controls to reduce the effect of such increases.

AMENDATORY SECTION (Amending Order DE 83-13, filed 4/15/83)

WAC 173-415-070 REPORT OF STARTUP, SHUTDOWN, BREAKDOWN OR UPSET CONDITIONS. ((If a startup, shutdown, breakdown or upset condition occurs which could result in an emission violation or a violation of an ambient air quality standard, the owner or operator of the source shall take the following actions as applicable:

(1) For a planned condition, such as a startup or shutdown, the condition shall be reported to the department, or its delegated authority, in advance of its occurrence.

(2) For an unplanned condition, such as a breakdown or upset, the condition shall be reported to the department, or its delegated authority as soon as possible.

Upon request of the department or its delegated authority, the owner or operator of the source shall submit a full written report including the known causes, the corrective actions taken, and the preventive measures to be taken to minimize or eliminate the chance of recurrence.

Compliance with the requirements of WAC 173-415-070, does not relieve the owner or operator of the source from the responsibility to maintain continuous compliance with all the requirements of chapter 173-415 WAC nor from the resulting liabilities for failure to comply.)) To demonstrate compliance with this chapter, refer to WAC 173-400-105(5).

AMENDATORY SECTION (Amending Order 88-39, filed 1/3/89)

WAC 173-415-080 EMISSION INVENTORY. ((The owner or operator of any primary aluminum plant shall submit an inventory of emissions from the source each year upon a form and according to instructions received from the department of ecology. The inventory may include stack and fugitive emissions of particulate matter, PM-10, sulfur dioxide, carbon monoxide, fluorides, volatile organic compounds, and other contaminants, and shall be submitted when required no later than one hundred five days after the end of the calendar year. The inventory shall include total emissions for the year in tons per year and an estimate of the percentage of the total emitted each quarter. An estimate shall be made of the one hour and twenty-four hour emissions while operating at capacity. The report shall include the average sulfur content of any fossil fuel or raw-material used which will result in emissions of more than twenty-five tons per year of sulfur dioxide.)) To demonstrate compliance with this chapter, refer to WAC 173-400-<u>105(1).</u>

REPEALER

The following section of the Washington Administrative Code is renealed:

WAC 173-415-041 EMISSION REQUIREMENTS OF PRIOR JURISDICTIONS.

AMENDATORY SECTION (Amending Order DE 80-18, filed 8/20/80)

WAC 173-490-010 POLICY AND PURPOSE. ((The purpose of this chapter is to establish control requirements for sources emitting volatile organic compounds.)) (1) It is the policy of the department of ecology (ecology) under the authority vested in it by chapter 43.21A RCW to provide for the systematic control of air pollution from air contaminant sources and for the proper development of the state's natural resources.

(2) It is the purpose of this chapter to establish technically feasible and reasonably attainable standards for sources emitting volatile organic compounds (VOCs) and revise such standards as new information and better technology are developed and become available.

AMENDATORY SECTION (Amending Order DE 82-22, filed 7/27/82)

WAC 173-490-020 DEFINITIONS. The ((specific)) definitions of terms contained in chapter 173-400 WAC are by this reference incorporated into this chapter((, and all words and phrases there defined shall, when used in this chapter, carry the meanings set forth in chapter 173-400 WAC)). Unless a different meaning is ((indicated)) clearly required by context, the following words and phrases, as used in this chapter, shall have the following meanings:

(1) "Bottom loading" means the filling of a tank through a ((submerged fill)) line entering the bottom of the tank.

(2) "Bulk gasoline plant" means a gasoline storage and transfer facility that receives more than ninety percent of its annual gasoline throughput by transport tank, and reloads gasoline into transport tanks.

(3) "Class II hardboard paneling finish" means finishes which meet the specifications of Voluntary Product Standard PS-59-73 as approved by the American National Standards Institute.

- (4) "Closed refinery system" means a system that will process or dispose of those VOCs collected from another system. The mass quantity of collected VOCs emitted to the ambient air from the closed refinery system shall ((by comparison)) not exceed that required for a disposal system.
- (5) "Condensate" means hydrocarbon liquid separated from ((natural)) a gas stream which condenses due to changes in the temperature or pressure and remains liquid at standard conditions.
- (6) "Condenser" means a device for cooling a gas stream to a temperature where specific ((volatile organic compounds)) VOCs become liquid and are removed.
- (7) "Control system" means one or more control devices, including condensers, that are designed and operated to reduce the quantity of VOCs emitted to the atmosphere.
- (8) "Crude oil" means a naturally occurring mixture which consists of hydrocarbons and sulfur, nitrogen or oxygen derivatives of hydrocarbons which is a liquid at standard conditions.

- (9) "Cutback asphalt" means an asphalt that has been blended with petroleum distillates to reduce the viscosity for ease of handling and lower application temperature. An inverted emulsified asphalt shall be considered a cutback asphalt when the continuous phase of the emulsion is a cutback asphalt.
- (10) (("Demonstrate" means a presentation of the necessary data and calculations to support the required conclusion. The material is recorded for each event and made a part of air quality records or reports required by the state.
- (11))) "Disposal system" means a process or device that reduces the mass quantity of the VOC that would have been emitted to the ambient air by at least ninety percent prior to their actual emission.
- (((12))) (11) "Dry cleaning facility" means a facility engaged in the cleaning of fabrics in an essentially ((nonagueous)) nonaqueous solvent by means of one or more washes in solvent, extraction of excess solvent by spinning, and drying by tumbling in an airstream. The facility includes, but is not limited to, any washer, dryer, filter and purification system(s), waste disposal system(s), holding tank(s), pump(s) and attendant piping and valve(s).
- (((13))) (12) "External floating roof" means a storage vessel cover in an open top tank consisting of a double deck or pontoon single deck which rests upon and is supported by the ((petroleum)) liquid being contained and is equipped with a closure seal or seals to close the space between the roof edge and tank wall.
- (((14))) (13) "Flexographic printing" means the application of words, designs and pictures to a substrate by means of a roll printing technique in which the pattern to be applied is raised above the printing roll and the image carrier is made of rubber or other elastomeric materials.
- (((15) "Gas service" means equipment that processes, transfers or contains a volatile organic compound or mixture of volatile organic compounds in the gaseous phase:
- compounds in the gascous phase:

 (16)) (14) "Gasoline" means a petroleum distillate ((having))
 which is a liquid at standard conditions and has a true vapor pressure
 greater than 200 mm of Hg (4 psia) at 20°C, ((that is a liquid at
 standard conditions of 760 mm of Hg and 20°C)), and is used as a
 fuel for internal combustion engines.
- (((177))) (15) "Gasoline dispensing facility" means any site dispensing gasoline into motor vehicle fuel tanks from stationary storage tanks.
- (((18))) (16) "Gasoline loading terminal" means a gasoline transfer facility that receives more than ten percent of its annual gasoline throughput solely or in combination by pipeline, ship or barge, and loads gasoline into transport tanks.
- (((+9+))) (17) "Hardboard" means a panel manufactured primarily from interfelted lignocellulosic fibers which are consolidated under heat and pressure in a hot press.
- (((28) "Hardboard)) (18) "Hardwood plywood" means plywood whose surface layer is a veneer of hardwood.
- (((21))) (19) "Lease custody transfer" means the transfer of produced crude oil or condensate, after processing or treating in the producing operations, from storage tanks or automatic transfer facilities to pipelines or any other forms of transportation.
- (((22))) (20) "Liquid-mounted seal" means a primary seal mounted in continuous contact with the liquid between the tank wall and the floating roof ((around the circumference of the tank)).
- (((23))) (21) "Liquid service" means equipment that processes, transfers or contains a ((volatile organic compound or mixture of volatile organic compounds)) <u>VOC or VOCs</u> in the liquid phase.
- (((24))) (22) "Low organic solvent coating" refers to coatings which contain less organic solvent than the conventional coatings used by the industry. Low organic solvent coatings include water-borne, higher solids, electrodeposition and powder coatings.
- (23) "Natural finish hardwood plywood panels" means panels whose original grain pattern is enhanced by essentially transparent finishes frequently supplemented by fillers and toners.
- (((25))) (24) "Packaging rotogravure printing" means rotogravure printing upon paper, paper board, metal foil, plastic film, and other substrates, which are, in subsequent operations, formed into packaging products and labels for articles to be sold.
- (((26))) (25) "Petroleum liquids" means crude oil, condensate, and any finished or intermediate products manufactured or extracted in a petroleum refinery((, excluding No. 2 through 6 fuel oils (ASTM D396-69), No. 2GT through 4 GT gas turbine fuel oils (ASTM D2880-71) or No. 2D and 4D diesel fuel oils (ASTM D975-68))).
- (((27))) (26) "Petroleum refinery" means a facility engaged in producing gasoline, aromatics, kerosene, distillate fuel oils, residual fuel

- oils, lubricants, asphalt, or other products by distilling crude oils or redistilling, cracking, extracting or reforming unfinished petroleum derivatives. Not included are facilities re-refining used motor oils or waste chemicals, processing finished petroleum products, separating blended products, or air blowing asphalt.
- (27) "Prime coat" means the first of two or more films of coating applied in an operation.
- (28) "Printed interior panels" means panels whose grain or natural surface is obscured by fillers and basecoats upon which a simulated grain or decorative pattern is printed.
- (29) "Proper attachment fittings" means hardware for the attachment of gasoline transfer or vapor collection lines that meet or exceed industrial standards or specifications and the standards of other agencies or institutions responsible for safety and health.
- (30) "Publication rotogravure printing" means rotogravure printing upon paper which is subsequently formed into books, magazines, catalogues, brochures, directories, newspaper supplements, and other types of printed materials.
- (31) (("Reactor" means a vessel that may be jacketed for temperature control in which to conduct chemical reactions.
- (32))) "Refinery unit" means a set of components that are a part of a basic process operation, such as distillation, hydrotreating, cracking or reforming of hydrocarbons.
- (((33))) (32) "Roll printing" means the application of words, designs, and pictures to a substrate usually by means of a series of hard rubber or steel rolls each with only partial coverage.
- (((34))) (33) "Rotogravure printing" means the application of words, designs, and pictures to a substrate by means of a roll printing technique which involves ((an integlio)) intaglio or recessed image areas in the form of cells.
- (((35) "Separation operation" means a process that separates a mixture of compounds and solvents into two or more components. Specific mechanisms include extraction, centrifugation, filtration, and crystallization.
- (36)) (34) "Single coat" means only one film of coating is applied to the metal substrate.
- (35) "Submerged fill line" means a pipe, tube, fitting or other hardware for loading liquids into a tank with either a discharge opening flush with the tank bottom; or with a discharge opening ((entirely)) below the lowest normal operating drawoff level or that level determined by a liquid depth two and one half times the fill line diameter when measured in the main portion of the tank, but not in sumps or similar protrusions.
- (((37))) (<u>36</u>) "Submerged loading" means the filling of a tank with a submerged fill line descending nearly to the bottom.
- (((38))) (37) "Suitable closure or cover" means a door, hatch, cover, lid, pipe cap, pipe blind, valve or similar device that prevents the accidental spilling or emitting of VOC. Pressure relief valves, aspirator vents or other devices specifically required for safety and fire protection are not included.
- (((39))) (38) "Thin particleboard" means a manufactured board one-quarter inch or less in thickness made of individual wood particles which have been coated with a binder and ((former)) formed into flat sheets by pressure.
- (((40))) (39) "Tileboard" means ((panelling)) paneling that has a colored waterproof surface coating.
- (40) "Topcoat" means the final film or series of films of coating applied in a two-coat (or more) operation.
- (41) "Transport tank" means a container ((having a usable liquid volume greater than one thousand liters (260 gallons))) used for shipping gasoline on land((; including but not limited to, tank trucks, tank trailers, railroad tank cars, and metallic or nonmetallic tanks or cells conveyed on any vehicle)).
- (42) "True vapor pressure" means the equilibrium partial pressure of a petroleum liquid as determined with methods described in American Petroleum Institute Bulletin 2517, 1980.
- (43) "Unit turnaround" means the procedure of shutting down, repairing, inspecting, and restarting a unit.
- (44) "Valves not externally regulated" means valves that have no external controls, such as in-line check valves.
- (((44))) (45) "Vapor collection system" means a closed system to conduct vapors displaced from a tank being filled into the tank being emptied, a vapor holding tank, or a vapor control system.
- (((45))) (46) "Vapor control system" means a system designed and operated to reduce or limit the emission of VOCs, or to recover the VOCs to prevent their emission into the ambient air.

(((46))) (47) "Vapor-mounted seal" means a primary seal mounted so there is an annular vapor space underneath the seal. The annular vapor space is bounded by the bottom of the primary seal, the tank wall, the liquid surface, and the floating roof.

(((47))) (48) "Volatile organic compound (VOC)" means ((a hydrocarbon or derivative of hydrocarbon that has a vapor pressure greater than 0.1 mm of Hg (millimeters of mercury) at a temperature of 20°C. Excluded compounds are methane, ethane, trichlorofluoromethane (CFC-11), dichlorodifluoromethane (CFC-12), chlorodifluoromethane (CFC-22), trifluoromethane (FC-23), trichlorotrifluoroethane (CFC-113), dichlorotetrafluoroethane (CFC-114), chloropentafluoroethane (CFC-115), methylene chloride and 1, 1, 1trichloroethane (methyl chloroform))) any organic compound which participates in atmospheric photochemical reactions; that is, any organic compound other than those which the administrator designates as having negligible photochemical reactivity. VOC may be measured by a reference method, an equivalent method, an alternative method or by procedures specified under 40 CFR Part 60. A reference method, an equivalent method, or an alternative method, however, may also measure nonreactive organic compounds. In such cases, an owner or operator may exclude the nonreactive organic compounds when determining compliance with a standard.

(((48))) (49) "Waxy, heavy pour crude oil" means a crude oil with

(((488))) (49) "Waxy, heavy pour crude oil" means a crude oil with a pour point of 50°F or higher as determined by the American Society for Testing and Materials Standard D97-66, "Test for Pour Point of Petroleum Oils."

AMENDATORY SECTION (Amending Order DE 82-22, filed 7/27/82)

WAC 173-490-025 GENERAL APPLICABILITY. In addition to the general applicability of chapter 173-400 WAC to all emission sources, specific emission standards listed in this chapter will take precedence over the general emission standards of chapter 173-400 WAC.

(1) This chapter shall apply to the specified emission sources of ((volatile organic compounds)) VOCs located in or operating within designated ozone nonattainment areas of the state of Washington.

- (2) ((Sources of volatile organic compound emissions may be exempted, by the director, from any or all requirements to control or reduce the emission of volatile organic compounds if the source will be permanently shutdown by January 1, 1983 and the owner or operator of the source complies with a phase-out schedule approved by the director. The phase-out schedule shall contain specific actions and dates necessary to the orderly termination of the source's activities. The operation of the emission source after January 1, 1983 shall be permitted only when done in full compliance with all other applicable requirements of this chapter.
- (3))) This chapter does not apply to those sources under the jurisdiction of the energy facility site evaluation council (EFSEC).
- (((4))) (3) A source of ((volatile organic compound)) VOC emissions not belonging to any of the categories listed in WAC 173-490-030 nor specifically identified in any section, but which is located on the same or adjacent property and owned or operated by the same person as a regulated emission source, shall not be required to comply with the regulations of this chapter.
- (((5))) (4) Sources of ((volatile organic compound)) <u>VOC</u> emissions may be exempted, by the director, from any or all requirements to control or reduce the emissions of ((volatile organic compounds)) <u>VOCs</u> when:
- (a) The source is a development operation and the equipment is used exclusively for research, laboratory analysis or determination of product quality and commercial acceptance, provided emissions of ((volatile organic compounds)) VOCs from such operations do not exceed 300 kg (660 lbs) per month; or
- (b) The source has emissions of VOCs which do not exceed 18 kg (40 lbs) per month and registration is not required under WAC 173-490-030; or
- (c) The source is a spray booth which is used solely for maintenance and utility activities and whose emissions do not exceed 18 kg (40 lbs) per month.
- (5) Sources of VOCs may be granted exemptions from emissions standards for a period not to exceed thirty days if the source is a newly permitted source which is to replace a similar permitted source and the new source is intended to utilize the existing emission control system. This provision is intended to apply to a break-in period prior to the shutdown and removal of the existing source.

AMENDATORY SECTION (Amending Order DE 80-18, filed 8/20/80)

WAC 173-490-030 REGISTRATION AND REPORTING. (1) The owner or operator of a stationary emission source of ((volatile organic compounds)) <u>VOCs</u> in the following source categories and located in a designated ozone nonattainment area shall register the source with ((the department)) ecology unless registration is required by an ((air pollution control)) authority ((with jurisdiction over the source of the source is under the jurisdiction of)) or the energy facility site evaluation council (EFSEC).

- (a) Petroleum refineries.
- (b) Petroleum liquid storage tanks.
- (c) Gasoline loading terminals.
- (d) Bulk gasoline plants.
- (e) Gasoline dispensing facilities.
- (f) Surface coaters.
- (g) Open top vapor degreasers.
- (h) Conveyorized degreasers.
- (i) Gasoline transport tanks.
- (j) Vapor collection systems.
- (k) Perchloroethylene dry cleaning systems.
- (I) Graphic arts systems.
- (m) Surface coaters of miscellaneous metal parts and products.
- (n) Synthesized pharmaceutical manufacturing facilities.
- (o) Flatwood panel manufacturers and surface finishing facilities.
- (2) ((The owner or operator of a registered stationary emission source of volatile organic compounds shall furnish, upon request of the director, such data as the director may require to calculate the emissions of the source and evaluate the emission control program. The data shall be supplied in a form and according to instructions received from the director or local air pollution control authority. When required, the data shall be submitted not later than sixty days following the request:
- (3)) A new emission source of ((volatile organic compounds)) VOCs that must comply with any requirements in WAC 173-490-040, 173-490-200, 173-490-201, 173-490-202, 173-490-203, 173-490-204, 173-490-205, 173-490-206 and 173-490-207, shall comply with the requirements of WAC 173-400-100 and shall register with ((the department or)) ecology or an authority prior to operation of the new source, and shall submit sufficient information to demonstrate that the new source is capable of complying with the requirements in this chapter. An opportunity shall be provided for an inspection of the new source by ecology or local authority inspectors prior to its operation.

$\frac{\text{AMENDATORY SECTION}}{7/27/82)}$ (Amending Order DE 82-22, filed

WAC 173-490-040 REQUIREMENTS. ((Sources shall)) To demonstrate compliance with this chapter ((using the sampling procedures on file with and approved by the director)), refer to WAC 173-400-105.

(1) Petroleum refineries.

(((a))) This chapter shall apply to all petroleum refineries with a crude oil or feed stock capacity greater than one million ((five)) four hundred thirty thousand liters (9,000 bbl) per day.

(((b) A petroleum refinery with a crude oil or feed stock capacity of eight million three hundred twenty-eight thousand liters (50,000 bbl) per day or less and which is owned or controlled by a refiner with a total combined crude oil or feed stock capacity of twenty-three million liters (137,500 bbl) per day or less shall be classified as a small refinery:

(c))) (a) Vacuum producing system.

- (i) Noncondensable VOC from vacuum producing systems shall be piped to an appropriate firebox, incinerator or to a closed refinery system.
- (ii) Hot wells associated with contact condensers shall be tightly covered and the collected VOC introduced into a closed refinery system.

(((d))) (b) Wastewater separator.

- (i) ((Wastewater-separators with demonstrated VOC emissions less than twenty-five tons annually shall be exempt from the requirements of WAC 173-490-040 (1)(d) (ii) and (iii).
- (ii)) Wastewater separator forebays shall incorporate a floating pontion or fixed solid cover with all openings sealed, totally enclosing the compartmented liquid contents, or a floating pontion or a double deck-type cover equipped with closure seals between the cover edge and compartment wall.

- (((iii))) (ii) Accesses for gauging and sampling shall be designed to minimize VOC emissions during actual use. All access points shall be closed with suitable covers when not in use.
 - (((c))) (c) Process unit turnaround.
- (i) The VOC contained in a process unit to be depressurized for turnaround shall be introduced to a closed refinery system, combusted by a flare, or vented to a disposal system.
- (ii) The pressure in a process unit following depressurization for turnaround shall be less than five psig before venting to the ambient
- (iii) Venting or depressurization to the ambient air of a process unit for turnaround at a pressure greater than five psig shall be allowed if the owner demonstrates the actual emission of VOC to the ambient air is less than permitted by WAC 173-490-040 (1)(((e))) (c)(ii).
- (((f))) (d) Maintenance and operation of emission control equipment. Equipment for the reduction, collection or disposal of VOC shall be maintained and operated in a manner ((commensurate)) consistent with the level of maintenance and housekeeping of the overall plant.
 - (2) Petroleum liquid storage tanks.
- (a) All fixed-roof tanks (except as noted in subparagraph (d) of this subsection) storing volatile organic petroleum liquids with a true vapor pressure as stored greater than 78 mm of Hg (1.5 psi)((, but less than 570 mm of Hg (11.1 psi))) at actual monthly average storage temperatures and having a capacity greater than one hundred fifty thousand liters (40,000 gallons) shall comply with one of the following:
- (i) Meet the equipment specifications and maintenance requirements of the federal standards of performance for new stationary sources -Storage Vessels for Petroleum Liquids (40 CFR 60, subpart K)((-)); or
- (ii) Be retrofitted with a floating roof or internal floating cover using a metallic seal or a nonmetallic resilient seal at least meeting the equipment specifications of the federal standards referred to in WAC 173-490-040 (2)(a)(i) or its equivalent((:)); or
- (iii) Be fitted with a floating roof or internal floating cover meeting the manufacturer's ((equipment)) specifications in effect when ((it was)) installed.
- (b) All seals used in WAC 173-490-040 (2)(a)(ii) and (iii) are to be maintained in good operating condition and the seal fabric shall contain no visible holes, tears or other openings.
- (c) All openings not related to safety are to be sealed with suitable closures.
- (d) Tanks used for the storage of gasoline in bulk gasoline plants and equipped with vapor balance systems as required in WAC 173-490-040 (4)(b) shall be exempt from the requirements of WAC 173-490-040(2)
 - (3) Gasoline loading terminals.
- (a) This chapter shall apply to all gasoline loading terminals with an average annual daily gasoline throughput greater than seventy-five thousand liters (20,000 gallons).
- (b) Loading facilities. Facilities for the purpose of loading gasoline into any transport tank shall be equipped with a vapor recovery system (VRS) as described in WAC 173-490-040 (3)(c) and comply with the following conditions:
- (i) The loading facility shall employ submerged ((loading)) or bot-
- tom loading for all transport tanks.

 (ii) The VRS shall be connected to the transport tank being loaded and ((operating)) shall operate during the entire loading of every transport tank loaded at the facility.
- (iii) The loading of all transport tanks shall be performed such that ninety percent by weight of the gasoline vapors displaced during filling are prevented from being released to the ambient air. Emissions from pressure relief valves shall not be included in the controlled emissions when the back pressure in the VRS collection lines is lower than the relief pressure setting of the transport tank's relief valves.
- (iv) All loading lines and vapor lines shall be equipped to close automatically upon disconnect. The point of closure shall be on the tank side of any hose or intermediate connecting line.
 (c) Vapor recovery system (VRS). The VRS shall be designed and
- built according to accepted industrial practices and meet the following conditions:
- (i) The VRS shall prevent at least ninety percent by weight of the gasoline vapors displaced during loading of each transport tank from entering the ambient air and in no case shall the gasoline vapors emitted to the ambient air exceed eighty milligrams per liter of gasoline
- (ii) The VRS shall be equipped with a signal device to alert personnel when the system is not operating or unintentionally shuts down.

- (iii) The back pressure in the VRS collection lines shall not exceed the transport tank's pressure relief settings.
- (d) Alternative loading facility. The loading of transport tanks by other means and using other vapor control systems shall require the facility owner to demonstrate that the emission of gasoline vapors to the ambient air is less than eighty milligrams per liter of gasoline loaded.
 - (4) Bulk gasoline plants.
- (a) This chapter shall apply to all bulk gasoline plants with an annual average daily gasoline throughput greater than fifteen thousand liters (4,000 gallons).
- (b) Storage tanks. All storage tanks with a capacity greater than two thousand one hundred liters (550 gallons) and used for the storage of gasoline shall comply with the following conditions:
 - (i) Each storage tank shall be equipped with a submerged fill line.
- (ii) Each storage tank shall be equipped for vapor balancing of gasoline vapors with transport tanks during gasoline transfer operations.
- (iii) The vapor line fittings on the storage tank side of break points with the transport tank vapor connection pipe or hose shall be equipped to close automatically upon planned or unintentional disconnect.
- (iv) The pressure relief valves on storage tanks shall be set at the highest possible pressure consistent with local and state codes for fire and safety.
- (c) Transport tanks. All transport tanks, except those meeting the conditions in WAC 173-490-040 (4)(d), transferring gasoline with storage tanks in a bulk gasoline plant shall comply with the following conditions:
- (i) The transport tank shall be equipped with the proper attachment fittings to make vapor tight connections for vapor balancing with stor-
- (ii) The vapor line fittings on the transport tank side of break points with the storage tank connection pipe or hose shall be equipped to close automatically upon planned or unintentional disconnect.
- (iii) The pressure relief valves on transport tanks shall be set at the highest possible pressure consistent with local and state codes for fire and safety.
- (d) Transport tanks used for gasoline and meeting all of the following conditions shall be exempt from the requirement to be equipped with any attachment fitting for vapor balance lines:
- (i) The transport tank is used exclusively for the delivery of gasoline into storage tanks of a facility exempt from the vapor balance requirements of WAC 173-490-040(5); and
- (ii) The transport tank has a total capacity less than fifteen thousand liters (4,000 gallons)and is of a compartmented design and construction requiring the installation of four or more separate vapor balance fittings.
- (e) Gasoline transfer operations. No owner or operator of a bulk gasoline plant or transport tank shall allow the transfer of gasoline between a transport tank and a storage tank except under the following conditions:
 - (i) All tanks shall be submerged filled or bottom loaded.
- (ii) The loading of all tanks, except those exempted under WAC 173-490-040 (4)(d) shall be performed such that ninety percent by weight of the gasoline vapors displaced during filling are prevented from being released into the ambient air. Emissions from pressure relief valves shall not be included in the controlled emissions.
- (f) Equipment or system failures. Failures or leaks in the vapor balance system shall be limited by the following conditions:
- (i) During the months of April, May, June, July, August ((and)), September and October, failures of the vapor balance system to comply with this chapter shall require ((the discontinuation of)) that gasoline transfer operations stop for the failed part of the system. Other transfer points that can ((continue to)) operate in compliance may be
- (ii) ((The)) Loading or unloading of the transport tank connected to the failed part of the vapor balance system may be completed.
- (iii) Breakdowns and upset conditions during all months of the year shall also comply with the ((additional)) provisions of WAC ((173= $\frac{400-120(4)}{173-400-105(5)}$
- (g) The owner or operator of a bulk gasoline plant or transport tank shall take all reasonable necessary measures to prevent the spilling, discarding in sewers, storing in open containers or handling of gasoline in a manner on the plant site that will result in evaporation to the ambient air.
 - (5) Gasoline dispensing facilities (Stage 1).

- (a) This chapter shall apply to all gasoline dispensing facilities with a total annual gasoline output greater than seven hundred fifty-seven thousand liters (200,000 gallons) or sixty-three thousand one hundred liters (16,670 gallons) per month and total gasoline storage capacity greater than thirty-eight thousand liters (10,000 gallons).
- (b) All gasoline storage tanks of the facilities defined in WAC 173-490-040 (5)(a) shall be equipped with submerged or bottom fill lines and fittings for vapor balancing gasoline vapors with the delivery transport tank. ((Storage tanks required to comply are:
- (i) All tanks with a capacity greater than seven thousand five hundred liters (2,000 gallons) installed before January 1, 1979, except as provided for in WAC 173-490-040 (5)(c).
- (ii) All tanks with a capacity greater than one thousand liters (260 gallons) installed on or after January 1, 1979.))
- (c) Gasoline storage tanks with offset fill lines shall be exempt from the requirement of WAC 173-490-040 (5)(b) if installed prior to January 1, 1979.
- (d) The vapor balance system (for the purpose of measuring compliance with the emission control efficiency) shall consist of the transport tank, gasoline vapor transfer lines, storage tank and all tank vents. The vapor balance system shall prevent at least ninety percent of the displaced gasoline vapors from entering the ambient air. A vapor balance system that is designed, built and operated according to accepted industrial practices will satisfy this requirement.
- (e) The owner or operator of a gasoline dispensing facility shall not permit the loading of gasoline into a storage tank equipped with vapor balance fittings unless the vapor balance system is attached to the transport tank and operated satisfactorily.

(6) Surface coaters.

The operation of a coater and dryer, that may serve one or more process lines, shall comply with the following emission limits if the potential uncontrolled emissions of VOC from the coater, flashoff areas, and dryer would be greater than 18 kg (40 pounds) in any given twenty-four hour period. The emission limits and uncontrolled emission quantity shall include the additional quantity of emissions from the dryer during the twelve hour period after application of the coating.

	Limitation	
Process	Grams/Liter	lb/Gal.of
Can Coating	of Coating	Coating
_	(Excluding Water)	(Excluding Water)
Sheet basecoat and overvarm	ich:	
	340	2.8
two-piece can exterior		2.6
Two and three piece can into		
body spray, two piece can ex		
end	510	4.2
Side-seam spray	660	5.5
End sealing compound	440	3.7
Coil coating	310	2.6
Fabric coating	350	2.9
Vinyl coating	450	3.8
Paper coating	350	2.9
Auto and light duty truck		
coating		
Prime	230	1.9
Topcoat	340	2.8
Repair	580	4.8
Metal furniture coating	360	3.0
Magnet wire coating	200	1.7
Large appliance coating	340	2.8

- (7) Open top vapor degreasers.
- (a) All open top vapor degreasers shall ((comply with the following equipment specifications)):
- (i) ((Be equipped with)) Have a cover that may be readily opened and closed. When a degreaser is equipped with a lip exhaust, the cover shall be located below the lip exhaust. When a degreaser has a free-board ratio equal to or greater than 0.75 and the opening is greater than one square meter (10 square feet) the cover shall be power operated.
 - (ii) Have one of the following:
 - (A) A freeboard ratio equal to or greater than 0.75((:)); or
 - (B) A freeboard chiller((-)); or
- (C) A closed design such that the cover opens only when the part enters or exits the degreaser.
 - (iii) Be equipped with at least the following three safety switches:
- (A) Condenser-flow switch and thermostat (shuts off sump heat if coolant is either not circulating or too warm)((-)); and
- (B) Spray safety switch (shuts off spray pump if the vapor level drops excessively((-)); and

- (C) Vapor level control thermostat (shuts off sump heat when vapor level rises too high).
- (iv) Post a permanent and conspicuous pictograph or instructions clearly explaining the following work practices:
- (A) Do not degrease porous or absorbent materials such as cloth, leather, wood or rope.
- (B) The cover of the degreaser should be closed at all times except when processing workloads.
- (C) When the cover is open the lip of the degreaser should not be exposed to steady drafts greater than 15.3 meters per minute (50 feet per minute).
 - (D) Rack parts so as to facilitate solvent drainage from the parts.
- (E) Workloads should not occupy more than one-half of the vaporair interface area.
- (F) When using a powered hoist, the vertical speed of parts in and out of the vapor zone should be less than 3.35 meters per minute (11 feet per minute).
- (G) Degrease the workload in the vapor zone until condensation ceases.
 - (H) Spraying operations should be done within the vapor layer.
 - (I) Hold parts in the degreaser until visually dry.
- (J) When equipped with a lip exhaust, the fan should be turned off when the cover is closed.
- (K) The condenser water shall be turned on before the sump heater when starting up a cold vapor degreaser. The sump heater shall be turned off and the solvent vapor layer allowed to collapse before closing the condenser water when shutting down a hot vapor degreaser.
- (L) Water shall not be visible in the solvent stream from the water separator.
- (c) Sump drainage and transfer of hot or warm solvent shall be carried out using threaded or other leakproof couplings.
- (d) Still and sump bottoms shall be kept in closed containers.
- (e) Waste solvent shall be stored in covered containers and returned to the supplier or ((a disposal firm handling)) to a firm which processes solvents for ((final)) disposal.
 - (8) Conveyorized degreasers.
- (a) The owner or operator of conveyorized cold cleaners and conveyorized vapor degreasers shall comply with the following operating requirements:
- (i) Exhaust ventilation shall not exceed twenty cubic meters per minute ((of)) per square meter (65 cfm per ft.²) of degreaser opening, unless necessary to meet OSHA requirements.
- (ii) Post in the immediate work area a permanent and conspicuous pictograph or instructions clearly explaining the following work practices:
 - (A) Rack parts for best drainage.
- (B) Maintain vertical speed of ((conveyored)) conveyed parts to less than 3.35 meters per minute (11 feet per minute).
- (C) The condenser water shall be turned on before the sump heater when starting up a cold vapor degreaser. The sump heater shall be turned off and the solvent vapor layer allowed to collapse before closing the condenser water when shutting down a hot vapor degreaser.
- (D) Water shall not be visible in the solvent stream from the water separator.
- (iii) Vapor degreasers shall be equipped with at least the following three safety switches:
- (A) Condenser flow switch and thermostat (shuts off sump heat if coolant is either not circulating or too warm)((:)); and
- (B) Spray safety switch (shuts off spray pump if the vapor level drops excessively)((;)); and
- (C) Vapor level control thermostat (shuts off sump heat when vapor level rises too high).
- (b) A routine inspection and maintenance program shall be implemented for the purpose of preventing and correcting solvent losses((; as)). For example, leaks from ((dripping)) drain taps, cracked gaskets, and malfunctioning equipment((: Leaks)) must be repaired immediately.
- (c) Sump drainage and transfer of hot or warm solvent shall be carried out using threaded or other leakproof couplings.
 - (d) Still and sump bottoms shall be kept in closed containers.

- (e) Waste solvent shall be stored in covered containers and returned to the supplier or ((a disposal firm handling)) to a firm which processes solvents for ((final)) disposal.
- (f) All conveyorized cold cleaners and conveyorized vapor degreasers with air/vapor interfaces of 2.0 m² or greater shall have ((one of the following major control devices installed and operating after April 1, 1982:
- (ii))) <u>a carbon</u> adsorption system, exhausting less than 25 ppm of solvent averaged over a complete adsorption cycle (based on exhaust ventilation of 15 $((\frac{m^2}{})) \frac{m^3}{}$ per min per m² of air/vapor area, when downtime covers are open), or
- (((iii) Refrigerated chiller with control effectiveness equal to or better than WAC 173-490-040 (8)(f)(i), or
- (iii))) a system with control effectiveness equal to or better than ((WAC 173-490-040 (8)(f)(i))) a carbon adsorption system.
 - (9) Cutback asphalt paving.
- (a) ((After June 1, 1981)) All paving applications of cutback asphalts are prohibited during the months of April, May, June, July, August ((and)), September and October, except as provided for in WAC 173-490-040 (9)(b).
- (b) The following paving uses and applications of cutback asphalts are permitted during all months of the year.
 - (i) As a penetrating prime coat on aggregate bases prior to paving.
- (ii) The manufacture of patching mixes used exclusively for pavement maintenance and needed to be stockpiled for times longer than one month
- (iii) All paving uses when the temperature during application is below 10°C (50°F). Any person using cutback asphalt for paving shall demonstrate that the ambient air temperature at 8 a.m. (PST) is below 50°F. The paving application of cutback asphalt when the ambient air temperature is 50°F or higher is in violation of this chapter.
 - (10) Cold cleaners.
- (a) The owners or operators of all cold cleaners shall comply with the following equipment specifications:
 - (i) Be equipped with a cover that is readily opened and closed.
- (ii) Be equipped with a ((drainrack)) drain rack that returns the drained solvent to the solvent bath.
 - (iii) Have a freeboard ratio of at least 0.5.
 - (iv) Have a visible fill line.
- (b) An owner or operator of a cold cleaner shall be responsible for following the required operating parameters and work practices. The owner shall post and maintain in the work area of each cold cleaner a pictograph or instructions clearly explaining the following work practices:
 - (i) The solvent level shall not be above the fill line.
- (ii) The spraying of parts to be cleaned shall be performed only within the confines of the cold cleaner.
- (iii) The cover of the cold cleaner shall be closed when not in use or when parts are being soaked or cleaned by solvent agitation.
- (iv) Solvent-cleaned parts shall be rotated to drain cavities or blind holes and then set to drain until dripping has stopped.
- (v) Waste solvent shall be stored in covered containers and returned to the supplier or ((a disposal firm handling)) to a firm which processes solvents for ((final)) disposal.
- (c) The owner or operator shall maintain cold cleaners in good working condition and free of solvent leaks.
- (d) If the solvent has a vapor pressure greater than 2.0 kPa (0.3 psi) measured at 38°C (100°F), or if the solvent is agitated or heated, then the cover must be designed so that it can be easily operated with one hand.
- (e) If the solvent has a vapor pressure greater than 4.3 kPa (0.6 psi) measured at 38°C (100°F), then the drainage facility must be internal, so that parts are enclosed under the cover while draining. The drainage facility may be external for applications where an internal type cannot fit into the cleaning system.
- (f) If the solvent has a vapor pressure greater than 4.3 kPa (0.6 psi) measured at 38°C (100°F), or if the solvent is heated above 50°C (120°F), ((then)) one of the following solvent vapor control systems must be used:
 - (i) The freeboard ratio must be equal to or greater than 0.70; or
- (ii) Water must be kept over the solvent((, which)). The solvent must be more dense and insoluble in ((and heavier than)) water((; or
- (iii) Other systems of equivalent control, such as a refrigerated chiller)).

AMENDATORY SECTION (Amending Order DE 82-22, filed 7/27/82)

- WAC 173-490-080 EXCEPTIONS AND ALTERNATIVE METHODS. ((Exceptions to volatile organic compound emission standards and requirements.))
- (1) Other emission reduction methods may be ((employed)) used if the source operator demonstrates to ((the department)) ecology that they are at least as effective as the required methods((:)); and
- (2) The operation of a natural gas-fired incinerator and associated capture system installed for the purpose of complying with this chapter shall be required only during the months of April, May, June, July, August ((and)), September and October, unless the operation of such devices is required for purposes of occupational health or safety, or for the control of toxic substances, malodors, or other regulated pollutants.

AMENDATORY SECTION (Amending Order DE 78-23, filed 5/8/79)

WAC 173-490-090 NEW SOURCE REVIEW. ((Any new source of VOC emissions with a potential emission rate of one hundred tons per year is required to meet the new source review provisions of WAC 173-400-110.)) The conditions of WAC 173-400-110 shall apply to all new sources and modifications covered by this chapter.

 $\frac{AMENDATORY\ SECTION}{8/20/80)}\ (Amending\ Order\ DE\ 80-18,\ filed$

WAC 173-490-200 PETROLEUM REFINERY EQUIPMENT LEAKS. (1) Specific applicability. This section shall apply to all petroleum refineries as qualified in WAC 173-490-025.

- (2) Provisions for specific processes.
- (a) The owner(s) or operator(s) of a petroleum refinery shall:
- (i) Develop and conduct a monitoring program consistent with the provisions in WAC 173-490-200(3), 173-490-200(4), 173-490-200(5), and 173-400-105;
- (ii) ((Conduct a monitoring program consistent with the provisions in WAC 173-490-200(5):
- (iii))) Record all leaking components which have a VOC concentration greater than 10,000 ppm when tested according to the provisions in WAC 173-490-200((4))) (3) and place an identification tag on each component consistent with the provisions of WAC 173-490-200 ((5))) (4)(c);
- (((iv))) (iii) Correct and retest the leaking component, as defined in WAC 173-490-200 (2)(a)(((iii))) (ii), as soon as practicable, but not later than fifteen days after the leak is recorded. If a leak continues after all reasonable corrective actions have been taken, then the component shall be repaired or replaced on the next scheduled turnaround.
- (((\(\frac{(\)})})}) ((\(\frac{(\(\frac{(\(\frac{(\(\frac{(\(\frac{(\)})})) (\(\frac{(\(\frac{(\(\frac{(\)})})) (\(\frac{(\(\frac{(\)})})) (\(\frac{(\(\frac{(\)})})) (\(\frac{(\(\frac{(\)})})) (\(\frac{(\(\frac{(\)})})) (\(\frac{(\)})) (\(\))) (\(\frac{(\)})) (\(\)) (\(\frac{(\)})) (\(\))) (\(\frac{(\)})) (\(\)) (\(\)) (\(\)) (\(\)) (\(\))) (\(\) (\(\)) (
- (b) The owner or operator of a petroleum refinery shall not install or operate a valve at the end of a pipe or line containing VOC unless the pipe or line is sealed with a second suitable closure. Exceptions to this requirement are the ends of a pipe or line connected to pressure relief valves, aspirator vents or other devices specifically required to be open for safety protection. The sealing device may be removed only when a sample is being taken or during maintenance operations.
 - (3) ((Schedule of control dates.
- (a) The owner or operator of a petroleum refinery shall meet the increments of progress contained in the following schedules or an approved alternative schedule of control dates as stipulated in WAC 173-490-071:
- (b) Submit to the director a monitoring program by July 1, 1981. This program shall contain, at a minimum, a list of the refinery units and the quarter in which they will be monitored, a copy of the log book format, and the make and model of the monitoring equipment to be used. In no case shall a monitoring contract relieve the owner or operator of a petroleum refinery of the responsibility for compliance with this chapter.
- (c) The first quarter of monitoring shall be completed by December 15, 1981.
- (4))) Testing procedures. ((Testing and calibration procedures to determine)) To demonstrate compliance with this chapter ((shall be consistent with the procedures on file with and approved by the director)), refer to WAC 173-400-105(5).
 - $((\frac{5}{)})$ (4) Monitoring.

- (a) The owner or operator of a petroleum refinery shall conduct a monitoring program consistent with the following provisions:
- (i) Monitor yearly by the methods referenced in WAC 173-490-200(((4))) (3) all pump seals, pipeline valves in liquid service and process drains;
- (ii) Monitor quarterly by the methods referenced in WAC 173-490-200(((4))) (3) all compressor seals, pipeline valves in gaseous service and pressure relief valves in gaseous service;

(iii) Monitor weekly by visual methods all pump seals;

- (iv) Monitor immediately any pump seal from which liquids are observed ((dripping)) leaking;
- (v) Monitor any relief valve within twenty-four hours after it has vented to the atmosphere; and
- (vi) ((Monitor immediately after repair any component that was found leaking.)) After a leaking component is repaired, monitor for leaks prior to return to service.
- (b) Pressure relief devices that are connected to an operating flare header, vapor recovery device, inaccessible valves, storage tank valves, and valves that are not externally regulated are exempt from the monitoring requirements in WAC 173-490-200 ((5)) (4)(a).
- (c) The owner or operator of a petroleum refinery, upon the detection of a leaking component, as defined in WAC 173-490-200 (2)(a)((iii))) (ii), shall affix a weatherproof and readily visible tag, bearing an identification number and the date the leak is located, to the leaking component. This tag shall remain in place until the leak is corrected.

(((6))) (5) Recordkeeping.

- (a) The owner or operator of a petroleum refinery shall maintain a leaking component's monitoring log as specified in WAC 173-490-200 (2)(a)((iii))) (ii) that shall contain, at a minimum, the following data:
 - (i) The name of the process unit where the component is located.

(ii) The type of component (e.g., valve, seal).

(iii) The tag number of the component.

- (iv) The date on which a leaking component is discovered.
- (v) The date on which a leaking component is repaired.
- (vi) The date and instrument reading of the recheck procedure after a leaking component is repaired.
 - (vii) A record of the calibration of the monitoring instrument.
 - (viii) Those leaks that cannot be repaired until turnaround.
- (ix) The total number of components checked and the total number of components found leaking.
- (b) Copies of the monitoring log shall be retained by the owner or operator for a minimum of two years after the date on which the record was made or the report prepared.
- (c) Copies of the monitoring log shall immediately be made available to ((the department)) ecology, upon verbal or written request, at any reasonable time.
- (((7))) (6) Reporting. The owner or operator of a petroleum refinery shall notify ((the director)) ecology in writing within forty-five days following each quarterly or annual inspection for component leaks when:
- (a) The number of discovered leaks has increased by more than ten percent above the number recorded during the last inspection of the same components;
- (b) The number of leaking components has increased for two consecutive quarterly or annual inspections;
- (c) The number of leaks not corrected within fifteen days exceeds five percent of the leaks detected;
- (d) The next scheduled process unit turnaround needed to repair an uncorrectable leak is more than twelve months away.

(((8))) (7) Petition for alternative monitoring.

- (a) After two complete liquid service inspections and five complete gaseous service inspections, the owner or operator of a petroleum refinery may petition the director for alternative monitoring procedures or a reduction in monitoring frequency.
 - (b) A petition for alternative monitoring procedures shall contain:
- (i) The name and address of the company and the name and telephone number of the responsible person over whose signature the petition is submitted;
- (ii) A detailed description of the problems encountered under WAC 173-490-200(((5))) (4); and
- (iii) A detailed description of the alternative monitoring procedures and how this alternative procedure will solve or reduce the problems encountered under WAC 173-490-200(((5))) (4).
 - (c) A petition for a reduction in monitoring frequency shall contain:
- (i) The information requested in WAC 173-490-200 (((8))) (7)(b)(i);

- (ii) A detailed description of the proposed component-monitoring schedule;
- (iii) A demonstration by the owner or operator that the facility is currently operating with a low level of component leaks and is committed to a maintenance program that will assure a frequency and severity of component leaks as good as that attainable under WAC 173-490-200(2).
- (d) An approved petition for a reduction in monitoring frequency shall begin with the next quarterly inspection and shall be valid for a period of twelve quarters (three years). At the time of the last inspection in the twelve quarters, a new submittal of the information required in WAC 173-490-200 (((8))) (7)(c) shall be made if the reduced frequency of monitoring is to continue.
- (e) ((The department)) Ecology may approve a part or all of a petition for alternative monitoring requested under WAC 173-490-200 (((8))) (7)(b) or (c). Approval or disapproval will be in writing and within forty-five calendar days of receipt of the petition by ((the department)) ecology. A failure to approve or disapprove a new petition or petition for renewal within the stated time limit shall be taken as an approval.

AMENDATORY SECTION (Amending Order DE 80-18, filed 8/20/80)

WAC 173-490-201 PETROLEUM LIQUID STORAGE IN EXTERNAL FLOATING ROOF TANKS. (1) Specific applicability.

- (a) This section shall apply to all petroleum liquid storage vessels equipped with external floating roofs, having capacities greater than 150,000 liters (40,000 gallons), and as qualified in WAC 173-490-025.
- (b) This section does not apply to petroleum liquid storage vessels that:
 - (i) Are used to store waxy, heavy pour crude oil; or
- (ii) Have capacities less than 1,600,000 liters ($4\overline{20},000$ gallons) and are used to store produced crude oil and condensate prior to lease custody transfer; or
- (iii) Contain a petroleum liquid with a true vapor pressure of less than 10.5 kPa (1.5 psia); or
- (iv) Contain a petroleum liquid with a true vapor pressure less than 27.6 kPa (4.0 psia); are of welded construction; and presently possess a metallic-type shoe seal, a liquid-mounted foam seal, a liquid-mounted liquid filled type seal, or other closure device of demonstrated equivalence approved by ((the director)) ecology; or
- (v) Are of welded construction, equipped with a metallic-type shoe primary seal and have secondary seal from the top of the shoe seal to the tank wall (shoe-mounted secondary seal).
 - (2) Provisions for specific processes.
- (a) No owner(s) or operator(s) of a petroleum liquid storage vessel shall store a petroleum liquid in that vessel unless:
 - (i) The vessel has been fitted with:
- (A) A continuous secondary seal extending from the floating roof to the tank wall (rim-mounted secondary seal); or
- (B) A closure or other device which controls VOC emissions with an effectiveness equal to or greater than a seal required under WAC 173-490-201 (2)(a)(i)(A) and approved by ((the director)) ecology.
 - (ii) All seal closure devices meet the following requirements:
- (A) There are no visible holes, tears, or other openings in the seal or seal fabric;
- (B) The seal is intact and uniformly in place around the circumference of the floating roof between the floating roof and the tank wall;
- (C) For vapor mounted primary seals, the accumulated area of gaps exceeding 0.32 cm (1/8 inch) in width between the secondary seal and the tank wall shall not exceed 21.2 cm² per meter of tank diameter (1.0 in.² per foot of tank diameter), as determined by the method in WAC 173-490-201(((4))) (3).
- (iii) All openings in the external floating roof, except for automatic bleeder vents, rim space vents, and leg sleeves, are:
- (A) Equipped with covers, seals, or lids in the closed position except when the openings are in actual use; and
- (B) Equipped with projections into the tank which remain below the liquid surface at all times.
- (iv) Automatic bleeder vents are closed at all times except when the roof is floated off or landed on the roof leg supports;
- (v) Rim vents are set to open when the roof is being floated off the leg supports or at the manufacturer's recommended setting; and

- (vi) Emergency roof drains are provided with slotted membrane fabric covers or equivalent covers which cover at least ninety percent of the area of the opening.
- (b) The owner(s) or operator(s) of a petroleum liquid storage vessel with an external floating roof subject to this chapter shall:
- (i) Perform routine inspections annually in order to insure compliance with WAC 173-490-201 (2)(a) and the inspection shall include a visual inspection of the secondary seal gap;
- (ii) Measure the secondary seal gap annually in accordance with WAC 173-490-201(((4+))) (3) when the floating roof is equipped with a vapor-mounted primary seal; and
- (iii) Maintain records of the types of volatile petroleum liquids stored, the maximum true vapor pressure of the liquid as stored, and the results of the inspections performed in WAC 173-490-201 (2)(b)(i) and (ii).
- (c) The owner(s) or operator(s) of a petroleum liquid storage vessel with an external floating roof exempted from this chapter by WAC 173-490-201 (1)(b)(iii), but containing a petroleum liquid with a true vapor pressure greater than 7.0 kPa (1.0 psi), shall maintain records of the average monthly storage temperature, the type of liquid, and the maximum true vapor pressure for all petroleum liquids with a true vapor pressure greater than 7.0 kPa.
- (d) Copies of all records under WAC 173-490-201 (2)(b) and (c) shall be retained by the owner(s) or operator(s) for a minimum of two years after the date on which the record was made.
- (e) Copies of all records required under WAC 173-490-201 shall immediately be made available to the director, upon verbal or written request, at any reasonable time.
 - (3) ((Schedule of control dates:
- (a) The owner or operator of a petroleum liquid storage vessel shall meet the increments of progress contained in the following schedule or an approved alternative schedule of control dates as stipulated in WAC 173-490-071.
- (i) Submit final plans for the emission control system before March 1, 1981;
- (ii) Award contracts for the emission control system before May 1, 1981;
- (iii) Initiate on-site construction or installation of the emission control equipment before July 1, 1981;
- (iv) Complete on-site construction or installation of the emission control equipment before November 1, 1981; and
- (v) Achieve final compliance with subsection (2) of this section before January 1, 1982.
- (b) The owner or operator of a source of VOC emissions subject to a schedule of control dates shall certify to the director within ten calendar days after the deadline for each increment of progress, whether the required increment of progress has been met.
 - (4))) Testing and monitoring.
- (a) The owner or operator of a storage vessel covered under WAC 173-490-201 shall demonstrate compliance by the methods of this subsection or an alternative method approved by ((the director)) ecology.
- (b) A person proposing to measure the seal fit of a storage vessel in order to comply with this section shall notify ((the director)) ecology of the intent to measure not less than five working days before the measurement so the director or a representative may ((at his option)) observe the measurement if desired.
- (c) Compliance with WAC 173-490-201 (2)(a)(ii)(C) shall be determined by physically measuring the length and width of all gaps around the ((entire)) circumference of the secondary seal in each place where a 0.32 cm (1/8 in.) ((uniform)) diameter probe passes freely (without forcing or binding against the seal) between the seal and the tank wall and summing the area of the individual gaps.

AMENDATORY SECTION (Amending Order DE 80-18, filed 8/20/80)

WAC 173-490-202 LEAKS FROM GASOLINE TRANSPORT TANKS AND VAPOR COLLECTION SYSTEMS. (1) Specific applicability.

This section shall apply to all gasoline transport tanks equipped for gasoline vapor collection and all vapor collection systems at gasoline loading terminals, bulk gasoline plants and gasoline dispensing facilities as qualified in WAC 173-490-025 and 173-490-040.

- (2) Provisions for specific processes.
- (a) The owner(s) or operator(s) of a gasoline loading or unloading facility shall only allow the transfer of gasoline between the facility and a transport tank when a current leak test certification for the

- transport tank is on file with the facility or a valid inspection sticker is displayed on the vehicle.
- (b) The owner(s) or operator(s) of a transport tank shall not make any connection to the tank for the purpose of loading or unloading gasoline, except in the case of an emergency, unless the gasoline transport tank:
- (i) Is tested annually according to the test procedure referenced in WAC 173-490-202 (((4))) (3)(c);
- (ii) Sustains a pressure change of no more than 0.75 kilopascals (3 inches of water) in five minutes when pressurized to a gauge pressure of 4.5 kilopascals (18 inches of water) or evacuated to a gauge pressure of 1.5 kilopascals (6 inches of water) during the testing required in WAC 173-490-202 (2)(b)(i);
- (iii) Is repaired by the owner(s) or operator(s) and retested within fifteen days of testing if it does not meet the criteria of WAC 173-490-202 (2)(b)(ii);
 - (c) The owner(s) or operator(s) of a transport tank shall:
- (i) Have a current leak test certification for the transport tank on file with each gasoline loading or unloading facility ((at which)) where gasoline is transferred ((a current leak test certification for the transport tank)); or
- (ii) Display a sticker near the department of transportation certification plate required by 49 CFR 178.340-10b which:
- (A) Shows the date that the gasoline tank truck last passed the test required in WAC 173-490-202 (2)(b)(i) and (ii);
- (B) Shows the identification number of the gasoline tank truck tank; and
- (C) Expires not more than one year from the date of the leak tight test.
 - (d) The owner(s) or operator(s) of a vapor collection system shall:
- (i) Operate the vapor collection system and the gasoline loading equipment during all loadings and unloadings of transport tanks equipped for emission control such that:
- (A) A gauge reading of tank pressure will not exceed 4.5 kilopascals (18 inches of water) or vacuum 1.5 kilopascals (6 inches of water);
- (B) The concentration of gasoline vapors is below the lower explosive limit (LEL, measured as propane) at all points a distance of 2.5 cm (1 inch) from potential leak sources when measured by the method in WAC 173-490-202(((4+))) (3); and
 - (C) There are no visible liquid leaks.
- (ii) Repair and retest a vapor collection system that exceeds the limits of WAC 173-490-202 (2)(d)(i) within fifteen days.
- (e) ((The department)) Ecology may, at any time, monitor a gasoline transport tank and vapor collection system during loading or unloading operations by the procedure in WAC 173-490-202 ((4))) (3)(d) to confirm continuing compliance with WAC 173-490-202 (2)(b) or (d).
 - (3) ((Schedule of control dates.
- (a) The owner or operator of a gasoline transport tank shall meet the increments of progress contained in the following schedule or an approved alternative schedule of control dates as stipulated in WAC 173-490-071;
- (i) Submit plans to the department for operating and maintenance procedures to implement WAC 173-490-202 (2) and (4) before March 1, 1981;
- (ii) Issue purchase orders or contracts for all needed test equipment before May 1, 1981;
- (iii) Commence certification of vapor collection systems before January 1, 1982; and
- (iv) Complete initial certification of all vapor collection systems before July 1, 1982.
- (b) The owner or operator of a vapor collection system subject to this schedule of control dates shall certify to the department within ten calendar days after the deadline for each increment of progress, whether the required increment of progress has been met:
 - (4))) Testing and monitoring.
- (a) The owner(s) or operator(s) of a gasoline transport tank or vapor collection system shall, at his own expense, demonstrate compliance with WAC 173-490-202 (2)(a) and (b), respectively. All tests shall be made by, or under the direction of, a person qualified to perform the tests ((and approved by the department)).
- (b) The owner(s) or operator(s) of a gasoline transport tank shall notify ((the department)) ecology in writing of the date and location of a certification test at least ten calendar days before the anticipated test date.
- (c) ((Testing procedures to determine)) To demonstrate compliance with ((WAC 173-490-202 shall be consistent with the procedures on

file with and approved by the department)) this chapter, refer to WAC

(d) Monitoring to confirm the continuing existence of leak tight conditions shall be consistent with the procedures on file with and approved by ((the department)) ecology.

(((5))) (4) Recordkeeping.

(a) The owner(s) or operator(s) of a gasoline transport tank or vapor collection system shall maintain records of all certification tests and repairs for at least two years after the test or repair is completed.

(b) The records of certification tests required by WAC 173-490-202

(((5))) <u>(4)</u>(a) shall, as a minimum, contain:

(i) The transport tank identification number;

(ii) The initial test pressure and the time of the reading; (iii) The final test pressure and the time of the reading;

(iv) The initial test vacuum and the time of the reading;

(v) The final test vacuum and the time of the reading;

(vi) At the top of each report page, the company name, date and location of the tests on that page; and

(vii) Name and title of the person conducting the test.

(c) The owner(s) or operator(s) of a gasoline transport tank shall annually certify that the transport tank passed the required tests.

(d) Copies of all records required under WAC 173-490-202 shall immediately be made available to ((the department)) ecology, upon written request, at any reasonable time.

AMENDATORY SECTION (Amending Order DE 82-22, filed 7/27/82)

WAC 173-490-203 PERCHLOROETHYLENE DRY CLEAN-ING SYSTEMS. (1) Specific applicability. This section shall apply to all dry cleaning systems using perchloroethylene cleaning solvent and as qualified in WAC 173-490-203 (1)(a) and (b) and 173-490-025.

(a) The following dry cleaning systems are exempt from the requirements of WAC 173-490-203 (2)(a)(i) and (ii):

(i) Coin-operated systems;

(ii) Systems located in a facility with inadequate space to accommodate an adsorber:

(iii) ((Systems with an average monthly loss less than twenty-five gallons (2 tons per year); and

(iv))) Systems with insufficient steam capacity to desorb adsorbers.

- (b) An exemption for the conditions stated in WAC 173-490-203 (2)(a)(i) and (ii) may be granted by ((the director)) ecology when sufficient evidence is submitted by the owner(s) or operator(s) of the dry cleaning system to justify the exemption.
 - (c) A material balance will be used to determine VOC losses.

(2) Provisions for specific processes.

- (a) The owner(s) or operator(s) of a perchloroethylene dry cleaning facility subject to this chapter shall:
- (i) Vent the entire dryer exhaust through a properly functioning carbon ((absorption)) adsorption system or equally effective control device:
- (ii) Emit no more than 100 ppmv when ((determined)) demonstrated in accordance with WAC 173-490-203 (((4))) (3)(c)(i), of ((volatile organic compounds)) VOCs from the dryer control device before dilution;
- (iii) Immediately repair all components found to be leaking liquid ((volatile organic compounds)) VOCs;
- (iv) Cook or treat all diatomaceous earth filters so that the residue contains 25 kg or less of ((volatile organic compounds)) VOCs per 100 kg of wet waste material;

(v) Reduce the ((volatile organic compounds)) VOCs from all solvent stills to 60 kg or less per 100 kg of wet waste material;

- (vi) Drain all filtration cartridges, in the filter housing or other enclosed container, for at least twenty-four hours before discarding the cartridges; and
- (vii) When possible, dry all drained cartridges without emitting ((volatile organic compounds)) VOCs to the atmosphere.

(3) ((Schedule of control dates.

- (a) The owner or operator of a perchloroethylene dry cleaning facility subject to WAC 173-490-203 (2)(a)(i) and (ii) shall meet the applicable increments of progress in the following schedule or a schedule approved under WAC 173-490-071.
- (i) Award contracts, issue purchase orders, or otherwise order the emission control system and process equipment, before July 1, 1981;
- (ii) Complete installation of the emission control and process equipment before July 1, 1982;
- (iii) Achieve final compliance, determined in accordance with WAC 173-490-203(4) before July 1, 1982;

- (iv) In the event that equipment cannot be delivered prior to May 1, 1982, and the owner or operator placed the order prior to July 1, 1981; the final compliance date shall be sixty days following delivery of the equipment.
- (b) The owner or operator of a perchloroethylene dry cleaning facility subject to this chapter shall comply with the operational and maintenance provisions of WAC 173-490-203 (2)(a)(iii) through (vii) by July 1, 1981.
 (4))) Testing and monitoring.

- (a) Compliance with WAC 173-490-203 (2)(a)(i), (vi), and (vii) shall be determined by means of visual inspection.
- (b) Compliance with WAC 173-490-203 (2)(a)(iii) shall be determined by means of visual inspection of the following components:
 - (i) Hose connections, unions, couplings and valves;
 - (ii) Machine door gaskets and seatings;
 - (iii) Filter head gasket and seating;
 - (iv) Pumps;
 - (v) Base tanks and storage containers;
 - (vi) Water separators;
 - (vii) Filter sludge recovery;
 - (viii) Distillation unit;
 - (ix) Diverter valves;
 - (x) Saturated lint from lint basket; and

(xi) Cartridge filters.

- (c) Compliance with WAC 173-490-203 (2)(a)(ii) shall be ((determined)) demonstrated by:
- (i) A test consistent with the procedures on file with and approved by ((the department)) ecology; or
- (ii) The proper installation, operation, and maintenance of equipment that has been demonstrated by the owner(s) or operator(s) to adequately meet the emission limits in WAC 173-490-203 (2)(a)(ii).
- (d) Compliance with WAC 173-490-203 (2)(a)(iv) and (v) shall be ((determined)) demonstrated by tests consistent with the procedures on file with and approved by ((the department)) ecology.

AMENDATORY SECTION (Amending Order DE 82-22, filed 7/27/82)

WAC 173-490-204 GRAPHIC ARTS SYSTEMS. (1) Specific applicability.

- (a) This section shall apply to all packaging rotogravure, publication rotogravure, specialty printing operations, and flexographic printing facilities that use more than 90 megagrams (100 tons) per year of ((volatile organic compounds)) VOCs as a component of ink, for the thinning of ink, cleaning of presses, press components and equipment; and are covered by WAC 173-490-025.
- (b) Machines that have both coating units (apply a uniform layer of material across the entire width of a web) and printing units (forming words, designs, and pictures) shall be included under WAC 173-490-204 rather than WAC 173-490-040(6), Surface coaters.
 - (2) Provisions for specific processes.
- (a) No owner(s) or operator(s) of a packaging rotogravure, publication rotogravure or flexographic printing subject to this regulation and employing solvent containing ink may operate, cause, allow or permit the operation of the facility unless:
- (i) The volatile fraction of ink, as it is applied to the substrate, contains twenty-five percent by volume or less of organic solvent and seventy-five percent by volume or more of water;
- (ii) The ink as it is applied to the substrate, less water, contains sixty percent by volume or more nonvolatile material; or
- (iii) The owner(s) or operator(s) installs and operates((:)) a system that captures at least ninety percent by weight and;
- (A) A carbon adsorption system which reduces the volatile organic emissions from the capture system by at least ninety percent by weight:
- (B) An incineration system which oxidizes at least ninety percent of the nonmethane ((volatile organic compounds)) VOCs (VOC measured as total combustible carbon) to carbon dioxide and water; or
- (C) An alternative ((volatile organic compound)) VOC emission reduction system demonstrated to have at least a ninety percent reduction efficiency, measured across the control system, and has been approved by ((the department)) ecology.
- (b) A collection system shall be used with the emission controls of WAC 173-490-204 (2)(a)(iii). The design and operation of the collection system shall be consistent with good engineering practice, and shall provide an overall reduction in the emission of ((volatile organic compounds)) VOCs of at least:

- (i) Seventy-five percent where a publication rotogravure process is used; or
- (ii) Sixty-five percent where a packaging rotogravure process is used; or
 - (iii) Sixty percent where a flexographic process is used.
 - (3) ((Schedule of control dates.
- (a) The owner or operator of a packaging rotogravure, publication rotogravure or flexographic printing facility subject to this chapter shall meet the applicable increments of progress in the following schedules or an approved alternative schedule of control dates as stipulated in WAC 173-490-071:
- (i) For process equipment changes and add-on control devices, including incineration with heat recovery:
- (A) Submit final plans for the emission control system or process equipment, or both, before April 1, 1981;
- (B) Award contracts or purchase orders for the emission control system or process equipment, or both, before June 1, 1981;
- (C) Initiate on-site construction or installation of the emission control or process equipment, or both, before December 1, 1981;
- (D) Complete on-site construction or installation of the emission control or process equipment, or both, before December 1, 1982; and
- (E) Achieve final compliance, determined in accordance with WAC 173-490-204(4), before January 1, 1983.
- (ii) For incincration equipment without heat recovery or process modifications not requiring purchase orders:
- (A) Submit final plans for the emission control system or process modifications, or both, before March 1, 1981;
- (B) Award contracts for process modifications or for incineration equipment, or both, before May 1, 1981;
- (C) Initiate on-site construction or installation of process modifications or emission control equipment, or both, before July 1, 1981;
- (D) Complete on-site construction or installation of process modifications or incineration equipment, or both, before November 1, 1981; and
- (E) Achieve final compliance, determined in accordance with WAC 173-490-204(4) before January 1, 1982.
 - (iii) For low solvent technology:
- (A) Submit a plan for an extended schedule of control dates meeting the conditions in WAC 173-490-071;
- (B) Achieve a final reduction in emissions greater than that which would have been attained from the controls specified in WAC 173-490-204(2);
- (C) Commit to the installation of the controls in WAC 173-490-204(2) and achieving final compliance by January 1, 1987 should progress toward low solvent technology not meet expectations;
- (D) Provide for a major reduction in emissions by January 1, 1983 as an increment of progress as required in WAC 173-490-071.
- (b) The owner or operator of a volatile organic compound source subject to a compliance schedule of WAC 173-490-204 shall certify to the department within five days after the deadline for each increment of progress whether the required increment of progress has been met.
 - (4))) Testing and monitoring.
- (a) ((Testing procedures to determine)) To demonstrate compliance with this chapter ((shall be on file with and approved by the department)), refer to WAC 173-400-105.
- (b) When add—on control equipment is used, continuous monitors of the following parameters shall be installed, periodically calibrated, and operated at all times that the associated control equipment is operating:
 - (i) Exhaust gas temperature of all incinerators;
 - (ii) Temperature rise across a catalytic incinerator bed;
 - (iii) Breakthrough of VOC on a carbon adsorption unit; and
- (iv) Any other continuous monitoring or recording device required by ((the department)) ecology.
- (c) The owner or operator of a facility shall be responsible for all expenses of monitoring required by WAC 173-490-204 ((4)) (3)(b).

AMENDATORY SECTION (Amending Order DE 82-22, filed 7/27/82)

WAC 173-490-205 SURFACE COATING OF MISCELLA-NEOUS METAL PARTS AND PRODUCTS. (1) Specific applicability. This section shall apply to surface coating of miscellaneous metal parts and products in the following industries ((having VOC emissions greater than one hundred six kilograms (two hundred thirty-five pounds) per day)), if the potential uncontrolled emissions of VOC is

- greater than 10 tons per year and as qualified in WAC 173-490-205 (1)(b), (c), and (d), and 173-490-025.
 - (a) Miscellaneous metal parts and products shall include:
- (i) Large farm machinery (harvesting, fertilizing and planting machines, tractors, combines, etc.);
- (ii) Small farm machinery (lawn and garden tractors, lawn mowers, rototillers, etc.);
- (iii) Small appliances (fans, mixers, blenders, crock pots, dehumidifiers, vacuum cleaners, etc.);
- (iv) Commercial machinery (office equipment, computers and auxiliary equipment, typewriters, calculators, vending machines, etc.);
- (v) Industrial machinery (pumps, compressors, conveyor components, fans, blowers, transformers, etc.);
- (vi) Fabricated metal products (metal covered doors, frames, etc.); and
- (vii) Any other industrial category which coats metal parts or products under the Standard Industrial Classification Code of Major Group 33 (primary metal industries), Major Group 34 (fabricated metal products), Major Group 35 (nonelectric machinery), Major Group 36 (electrical machinery), Major Group 37 (transportation equipment), Major Group 38 (miscellaneous instruments), ((and)) Major Group 39 (miscellaneous manufacturing industries), Major Group 40 (railroad transportation), and Major Group 41 (transit passenger transportation).
- (b) This ((chapter)) section is not applicable to the surface coating of the following metal parts and products:
- (i) Automobiles and light-duty trucks;
- (ii) Metal cans;
- (iii) Flat metal sheets and strips in the form of rolls or coils;
- (iv) Magnet wire for use in electrical machinery;
- (v) Metal furniture;
- (vi) Large appliances;
- (vii) Airplanes;
- (viii) Automobile refinishing;
- (ix) Customized top coating of automobiles and trucks, if production is less than thirty-five vehicles per day; and
 - (x) Exterior of marine vessels.
- (c) This chapter applies to the application area, flashoff area, air and forced air drier, and oven used in the surface coating of the metal parts and products in WAC 173-490-205 (1)(a). This chapter also applies to prime coat, top coat, and single coat operations.
- (d) The application of coatings whose formulations are controlled by federal specifications and the use of which is required by federal agencies shall be exempt from the emission limits in WAC 173-490-205 (2)(a).
- (e) A case-by-case determination of the emission controls best representing RACT may be substituted for the requirements of WAC 173-490-205(2). Such a determination shall be approved by ((the department)) ecology.
 - (2) Provisions for specific processes.
- (a) The owner or operator of a coating application system shall not emit a quantity of ((volatile organic compounds)) VOCs greater than those listed by specific coating, excluding water and as delivered to the application system:

0.52 kg/liter	(4.3 lb/gallon)
0.42 kg/liter	(3.5 lb/gallon)
0.42 kg/liter	(3.5 lb/gallon)
0.36 kg/liter	(3.0 lb/gallon)
0.05 kg/liter	(0.4 lb/gallon)
	0.42 kg/liter 0.42 kg/liter 0.36 kg/liter

- (b) When more than one emission limitation listed in WAC 173-490-205 (2)(a) applies to a specific coating, the least stringent will apply.
- (c) All VOC emissions from solvent washings shall be considered in the emission limitations in WAC 173-490-205 (2)(a), unless the solvent is directed into containers that prevent evaporation into the atmosphere.
- (d) The emission limits set forth in WAC 173-490-205 (2)(a) shall be achieved by:
 - (i) The application of low solvent coating technology; or
- (ii) An incineration system that oxidizes at least ninety percent of the ((volatile organic compounds)) VOCs (VOC measured as total combustible carbon) to carbon dioxide and water; or
- (iii) An equivalent means of VOC reduction certified by the owner(s) or operator(s) and approved by ((the department)) ecology.

- (e) A collection system shall be used together with the incinerator of WAC 173-490-205 (2)(d)(ii). The design and operation of the collection system shall be consistent with good engineering practice and provide for an overall VOC emission reduction necessary to comply with the emission limits of WAC 173-490-205 (2)(a). The required VOC emission reduction shall be calculated on a unit volume of uncured solids basis.
 - (3) ((Schedule of control dates:
- (a) The owner or operator of a source shall meet the following applicable increments of progress, unless a source has an approved alternative schedule of control dates as stipulated in WAC 173-490-071.
 - (i) Sources using low solvent content coatings shall:
- (A) Submit final plans for the application of low solvent technology before April 1, 1981;
- (B) Complete evaluation of product quality and commercial acceptance before October 1, 1981;
- (C) Issue purchase orders or contracts for low solvent content coatings before December 1, 1981;
 - (D) Initiate process modifications before January 1, 1982; and
- (E) Complete process modifications and begin use of low solvent content coatings before January 1, 1983:
- (ii) Sources using process equipment changes or add-on control devices, including incineration with heat recovery, shall:
- (A) Submit final plans for the emission control system, or process equipment, or both, before April 1, 1981;
- (B) Award contracts or purchase orders for the emission control systems, or process equipment, or both, before June 1, 1981;
- (C) Initiate on-site construction or installation of the emission control system, or process equipment, or both, before December 1, 1981;
- (D) Complete on-site construction or installation of the emission control system or process equipment, or both, before December 1, 1982; and
- (E) Achieve final compliance, determined in accordance with WAC 173-490-205(4) before January 1, 1983.
- (iii) Sources using incineration without heat recovery or process modifications not requiring purchase orders shall:
- (A) Submit final plans for the emission control system or process modification, or both, before March 1, 1981;
- (B) Award contracts or purchase orders for the emission control system or process modification, or both, before May 1, 1981;
- (C) Initiate on-site construction or installation of the emission control system or process modification, or both, before July 1, 1981;
- (D) Complete on-site construction or installation of the emission control system or process modification, or both, before November 1, 1981; and
- (E) Achieve final compliance, determined in accordance with WAC 173-490-205(4), before January 1, 1982.
 - (4))) Testing and monitoring.
- (a) ((The department)) Ecology may require the owner(s) or operator(s) of a source to demonstrate at his/her own expense, compliance by the methods of WAC 173-490-205 (((4))) (3)(c).
- (b) The owner(s) or operator(s) of a source shall notify ((the department)) ecology at least ten days before a proposed emission certification test so the director or a representative may ((at his option)) observe the test.
- (c) ((Testing and calibration procedures to determine)) To demonstrate compliance with this chapter ((shall be consistent with the procedures on file with and approved by the department)), refer to WAC 173-400-105.
- (d) ((The department)) Ecology may require monitoring of the following parameters:
 - (i) Exhaust gas temperature of all incinerators;
 - (ii) Temperature rise across a catalytic incinerator bed; and
 - (iii) Breakthrough of VOC on a carbon adsorption unit.

AMENDATORY SECTION (Amending Order DE 80-18, filed 8/20/80)

- WAC 173-490-207 SURFACE COATING OF FLATWOOD PANELING. (1) Specific applicability.
- (a) This section shall apply to all flatwood panel manufacturers and surface finishing facilities as qualified in WAC 173-490-207 (1)(b) and (c) and 173-490-025.
- (b) These chapters shall apply to all operations and equipment that is used to apply, convey and dry (including flashoff areas) a surface pattern or coating on the following products:
- (i) Printed interior panels made of hardwood plywood and thin ((particle board)) particleboard;

- (ii) Natural finish hardwood plywood panels; or
- (iii) Hardboard paneling with Class II finishes.
- (c) These chapters do not apply to the manufacture of exterior siding, tileboard, or particleboard used as a furniture component.
 - (2) Provisions for specific processes.
- (a) The owner(s) or operator(s) of a facility shall not emit ((volatile organic compounds)) VOCs from a coating application system in excess of:
- (i) 2.9 kg per 100 square meters of coated finished product (6.0 lb/1,000 square feet) from printed interior panels, regardless of the number of coats applied;
- (ii) ((5.8)) 5.9 kg per 100 square meters of coated finished product (12.0 lb/1,000 square feet) from natural finish hardwood plywood panels, regardless of the number of coats applied; and
- (iii) ((4.8)) 4.9 kg per 100 square meters of coated finished product (10.0 lb/1,000 square feet) from Class II finishes on hardboard panels, regardless of the number of coats applied.
- (b) The emission limits in WAC 173-490-207 (2)(a) shall be achieved by:
 - (i) The application of low solvent content coating technology; or
- (ii) An incineration system which oxidizes at least ninety percent of the nonmethane ((volatile organic compounds)) VOCs entering the incinerator (VOC measured as total combustible carbon) to carbon dioxide and water; or
- (iii) An equivalent means of VOC removal. The equivalent means must be certified by the owner(s) or operator(s) and approved by ((the department)) ecology.
- (c) A capture system shall be used in conjunction with the emission control systems in WAC 173-490-207 (2)(b)(ii) and (iii). The design and operation of the capture system must be consistent with good engineering practice and shall be required to provide for an overall emission reduction sufficient to meet the emission limitation in WAC 173-490-207 (2)(a).
 - (3) ((Schedule of control dates.
- (a) The owner or operator of a source shall meet the following applicable increments of progress, unless a source has an approved alternative schedule of control dates as stipulated in WAC 173-490-071.
 - (i) Sources using low solvent content coatings shall:
- (A) Submit final plans for the application of low solvent technology before April 1, 1981;
- (B)Complete evaluation of product quality and commercial acceptance before October 1, 1981;
- (C) Issue purchase orders or contracts for low solvent content coatings before December 1, 1981;
 - (D) Initiate process modifications before January 1, 1982; and
- (E) Complete process modifications and begin use of low solvent content coatings before January 1, 1983.
- (ii) Sources utilizing process equipment changes or add-on control devices, including incineration with heat recovery, to comply with the emission limitations in WAC 173-490-207 (2)(a) shall:
- (A) Submit final plans for the emission control system, or process equipment, or both, before April 1, 1981;
- (B) Award contracts or purchase orders for the emission control systems, or process equipment, or both, before June 1, 1981;
- (C) Initiate on-site construction or installation of the emission control system, or process equipment, or both, before December 1, 1981;
- (D)Complete on-site construction or installation of the emission control system or process equipment, or both, before December 1, 1982, and
- (E) Achieve final compliance, determined in accordance with WAC 173-490-207(4) before January 1, 1983.
- (iii) Sources utilizing incineration without heat recovery or process modifications not requiring purchase orders to comply with the emission limitation in WAC 173-490-207 (2)(a) shall:
- (A) Submit final plans for the emission control system or process modification; or both, before March 1, 1981;
- (B) Award contracts or purchase orders for the emission control system or process modification, or both, before May 1, 1981;
- (C) Initiate on-site construction or installation of the emission control system or process modification, or both, before July 1, 1981;
- (D) Complete on site construction or installation of the emission control system or process modification, or both, before November 1, 1981; and
- (E) Achieve final compliance, determined in accordance with WAC 173-490-207(4), before January 1, 1982.
 - (4))) Testing and monitoring.

- (a) ((The department)) Ecology may require the owner or operator of a facility to demonstrate at his/her own expense compliance by the methods of WAC 173-490-207 ((4)) (3)(c).
- (b) The owner(s) or operator(s) of a facility shall notify ((the department)) ecology at least ten days before a proposed emission certification test so the ((department)) director or a representative may ((at his option)) observe the test.
- (c) ((Testing and calibration procedures to determine)) To demonstrate compliance with this chapter ((shall be consistent with the procedure on file with and approved by the department)), refer to WAC 173-400-105.
- (d) ((The department)) Ecology may require monitoring of the following parameters:
 - (i) Exhaust gas temperature of all incinerators;
 - (ii) Temperature rise across a catalytic incinerator bed; and
 - (iii) Breakthrough of VOC on a carbon adsorption unit.

AMENDATORY SECTION (Amending Order DE 82-22, filed 7/27/82)

WAC 173-490-208 AEROSPACE ASSEMBLY AND COMPONENT COATING OPERATIONS. (1) Specific applicability. This section shall apply to all aerospace component coating facilities that emit an annual average of eighteen kilograms (forty pounds) or more of ((volatile organic compounds)) VOCs per operating day and as qualified in WAC 173-490-025.

- (2) It shall be unlawful for any person to cause or allow:
- (a) The application of any primer or topcoat to aerospace components which contains in excess of:
 - (i) 650 grams of VOC per liter of primer, less water, as applied.
 - (ii) 600 grams of VOC per liter of topcoat, less water, as applied.
- (b) The application of any temporary protective coating to aerospace components that contains more than 250 grams of VOC per liter of material, less water, as applied.
- (c) The use of ((volatile organic compounds)) VOCs of composite vapor pressure of 10.4 kPa (1.5 psia) or greater at a temperature of 21.1°C (70°F) for surface preparation or cleanup, excluding paint removal
- (d) The use of ((volatile organic compounds)) VOCs for the cleanup of spray equipment used in aerospace component coating operations unless 85 percent of the ((volatile organic compounds)) VOCs by weight, are collected and disposed ((such)) so that they are not emitted to the atmosphere.
- (e) The use of a stripper which contains more than 400 grams of VOC per liter or has a composite vapor pressure of ((volatile organic compounds)) VOCs more than 1.3 kPa (0.19 psia) at 21.1°C (70°F).
 - (3) The emission limits of paragraph (2) shall be achieved by:
- (a) The application of reasonably available low solvent coating technology;
 - (b) A vapor collection and disposal system; or
- (c) An equivalent method of VOC reduction certified by the owner(s) or operator(s) and approved by ((the director)) ecology.
- (4) The provisions of WAC 173-490-208 (2)(a) and (2)(b) shall not apply to the following materials:
 - (a) Coatings for masking in chemical etching operations,
 - (b) Adhesive bonding primer,
 - (c) Flight test coatings,
 - (d) Space vehicle coatings, or
 - (e) Fuel tank coatings.
- (5) Upon the submission of an alternative coating evaluation, ((the director)) ecology may determine that a reasonably available low solvent coating does exist for a given application and may exempt the coating from requirements of WAC 173-490-208. All alternative coating evaluations shall contain, as a minimum:
 - (a) Types of products to be coated,
 - (b) Types of coatings evaluated,
 - (c) Results of performance tests,
- (d) Status of research into development of low VOC coatings for the application,
 - (e) Feasibility of installing control equipment,
- (f) Mitigating measures that could be implemented to reduce VOC emissions.
- (((6) Any facility subject to this section shall submit a report to the department by January 1, 1983. This report shall include, as a minimum, a discussion of the advances in coating technology that have occurred since January 1, 1980, and a forecast of future technology improvements.
 - (7) Schedule of control dates.

- (a) The owner or operator of a source shall meet the following applicable increments of progress.
- (i) Submit final plans for the emission control system, process equipment or low solvent coatings substitution before September 1, 1982.
- (ii) Award contracts or purchase orders for the emission control system, process equipment or low solvent coatings before January 1, 1983:
- (iii) Initiate construction or process modifications before March 1, 1983:
 - (iv) Achieve final compliance before July 1, 1983.))

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 173-490-070 SCHEDULE OF CONTROL DATES.

WAC 173-490-071 ALTERNATIVE SCHEDULE OF CON-

TROL DATES.

WAC 173-490-120 COMPLIANCE SCHEDULES.

WAC 173-490-130 REGULATORY ACTIONS.

WAC 173-490-135 CRIMINAL PENALTIES.

WAC 173-490-140 APPEALS.

WAC 173-490-150 VARIANCE.

WSR 90-05-053 PROPOSED RULES DEPARTMENT OF HEALTH

[Filed February 20, 1990, 3:50 p.m.]

Original Notice.

Title of Rule: License renewal registration date and fee.

Purpose: To amend the renewal date for yearly renewal of acupuncture license. Current rule requires pro rating of fee. Amendment would make the first renewal date that of licensee's birth date and every year thereafter.

Statutory Authority for Adoption: RCW 18.06.160 Adoption of rules.

Statute Being Implemented: WAC 308-180-120.

Summary: Amend rule to delete pro rating of first years' license fee and make license due automatically on licensee's birth date.

Reasons Supporting Proposal: Ease in administering renewal process. Current pro rating system must be done by hand, cannot be automated. This system is too time consuming.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Terry West, Program Manager, 1300 Quince Street, Olympia, 753-3095.

Name of Proponent: Department of Health, governmental.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: This amendment will increase our efficiency.

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

Explanation of Rule, its Purpose, and Anticipated Effects: To amend the renewal date for yearly renewal of acupuncture license. Current rule requires pro rating of fee. Amendment will make the first renewal date that of licensee's birth date. Effect will be an increase in efficiency in renewing licenses because they will not have to

be hand calculated. System will be automated like other renewals without pro rating system. Fiscal impact will be very slight the first year of implementation because the renewal fees will be received on licensee's birth date and not pro rated through their first year of licensure.

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 Health, 3rd Floor Conference Room, 1300 Quince Street, Olympia, WA 98504, on April 27, 1990, at 10:00.

Submit Written Comments to: Leslie Baldwin, 1300 Quince Street, Olympia, WA 98504, by April 27, 1990.

Date of Intended Adoption: May 4, 1990.

February 16, 1990 Pam Campbell Mead for Kristine M. Gebbie Secretary

AMENDATORY SECTION (Amending Order PM 713, filed 3/9/88)

WAC 308-180-120 LICENSE RENEWAL REGISTRATION DATE AND FEE. (1) The annual license renewal date will coincide with the licensee's birth anniversary date.

- (2) ((Upon successfully completing the examination, a license will be issued to expire one year from the date of issuance at which time the current renewal fee will be prorated to convert the expiration date to the licensee's next birth anniversary date. The prorated fee will be submitted on or before the licensee's)) Individuals making application for initial license and examination, provided they meet all such requirements, will be issued a license, to expire on their next birth anniversary date.
- (3) Licensees who fail to pay the license renewal fee within thirty days of the license expiration date will be subject to the late penalty fee as set forth in RCW 18.06.120 and established in WAC ((308-180-100)) 308-180-260.

WSR 90-05-054 PREPROPOSAL COMMENTS DEPARTMENT OF AGRICULTURE

[Filed February 20, 1990, 4:38 p.m.]

Subject of Possible Rule Making: A proposal by the Pacific Northwest Aerial Applicator's Alliance to modify the restricted use herbicide rules in Eastern Washington. The proposal would primarily affect herbicide applications in Adams, Franklin and Grant counties by increasing the number of restricted use herbicides and requiring notification of the Department of Agriculture prior to applying these herbicides within two miles of three vineyards located in the Othello area.

Persons may comment on this subject in person at a public meeting, Moses Lake Elks Lodge, 814 North Stafford Road, Moses Lake, WA 98837, March 14, 1990, at 7:00 p.m.; or in writing to the Washington State Department of Agriculture, 406 General Administration Building, AX-41, Olympia, WA 98504, Attn: Ted Maxwell.

February 20, 1990 Art G. Losey Assistant Director

WSR 90-05-055 NOTICE OF PUBLIC MEETINGS MARINE EMPLOYEES' COMMISSION

[Memorandum—February 20, 1990]

Pursuant to RCW 42.30.075, the Marine Employees' Commission hereby gives notice that the previously scheduled March 1990 monthly meeting of the Marine Employees' Commission has been changed to Friday, March 30, 1990. The meeting will be held at 10:00 a.m. in the Port Commission Conference Room, Third Floor, Pier 66, Seattle. Any questions regarding the meeting may be addressed to: Janis Lien, Administrative Assistant, Marine Employees' Commission, Main Floor S.W., Quadrant FJ-11, Evergreen Plaza Building, Olympia, WA 98504.

WSR 90-05-056 NOTICE OF PUBLIC MEETINGS UNIVERSITY OF WASHINGTON

[Memorandum—February 15, 1990]

The following is a revised meeting schedule for regular meetings to be held by the University of Washington's Department of Orthopaedics:

The departmental/clinical faculty meetings for 1990 will be held on the following dates at 6:30 a.m. in RR-110:

January 8, 1990 February 5, 1990 March 5, 1990 April 9, 1990 May 7, 1990 June 4, 1990 – (in BB-1065E) July 2, 1990 August 6, 1990 September 10, 1990 – Cancelled October 1, 1990 November 5, 1990 December 3, 1990

We will notify you in advance when scheduled meetings are cancelled.

WSR 90-05-057 NOTICE OF PUBLIC MEETINGS CLEMENCY AND PARDONS BOARD

[Memorandum-February 19, 1990]

Please be advised the scheduled meeting of the Clemency and Pardons Board for March 9, 1990, is cancelled.

WSR 90-05-058
PROPOSED RULES
DEPARTMENT OF LICENSING

[Filed February 21, 1990, 11:50 a.m.]

Original Notice.

Title of Rule: Chapter 308-14 WAC.

Purpose: To adopt WAC pursuant to chapter 18.145 RCW to elaborate on licensing requirements.

Statutory Authority for Adoption: RCW 18.145.050.

Statute Being Implemented: Chapter 18.145 RCW.

Summary: Establish permanent and temporary certification and renewal procedures and set fees.

Reasons Supporting Proposal: Enable program to start the certifications of court reporters.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Judy Riker, 1300 Quince Street, Olympia, WA, 586-4565.

Name of Proponent: Department of Licensing, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: WAC 308-14-080, sets the requirement to apply for certifications; WAC 308-14-090, lists the application contents; WAC 308-14-100, states renewal requirements and nonrenewal penalties; WAC 308-14-110, gives criteria to qualify for certification without exam and qualification for temporary certification when practicing at time of chapter adopted; and WAC 308-14-200, list fees to be required for certification and renewal.

Proposal does not change existing rules.

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

Hearing Location: Best Western Airport Executel, 20717 Pacific Highway South, Seattle, WA, on March 27, 1990, at 9:00 a.m.

Submit Written Comments to: Judy Riker, Court Reporters, P.O. Box 9649, Olympia, WA 98504, by March 27, 1990.

Date of Intended Adoption: March 27, 1990.

February 21, 1990 Judy J. Riker Program Manager

Chapter 308-14 WAC COURT REPORTERS

NEW SECTION

WAC 308-14-080 CERTIFICATION REQUIREMENTS—PERMANENT AND TEMPORARY CERTIFICATES. (1) The department of licensing will issue a certificate to practice as a court reporter or shorthand reporter to an individual who meets the following requirements:

- (a) Submits a complete application with the required fee;
- (b) Passes the required examination;
- (c) Is of good moral character;
- (d) Has not engaged in unprofessional conduct;
- (e) Has no physical or mental impairment that would render the applicant unable to practice with reasonable skill and safety; or
 - (f) The provisions of WAC 308-14-110.
- (2) An individual may be issued a temporary certificate for one year if evidence is submitted showing the achievement and award of any of the following:
- (a) National Shorthand Reporters Association certificate of proficiency;
- (b) Registered professional reporter certificate or certificate of merit;
- (c) A current court reporter or shorthand reporter certification, registration, or license of another state; or
 - (d) A certificate of graduation from a court reporting school.

The temporary certificate will be valid for one year. Within one year of issuance of a temporary certificate, passage of the Washington license state examination is required. This certificate may be extended beyond the one-year limit only by the director if extraordinary circumstances are shown.

NEW SECTION

WAC 308-14-090 APPLICATION. (1) Applications for temporary and permanent certification must be complete in every detail and submitted with the required fee. Complete applications will contain the following information:

- (a) Name and address
- (b) Business name and address
- (c) Birth place and date
- (d) Social Security number
- (e) Educational background
 (f) Previous work experience in court reporting
- (g) List of references (references must have personal knowledge that the applicant has at least two years of court reporting experience)
- (h) Professional licensure/certification, including any action taken against the license or certificate
 - (i) Personal affidavit
- (j) Copies of school transcripts and/or graduation certificate (if required).
- (2) An applicant holding a temporary certificate must submit a complete updated application and fee for permanent certification. The application must be received at least eight weeks prior to the examination date.

NEW SECTION

WAC 308-14-100 LICENSE RENEWAL—PENALTIES. (1) Certification must be renewed on or before the expiration date shown on the certificate. The expiration date is the certificate holder's birthdate. Failure to renew the certificate by the expiration date will result in a penalty fee in an amount determined by the director. Certification may be reinstated for up to three years by payment of all renewal fees and a penalty fee for the period for which the certification had lapsed.

(2) An individual who fails to renew their certification by the expiration date forfeits all rights to represent themselves as a "shorthand reporter," "court reporter," "certified shorthand reporter," or "certified court reporter" until the certificate has been reinstated.

(3) An individual who has allowed the certification to expire for three years or more is required to file a new complete application and fee and must pass the state-approved examination. Upon passage of the exam a certificate will be issued.

NEW SECTION

WAC 308-14-110 PERSONS PRACTICING AS OF THE EFFECTIVE DATE OF THIS CHAPTER. (1) Anyone who has two or more years experience in court reporting or shorthand reporting in Washington state as of September 1, 1989, may apply for certification without examination, upon compliance with the following:

- (a) Completed application and fee must be submitted by September 1, 1990;
 - (b) Is of good moral character;
 - (c) Has not engaged in unprofessional conduct; and
- (d) Has no physical or mental impairments that would render the applicant unable to practice with reasonable skill and safety.
- (2) Shorthand reporters with less than two years of experience in Washington state may apply for a temporary certificate. Passage of the Washington state examination is required within one year of the issuance of the temporary certificate. An individual issued a temporary certificate must submit an application and fee to apply for permanent certification. The application and fee must be received at least eight weeks prior to the approved examination. The temporary certificates expire one year from the date of issuance. The certificate may be extended beyond the one-year limit only by the director if extraordinary circumstances are shown.
 - (3) This section expires September 1, 1990.
- (4) An individual who holds a temporary certificate and wishes to apply for permanent certification must submit an updated application and fee in order to be scheduled for the examination. The application and fee must be received at least eight weeks prior to the examination date. A completed application with fee and verification of experience

must be submitted to: Department of Licensing, Court Reporters Section, P.O. Box 9649, Olympia, WA 98504.

NEW SECTION

WAC 308-14-200 SHORTHAND REPORTING FEES. The following fees shall be charged by the professional licensing services division, department of licensing:

Title of Fee	Fee
Certification	
Application	\$150.00
Renewal	100.00
Late renewal penalty	100.00
Verification	25.00
Duplicate	. 15.00
Temporary certification	
Application	150.00
Verification	25.00
Duplicate	15.00

WSR 90-05-059 PROPOSED RULES DEPARTMENT OF AGRICULTURE

[Filed February 21, 1990, 12:08 p.m.]

Original Notice.

Title of Rule: Amending chapter 16-555 WAC, Washington Strawberry Commission.

Purpose: Amending WAC 16-555-010(6), delete the requirement for 10,000 pound minimum for commercial quantity; and WAC 16-555-040, assessments and collections to increase the assessment from one-fourth cent to one-half cent per pound.

Statutory Authority for Adoption: RCW 15.65.050. Statute Being Implemented: Chapter 15.65 RCW.

Summary: The first amendment would make all strawberries produced in Western Washington for market subject to the assessment. The second amendment is to increase the assessment on strawberries from one-fourth cent per pound to one-half cent per pound.

Reasons Supporting Proposal: Proposals would make all strawberries produced for market subject to assessment and would increase the assessment on anticipated smaller crops to maintain revenue.

Name of Agency Personnel Responsible for Drafting: Roger L. Roberts, WSDA, 406 General Administration Building, Olympia, 753-5028; Implementation and Enforcement: Washington Strawberry Commission, 4430 John Luhr Road, Olympia, 491-6567.

Name of Proponent: Petitioning producers, private.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Producers must approve in compliance with RCW 15.65.140 before this rule can become effective.

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

Explanation of Rule, its Purpose, and Anticipated Effects: WAC 16-555-010 would eliminate the minimum requirement of 10,000 pounds for a producer to be subject to the commission assessment. Therefore, all strawberries produced for market is subject to assessment; and

WAC 16-555-040 would increase the assessment on all strawberries produced for market. The total crop had decreased tremendously the last two years and the increase in the assessment would assist in maintaining an effective level of revenue.

Proposal Changes the Following Existing Rules: Described above.

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

Hearing Location: Chicona Room, Administration Building, Western Washington Research and Extension Center, Puyallup, Washington, on March 27, 1990, at 1:15 p.m.

Submit Written Comments to: Market Development Division, Washington State Department of Agriculture, 406 General Administration Building, Olympia, WA 98504, by March 25, 1990.

Date of Intended Adoption: May 1, 1990.

February 21, 1990 Arthur C. Scheunemann Assistant Director

AMENDATORY SECTION (Amending Order 1856, filed 5/14/85)

WAC 16-555-010 DEFINITION OF TERMS. For the purpose of this marketing order:

- (1) "Director" means the director of agriculture of the state of Washington or the director's duly appointed representative.
- (2) "Department" means the department of agriculture of the state of Washington.
- (3) "Act" means the Washington Agricultural Enabling Act of 1961 or chapter 15.65 RCW.
- (4) "Person" means any person, firm, association, or corporation.
- (5) "Affected producer" means any person who produces strawberries in commercial quantities in that portion of the state of Washington located west of the summit of the Cascade Mountains for fresh market, for processing, or for sale to processors.
- (6) "Commercial quantity" means any strawberries produced for a market ((in quantities of ten thousand pounds or more)), by a producer in any calendar year.
- (7) "Handler" means any person who acts as principal or agent or otherwise in processing, selling, marketing, storing, freezing, or distributing strawberries not produced by him.
- (8) "Strawberry commodity board," hereinafter referred to as "board," means the commodity board formed under the provisions of WAC 16-555-020.
- (9) "Strawberries" means and includes all kinds, varieties, and hybrids of "FRAGARIA-X-ANANASSA" grown and marketed in the state of Washington.
- (10) "Marketing season" or "fiscal year" means the twelve-month period beginning with January 1 of any year and ending with the last day of December following, both dates being inclusive.
- (11) "Producer-handler" means any person who acts both as a producer and as a handler with respect to strawberries. A producer-handler shall be deemed to be a producer with respect to the strawberries which he/she produces and a handler with respect to the strawberries which he/she handles, including those produced by himself/herself.
- (12) "Affected area" means that portion of the state of Washington located west of the summit of the Cascade Mountains.
- (13) "Sell" includes offer for sale, expose for sale, have in possession for sale, exchange, barter, or trade.
 - (14) "Affected unit" means one pound net of strawberries.

AMENDATORY SECTION (Amending Order 1856, filed 5/14/85)

WAC 16-555-040 ASSESSMENTS AND COLLECTIONS. (1) Assessments.

- (a) The annual assessment on all varieties of strawberries shall be ((one-fourth)) one-half cent per affected unit (pound).
 - (b) For the purpose of collecting assessments, the board may:
- (i) Require handlers to collect producer assessments from producers whose production they handle, and remit the same to the board; or

(ii) Require the person subject to the assessment to give adequate assurance or security for its payment.

(c) Subsequent to the first sale, no affected units shall be transported, carried, shipped, sold, marketed, or otherwise handled or disposed of until every due and payable assessment herein provided for has been paid and the receipt issued. The foregoing shall include all affected units shipped or sold, both inside and outside the state.

(2) Collections. Any moneys collected or received by the board pursuant to the provisions of the marketing order during or with respect to any season or year, may be refunded on a prorata basis at the close of such season or year or at the close of such longer period as the board determines to be reasonably adapted to effectuate the declared policies of this act and the purposes of this marketing order, to all persons from whom such moneys were collected or received or may be carried over into and used with respect to the next succeeding season, year, or period whenever the board finds that the same will tend to effectuate such policies and purposes.

(3) Penalties. Any due and payable assessment herein levied in such specified amount as may be determined by the board pursuant to the provisions of the act and the marketing order, shall constitute a personal debt of every person so assessed or who otherwise owes the same, and the same shall be due and payable to the board when payment is called for by it. In the event any person fails to pay the board the full amount of such assessment or such other sum on or before the date due, the board may, and is hereby authorized to, add to such unpaid assessment or sum an amount not exceeding ten percent of the same to defray the cost of enforcing the collecting of the same. In the event of failure of such person or persons to pay any such due and payable assessment or other such sum, the board may bring a civil action against such person or persons in a state court of competent jurisdiction for the collection thereof, together with the above specified ten percent thereon, and such action shall be tried and judgment rendered as in any other cause of action for debt due and payable.

WSR 90-05-060 PROPOSED RULES WASHINGTON STATE UNIVERSITY

[Filed February 21, 1990, 12:16 p.m.]

Supplemental Notice to WSR 90-01-105.

Title of Rule: Chapter 504-15 WAC, Campus traffic and parking regulations.

Purpose: These rules are adopted to change parking regulations for the Washington State University Pullman campus. These rules replace chapter 504-17 WAC.

Statutory Authority for Adoption: RCW 28B.30.125, 28B.30.150, 28B.10.560 and chapter 34.05 RCW.

Statute Being Implemented: RCW 28B.10.560.

Summary: These campus traffic and parking regulations establish a zone parking system.

Reasons Supporting Proposal: This plan provides an orderly and equitable distribution of parking space after satisfying institutional needs for parking space.

Name of Agency Personnel Responsible for Drafting. Implementation and Enforcement: John Shaheen, Parking Manager, Parking Services, Safety Building, 335-9684.

Name of Proponent: Washington State University, governmental.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: After the public hearing on January 24, 1990, the university elected to incorporate further suggestions from university employees, and delay adoption of the rules.

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

Explanation of Rule, its Purpose, and Anticipated Effects: These regulations include a new parking system for the Washington State University Pullman campus. The zone parking system establishes a hierarchy of parking spaces and places a premium on parking space at the center of the campus.

Proposal Changes the Following Existing Rules: The existing regulations identify parking areas with the individual's position in the institution, i.e., a student, an employee, or a visitor.

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

Hearing Location: Washington State University, Compton Union Building, Gridiron Room, Pullman, Washington 99164, on March 27, 1990, at 4:00 p.m.

Submit Written Comments to: Lou Ann Pasquan, 232 French Administration Building, Washington State University, Pullman, WA 99164-1023, by March 27, 1990.

Date of Intended Adoption: March 30, 1990.

February 12, 1990 Lou Ann Pasquan Director Procedures and Forms

Chapter 504-15 WAC CAMPUS TRAFFIC AND PARKING REGULATIONS

WAC

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PART I: INTRODUCTION

NEW SECTION

WAC 504-15-010 AUTHORIZATION. Pursuant to the authority granted by RCW 28B.30.125, 28B.30.150, 28B.10.560, and chapter 34.05 RCW, the board of regents of Washington State University establishes the following regulations to govern parking and traffic on campus.

NEW SECTION

WAC 504-15-020 PURPOSES OF REGULATIONS. The purposes of these regulations are to:

- (1) Expedite university business and provide maximum safety and convenience;
 - (2) Regulate parking, with priority given to:
 - (a) Services of the university;
 - (b) Persons who need vehicles in connection with their work; and
- (c) Staff and students who need private vehicles because of a disability or other approved reason; and
- (3) Provide and maintain suitable campus parking and traffic facilities.

NEW SECTION

WAC 504-15-030 KNOWLEDGE OF PARKING REGULA-TIONS. It is the responsibility of all individuals parking on the campus to read and fully understand these regulations. Lack of knowledge of these regulations will not be accepted as grounds for dismissal of citations.

NEW SECTION

WAC 504-15-040 APPLICABLE PARKING AND TRAFFIC LAWS AND REGULATIONS. The following regulations apply upon state lands owned and/or controlled by Washington State University—Pullman:

- (1) The motor vehicle and other traffic laws of the state of Washington (Revised Code of Washington);
- (2) The Washington State University parking and traffic regulations.

NEW SECTION

WAC 504-15-050 EMERGENCIES. The president of Washington State University shall have authority to suspend, modify, or repeal any or all provisions in this chapter in the event of an emergency, disaster, or other like contingency. Such action shall be limited in duration and scope to meeting the dangers of the contingency.

NEW SECTION

WAC 504-15-060 ADVISORY AND GOVERNING BODIES. (1) The traffic control subcommittee of the university planning committee. This subcommittee:

- (a) Makes recommendations on regulations governing campus traffic and parking control;
- (b) Reviews the administration and enforcement of traffic and parking regulations;
- (c) Makes recommendations for physical improvements in parking facilities;
- (d) Consults, where appropriate, with Pullman authorities on traffic matters:
- (e) Coordinates campus traffic planning with the work of the university planning committee; and
 - (f) Reviews alternative modes of transportation.
- (2) The parking appeals committee. This presidential standing committee has members representing faculty, staff, and students. The committee:
- (a) Establishes and maintains an appeals procedure for parking violations on campus;
 - (b) Hears appeals as requested and renders decisions; and
- (c) Informs parking services of recurring problems related to the enforcement of parking rules and regulations.

(3) Washington State University parking and police services. These departments are responsible for the cooperative administration and enforcement of these regulations. This responsibility also involves recommending the installation of appropriate traffic and parking signs, maintaining a registration record system, issuing permits, patrolling the university campus, and keeping a record of the violations, warnings, court summonses, and arrests.

NEW SECTION

WAC 504-15-080 SEVERABILITY. If any provision of this chapter, WAC 504-15, or its application to any person or circumstance is held invalid, the remainder of the chapter or its application to other persons or circumstances is unaffected.

NEW SECTION

WAC 504-15-100 DEFINITIONS. The definitions in this section are applicable within the context of these regulations.

(1) Campus. Describes all property owned, leased, and/or controlled by Washington State University in Pullman which is or may hereafter be dedicated mainly to the educational, research, housing, recreational, parking, or other activities of Washington State University.

- (2) Commuter student. Any student who does not live in a residence hall (dormitory). All students living in fraternities, sororities, university housing (other than residence halls), and private housing are considered to be commuter students.
 - (3) Dormitory. See residence hall.
- (4) Gate card. A plastic card that activates the gates controlling access to certain parking areas.
- (5) Handicap zone. A parking zone identified with a sign bearing the international handicap symbol that is restricted at all times to use by vehicles bearing a valid WSU handicap parking permit or indicator.
- (6) Holiday or university holiday. A day when all university facilities are generally closed (e.g., Thanksgiving Day, Christmas Day, New Year's Day). Vacation days are not considered holidays. See definition of vacation.
- (7) Housing area. Housing units or apartments, and their respective parking areas, that are owned by the university, but are not included as residence halls.
- (8) Illegal use of permit. A parking violation in which a citation is issued under the following circumstances:
 - (a) Use of a legal permit/indicator on the wrong vehicle.
 - (b) Use of a counterfeit permit/indicator.
 - (c) Use of a permit/indicator obtained under false pretenses.
 - (d) Use of a modified permit/indicator.
- (e) Use and/or retention of a resident priority permit/indicator by an unauthorized person.
- (f) Use of a visitor permit by a person who is not a visitor. See definition of visitor.
- (g) Use of a University of Idaho parking permit by WSU faculty, staff, or students.
- (9) Indicator. A decal displayed adjacent to a parking permit which more clearly defines the parking areas available to a permit holder.
- (10) Loading zone. A loading dock, or an area signed "loading zone" adjacent to a facility, in a parking area, or near a residence hall. Such an area is intended for loading and unloading bulky or voluminous material. Loading zones are restricted at all times.
- (11) Moped. Any two-wheeled or three-wheeled motor vehicle with an engine displacement of 50 cc or less.
- (12) Motorcycle. Any two-wheeled or three-wheeled motor vehicle with an engine displacement greater than 50 cc.
- (13) Motor vehicle. All motor-driven conveyances except wheelchairs.
- (14) No parking zone. Any area not specifically marked and/or signed for parking. Such areas include, but are not limited to areas with adjacent curbs or rails painted yellow or red.
- (15) Park/parking. This refers to the placement or standing of a vehicle, with or without a driver in attendance, and with or without the engine running.
- (16) Parking permit. A vinyl, plastic, or paper instrument sanctioned by parking services that is displayed from a vehicle, and authorizes parking in specified areas.
 - (17) Resident student. A student living in a residence hall.
- (18) Residence hall. The following living units are considered residence halls: Streit Hall, Perham Hall, Regents Hall, Scott Hall, Coman Hall, Wilmer Hall, Davis Hall, Duncan-Dunn Hall, Community Hall, Stevens Hall, McCroskey Hall, Gannon Hall, Goldsworthy

Hall, McEachern Hall, Orton Hall, Rogers Hall, Stephenson Complex, Stimson Hall, Waller Hall, and Kruegel McAllister Hall.

- (19) Service vehicle. A vehicle used to provide a service for the university or a tenant or contractor of the university (e.g., a university-owned vehicle or a privately-owned vehicle with a valid service permit displayed).
- (20) Service zone. Parking spaces designated for the use of university vehicles, other government—owned vehicles, and vehicles displaying a service indicator or commercial permit. Authorized vehicles may park in these zones for a maximum of fifteen minutes, except for vehicles that display a commercial permit, or a service indicator issued for an extended time. Service zones are restricted at all times.
- (21) Resident priority zone. A parking area close to a residence hall. Parking in these areas is assigned to resident students by residence life personnel, and/or residence hall officers.
- (22) Staff. For the purposes of these regulations, "staff" includes all faculty, classified staff, administrative and professional employees, temporary employees, and other support personnel employed by the university, and the personnel of other activities located on campus. Teaching assistants, research assistants, and other students employed by the university are not "staff."
- (23) Student. Any person who has been admitted to the university, and who is either attending classes, or actively pursuing a degree or certificate
- (24) Summer session. The summer session includes all summer school sessions beginning on the first day of the earliest session, and ending on the last day of the latest session.
 - (25) University holiday. See holiday.
- (26) Vacation. A period of time when classes or final exams are not in session. Except for holidays that fall within this period, the business offices of the university are open during this time.
 - (27) Vehicle. See motor vehicle.
- (28) Visitors. Persons who are not staff or students and who only visit the campus on an occasional basis.
- (29) Wheel lock. A device used to temporarily immobilize a vehicle (i.e., on-the-spot impoundment).

PART II: ENFORCEMENT

NEW SECTION

WAC 504-15-200 ENFORCEMENT AUTHORITY. Parking services is charged with the impartial enforcement of these regulations. Enforcement personnel have authority to issue parking citations, to impound vehicles, and to control access to areas.

NEW SECTION

WAC 504-15-210 TIMES OF ENFORCEMENT. Parking regulations are subject to enforcement at all times.

- (1) Permit areas: All parking zones are limited to authorized permit holders during specific hours. These hours are posted in each parking zone either at the entrance to parking areas, or along roadways where parking is marked. Restricted spaces are enforced at all times. See subsection (4) of this section, Special conditions.
- (2) Restricted spaces: These spaces are restricted for their designated purpose at all times (twenty-four hours a day, seven days a week):
 - (a) Handicapped.
 - (b) Gray zones (resident priority areas).
 - (c) Load/unload.
 - (d) Service.
 - (e) Reserved.
 - (f) Reserved (bagged) meters.
 - (g) Specially signed areas.
 - (h) Housing areas.
- (3) Metered spaces: Parking meters are in effect during the times posted on each meter. During these times the meter must be paid the posted amount. Additional time cannot be purchased beyond the meter's posted time limit (e.g., a two-hour meter will allow a maximum of two hours to be purchased at one time).
- (4) Special conditions: The parking regulations are enforced every day, twenty-four hours a day. However, during the following periods special conditions exist, and the regulations are modified.
- (a) During the following times, permits are not required in blue and gray zones:
- (i) At the start of each semester from Monday of registration week through the sixth day of class.
 - (ii) During vacation periods and between semesters.

- (iii) During finals week.
- (b) During the summer session, gray zones are open to all valid WSU parking permits, except housing permits.
- (c) During the following times, housing permits are not required in housing areas:
- (i) At the start of each semester from Monday of registration week through the sixth day of class.
 - (ii) During finals week.
- (d) During the period when the university is officially on summer business hours, all metered spaces and permit areas which are not restricted will be open parking after 4:00 p.m. This period varies from year to year, and does not include periods when individual departments change their business hours outside the university's official summer business hours.

NEW SECTION

- WAC 504-15-220 SIGNED AND MARKED AREAS. (1) Parking on campus is permitted only in the marked and/or signed spaces in areas and on streets. All other areas outside these designated areas are "no parking zones." Each parking area has signs or markings to indicate the type of permit or permits required, and the times they are required.
- (2) Individual parking spaces are marked, and no vehicle may be parked so as to occupy any portion of more than one parking space. The fact that other vehicles were parked in a manner requiring a vehicle to occupy a portion of more than one space shall not constitute an excuse for a violation of this rule.
- (3) Standing (the stopping of a vehicle with the driver remaining in it) is permitted in marked parking spaces, except metered spaces and restricted spaces, even though the vehicle does not have a valid parking permit. Double parking while "standing" is not permitted.
- (4) Should there be a conflict between these regulations, map designation, and on-site signs regarding parking instructions, the on-site sign takes precedence.
- (5) Permit areas and restricted spaces are not always signed individually.

NEW SECTION

WAC 504-15-250 MOTORCYCLES, MOPEDS, AND BICY-CLES. (1) The general traffic regulations applicable to motor vehicles apply equally to motorcycles, mopeds, and bicycles. Motorcycles or mopeds may not be driven on sidewalks or in the mall area. Bicycles may be used on sidewalks, though pedestrians always have the right of way. Owners of motorcycles and mopeds are responsible for all violations including violations issued even if said vehicle is moved by someone else after being legally parked.

- (2) The university classifies mopeds and motorcycles by engine displacement (also referred to as engine size). This definition applies only to parking at the university and does not replace or supersede the definitions established by the state of Washington for licensing or traffic purposes.
- (3) Mopeds: Mopeds may park only in the following locations with a valid moped permit:
- (a) A designated moped parking area marked by signs and/or the letters "MP" on the parking surface.
- (b) A bicycle rack unless the rack is signed to exclude mopeds. Mopeds may not park in marked motorcycle areas at any time.
- (4) Motorcycles: Motorcycles may park only in spaces which are marked by signs, or the letter "M" painted on the parking surface. Motorcycles must display a valid WSU motorcycle permit. Motorcycles may not park in designated moped areas at any time.

NEW SECTION

WAC 504-15-300 RESPONSIBILITY FOR CITATIONS. (1) Each permit registrant shall be responsible for parking citations on vehicles:

- (a) Registered with parking services; and/or
- (b) Displaying the registrant's permit.
- (2) Owners of vehicles will be held primarily liable for citations. An assumption is made that any employee or student with the same address as the registered owner was the operator of the vehicle receiving citations, and primary liability will be transferred to that person.

NEW SECTION

WAC 504-15-350 USE OF AREAS FOR EMERGENCY, MAINTENANCE, OR SPECIAL NEEDS. The university reserves the right to close any campus parking area at any time it is deemed necessary for maintenance, safety, or to meet special needs. Parking services will provide notice to users when possible.

Public safety and maintenance personnel performing official duties may deviate from these regulations as required to conduct emergency procedures and/or maintenance activities prescribed by the university.

NEW SECTION

WAC 504-15-360 LIABILITY. The university assumes no responsibility for the care and protection of any vehicle or its contents at any time the vehicle is on university property.

PART III: PARKING PERMITS

NEW SECTION

WAC 504-15-410 ISSUANCE AND USE OF PERMITS. Parking permits are available at parking services, located in the safety building, upon application and the payment of the appropriate fees. The applicant will receive a parking permit and/or indicator which specifies parking area(s) where the vehicle may be parked.

Temporary parking permits may be obtained from police services when the parking services office is closed.

Housing area parking permits are issued by the respective apartment housing offices.

NEW SECTION

WAC 504-15-420 CONSENT TO WITHHOLDING OF FINES. All permit applications shall provide that the university may withhold unpaid fines from any sums owed the permit holder and to treat the same as a debt.

NEW SECTION

WAC 504-15-430 CHANGE IN RESIDENCE OR LICENSE PLATES. Permit holders changing residence or license plates after initial application must contact parking services and complete the necessary forms. Failure to do so may result in continued responsibility for citations issued to the old license plate and a loss of parking privileges.

NEW SECTION

WAC 504-15-440 TERM OF PERMIT-TRANSFER OF PERMIT. Permits are valid up to and including the expiration date on the permit.

The ownership of permits is generally not transferrable, but exceptions can be made by parking services provided that the:

- (1) Person relinquishing ownership and the eligible purchaser appear in person at parking services when requesting such a transfer;
- (2) Former owner relinquishes all ownership or claim to the permit, and pays all outstanding fines; and
 - (3) New owner completes a new application form for the permit.

If a replacement permit is requested, the old permit must be removed and presented to parking services to be eligible for a replacement or a refund.

NEW SECTION

WAC 504-15-450 REPLACEMENT PERMITS, INDICAT-ORS, AND GATE CARDS. (1) Sold or traded vehicles. Failure to advise parking services of a sale or trade for registration purposes may result in continued responsibility to the permit holder for citations received on that permit.

The permit holder has responsibility for removing parking permits prior to selling or trading a vehicle. The identifiable remnants of the original permit must be presented to parking services to receive a free replacement. Persons failing to comply with this requirement shall pay the cost of a new permit.

(2) Lost/stolen permits. Permit holders are responsible for the security of their permits. The theft or loss of a parking permit should be reported to parking services immediately upon discovery. A stolen permit will be replaced once at no cost, but only if a theft report of the permit has been filed in the appropriate police jurisdiction. The second time the permit is reported stolen, the replacement fee will be ten dollars; the third time, twenty dollars; and thereafter, the original cost of the stolen permit. A lost permit will be replaced once for ten dollars; the second time, twenty dollars; and thereafter at the original cost of the permit. Lost, or stolen permits must be returned to the parking services office immediately if recovered.

(3) Windshield replacements. When a permit-bearing windshield is replaced, the permit replacement fee will be waived if proof of replacement is presented.

(4) Gate card replacement. A lost, stolen, or damaged gate card will be replaced for five dollars.

NEW SECTION

WAC 504-15-460 FALSE INFORMATION. No person shall obtain, attempt to obtain, or use in a manner contrary to these regulations, a modified, stolen, lost, or counterfeit parking permit or a permit issued upon false information. A violation of this section includes giving a false name, address, Social Security number, and/or other information known to be false. It also includes the use of a visitor, conference, and commercial permit by staff or students. Violation of this provision shall constitute the illegal use of a parking permit, and will be subject to citation and fine.

NEW SECTION

WAC 504-15-470 RECALL OF PERMITS AND GATE CARDS. Parking permits are the property of the university and may be recalled by the parking manager when:

- (1) The purpose for which the permit or gate card was issued changes or no longer exists;
- (2) A permit or gate card is used on an unauthorized vehicle or by an unauthorized person;
 - (3) A parking permit application is falsified;
- (4) A counterfeit, modified, lost/stolen permit or gate card is used;
 - (5) The parking fee is unpaid.

NEW SECTION

WAC 504-15-510 PERMITS-GENERAL. The university will issue permits for designated areas of the campus. Any vehicle parked on university property, other than a pay area or metered space must clearly display a current university permit for a given area during the posted hours when permits are required.

NEW SECTION

WAC 504-15-520 PERMITS-FORM AND DISPLAY. All permits must be displayed in the approved position on the vehicle with permit numbers visible. Permits not displayed in accordance with the provisions of this section are not valid, and vehicles displaying them improperly are subject to citation.

(1) Autos and trucks:

(a) Hanging permits, both annual and temporary, must be displayed hanging from the rear-view mirror post.

- (b) Transferable cards and affixed decals must be displayed on the front windshield at the lower left corner (driver's side). Decals must be mounted completely by means of their own adhesive (not by tape).
- (2) Motorcycles and mopeds: Motorcycle and moped permits must be mounted completely by means of their own adhesive and prominently displayed on the left rear side of the vehicle or on top of the rear tail light.

NEW SECTION

WAC 504-15-540 ZONE PERMITS-AVAILABILITY AND USE. The management and assignment of parking zones is designed to provide a reliable parking space to permit holders. However, uncontrolled access to parking areas and unexpected parking demand make it impossible to guarantee a parking space in a permit holder's assigned zone. Every effort will be made via surveys and limits on permit sales, to ensure that permit holders are not displaced from their assigned zones. The only exception to this will be that the sale of blue permits will not be limited.

Staff and students are generally assigned to specific parking areas, called zones. Parking zones are color-coded with respect to their price and numbered with respect to the specific parking area assignment of each permit holder. Permit holders may park in their assigned zone as

reflected by the combination of color and number on their permit and corresponding sign, or they may park in other zones as described below.

- (1) Orange permits: Orange permit holders may park in their numerically assigned orange zone, or in any green, yellow, red, or blue zone. These permits may be available on a temporary basis during the summer session.
- (2) Green permits: Green permit holders may park in their numerically assigned green zone, or in any yellow, red, or blue zone. These permits may be available on a temporary basis during the summer session.
- (3) Yellow permits: Yellow permit holders may park in their numerically assigned yellow zone, or in any red or blue zone. These permits may be available on a temporary basis.
- (4) Red permits: Red permit holders may park in any red or blue zones. These permits may be available on a temporary basis.
- (5) Gray permits (resident priority parking): Gray permit holders may park in their numerically assigned gray zone, or in any blue zone. These permits may be available on a temporary basis.
- (6) Blue permits (peripheral parking): Blue permit holders may park in any blue zone. These permits are available on a temporary basis.

NEW SECTION

WAC 504-15-560 OTHER PERMITS—AVAILABILITY AND USE. (1) Visitor permits: Visitor permits are available on an annual or daily basis to visitors of the university. Annual visitor permits are valid in green, yellow, red and blue zones, and parking spaces signed for visitors only. Daily visitor permits may be assigned to specific zones on a space-available basis. If a parking zone is not specified on the permit, it is valid in the same parking areas as an annual visitor permit. Visitor permits are not valid in orange zones, meters, or restricted spaces.

(2) Golden cougar permits: Golden cougar permits are special visitor permits that are issued to retired faculty and staff free of charge. They are issued on an annual basis and are valid in green, yellow, red, blue zones, and visitor—only parking spaces. Faculty and staff who remain regularly employed by the university after formal retirement are not eligible to use a golden cougar permit in lieu of a regular paid permit.

(3) President's associates decals: President's associate decals are issued to eligible members of WSU foundation. They are valid in green, yellow, red, blue zones, and visitor—only parking spaces. However, WSU faculty, staff, and students may not use a president's associates decal in lieu of a paid zone permit.

(4) Conference permits: Conference permits are available to visitors who participate in conferences held on the university campus. They are available on a daily basis only. Conference permits may be assigned to specific zones on a space—available basis. If a parking zone is not specified on the permit, it is valid in green, yellow, red, blue zones, and visitor—only parking spaces. Conference permits are not valid in orange zones, meters, or restricted spaces.

(5) Motorcycle permits: Motorcycle permits are valid within boundaries of areas specifically posted and/or marked for motorcycle permits. Motorcycle permits are available on an annual basis.

(6) Moped permits: Moped permits are valid within boundaries of areas specifically posted and/or marked for moped permits. Moped permits are available on an annual basis.

- (7) Commercial permits: Commercial permits are issued to vendors, suppliers, and service representatives of outside companies performing a service for the university. Commercial permits are available on an annual or daily basis. Annual commercial permits are valid in service zones, and green, yellow, red and blue zones, and parking spaces signed for visitors only. Daily commercial permits may be assigned to specific zones on a space-available basis. If a parking zone is not specified on the permit, it is valid in the same parking areas as an annual commercial permit. Commercial permits are not valid in orange zones, meters, or other restricted spaces.
- (8) Construction permits: A construction permit is issued to personnel who are working on a construction or remodel site on campus. Construction permits are available on a temporary basis only, and are assigned to a specific parking area.
- (9) Housing permits: A housing permit is issued to eligible residents of university apartments. Housing permits are valid only in specific housing parking areas.
- (10) Carpool: Bona fide carpools with four or more participants will be given preference in the assignment of parking zones, and will be issued a permit instrument that will facilitate the carpool. This includes access to no more than two zones of the same fee level. If the carpool requires access to zones of various fee rates, the highest fee rate will be

charged for use of the carpool permit. Obtaining or using a carpool permit under false pretenses constitutes the illegal use of a permit.

NEW SECTION

WAC 504-15-580 SPECIAL INDICATOR DECALS/HANG-ERS. Special indicator decals or hangers may be issued to staff and student permit holders who have otherwise valid parking permits in the following cases:

(1) Service indicator decals/hangers which are valid for a maximum of fifteen minutes in a marked service zone. A separate mall service indicator allows a maximum of fifteen-minute parking in the pedestrian mall. These are available to staff or students who must use a private vehicle for university business. They are issued on an annual or daily basis after the approval of the parking manager or his/her designee.

(2) Resident priority indicator decals/hangers which are valid for a specific parking area within the gray parking zones. These are issued to eligible resident students who have been assigned to priority parking.

- (3) Night parking indicator decals/hangers which are valid in parking zones up to thirty minutes after the permit times begin, and thirty minutes before the permit times end. For example, if permits are required in a parking zone from 7:00 a.m. to 5:00 p.m., the night parking indicator is valid in that zone from 4:30 p.m. until 7:30 a.m. Night parking indicators are not valid at any time in gray zones, meter spaces, restricted spaces, or parking zones that require a parking permit at all times.
- (4) Reserved parking indicator decals/hangers which are valid in parking spaces that are signed for the corresponding permit and indicator.

NEW SECTION

WAC 504-15-600 HANDICAPPED PERMITS. The university and parking services strongly supports the provision of designated handicapped parking spaces at a reasonable proximity to campus buildings for people of disability.

There are two types of handicapped permits:

- (1) Permanent physical disability. An annual handicap permit is available to permanently disabled university employees and students at the established fee. Holders of annual permits may park in orange, green, yellow, red, and blue zones, meter spaces, and for unlimited periods of time in parking zones with time limitations. They may not park in gray zones, service zones, or reserved spaces. The fee for an annual handicap permit is equal to the blue zone fee.
- (2) Temporary physical disability. Temporary handicap permits will be issued to temporarily disabled staff and students for a maximum of six weeks, although they may be renewed. Holders may park in assigned areas as determined by parking services.

Employees and students must obtain a temporary disability form from parking services. Temporary parking privileges will be granted only after submission of the form that shows the applicant meets established physical limitations. The form must be completed by a health care provider. Parking services will not accept substitute forms or letters.

NEW SECTION

WAC 504-15-650 PERMIT FEES. (1) Schedules for parking fees, parking administrative fees, meter rates, prorate and refund schedules, and the effective date thereof will be submitted to the president or his/her designee and to the board of regents for approval by motion and will thereafter be proofed in the public area of the parking services office, and filed with the university rules coordinator.

(2) Handicap permits will be issued free of charge to those who have their vehicle identified with a state disability license plate or other indicator in accordance with RCW 46.16.380.

- (3) Payments: Fees may be paid at parking services by cash, check, or money order. A payroll deduction plan is available for permanent university employees and eligible graduate students during the fall semester only.
- (4) The annual fee for any shorter period relative to all permits shall be prorated.
- (5) The proper fee must be paid for all vehicles parked in metered areas unless otherwise authorized.
- (6) Staff members whose work schedules qualify them for night time differential pay may purchase a permit for one-half the regular fee. Verification will be required.

(7) Refunds: Annual permits being relinquished may be returned to parking services for a prorata refund. Identifiable remnants of the permit must be returned. Provision of the permit holder's copy of the permit receipt will facilitate the refund process. A minimum ten-dollar service charge will be retained by parking services. Further, the balance of any fees and fines owed parking services will be deducted from any refund due. No refunds will be granted after 5:00 p.m. Friday of the third week of the spring semester. Refunds for temporary permits will not be granted.

NEW SECTION

WAC 504-15-750 WSU/UI RECIPROCAL AGREEMENT. (1) Purpose: Washington State University and the University of Idaho have developed a cooperative parking agreement for the purpose of enhancing the accessibility to either campus for faculty, staff, and students participating in cooperative programs. Selected parking permits from each university have been deemed valid in specific parking areas.

(2) University of Idaho permit holders at WSU: The following applies to University of Idaho permit holders who wish to park at Washington State University:

(a) UI gold permits are valid in WSU green, yellow, red, and blue zones.

(b) UI red permits are valid in WSU yellow, red, and blue zones.

(c) UI blue permits are valid in WSU blue zones.

- (d) UI green permits (housing, visitor permits, or commercial permits) are not valid at Washington State University.
- (e) UI parking permits are not valid in WSU orange zones, gray zones, or housing areas.
- (f) Annual or temporary permits may be available for other parking areas on a space-available basis, and for an additional fee.
- (3) WSU faculty, staff, and students assigned to, enrolled at, or who pay fees to Washington State University or employees of other activities or agencies located on the Pullman campus must display a WSU parking permit when parking at WSU. Any attempt by the above personnel to use a UI parking permit in lieu of a WSU permit may result in a fifty-dollar fine for illegal use of a parking permit.
- (4) WSU permit holders at UI: The following applies to Washington State University permit holders who wish to park at the University of Idaho. It is provided for information only, and is subject to change by the UI. WSU permit holders are subject to all UI parking and traffic regulations.
- (a) WSU orange, green, and golden cougar permits are valid in UI gold, red, and blue areas.
- (b) WSU yellow, red, blue, and gray permits are valid in UI red and
- (c) WSU housing permits and visitor permits are not valid at the University of Idaho.

PART IV: FINES, SANCTIONS, AND APPEALS

NEW SECTION

WAC 504-15-810 VIOLATIONS, FINES, AND SANCTIONS. (1) Violations and fines: Parking violations will be processed by the University. Fines must be paid at parking services in the safety building at the following rates:

\$ 5.00
\$ 5.00
\$ 15.00
\$ 10.00
\$ 10.00
\$ 3.00
\$ 15.00
\$ 25.00
\$ 25.00
\$ 25.00
\$ 50.00
\$100.00
\$ 35.00
\$ 10.00

(2) Reduction of fines: Fines for violations in subsection (1)(a) and (b) of this section paid within twenty-four hours will be reduced by one-half. Eligible violations received on Friday or Saturday can be paid on the following Monday to satisfy the twenty-four hour requirement. Mailed fines must be postmarked within twenty-four hours to receive the one-half reduction. If a permit holder of record neglects to

display his/her permit and receives a notice of violation for No parking permit, (subsection (1)(c) of this section), that fine will be reduced to three dollars when possession of a valid parking permit for the location is verified by the parking services within twenty-four hours.

(3) Visitors: The first violation of the notices listed in subsection (1)(c) of this section, No parking permit, and subsection (1)(d) of this section, No parking permit for this area, issued to visitors are considered warning notices upon presentation to the parking services office.

NEW SECTION

WAC 504-15-830 OTHER VIOLATIONS AND SANC-TIONS. (1) Late payment of fines: Forty-five days after issuance of a notice of violation a five-dollar charge shall be added to all unpaid parking violations. If a student or staff member fails to pay the fine assessed for any violation, the fine will be referred to the WSU controller's office for collection. The controller may, if other collection efforts fail, deduct outstanding fines from the salary warrants of employees or withhold the amount of the outstanding fines from damage deposits or other funds held for any student in order to secure payment. Where collection efforts are unsuccessful, the controller may notify the registrar to refrain from issuing student transcripts or to withhold permission to reenroll for a subsequent term until outstanding fines are paid. The procedures discussed above are not exclusive, however, and failure by anyone to pay fines may lead to towing or use of the wheel lock device described in these regulations. Nor are the procedures discussed above a precondition to towing or use of the wheel lock.

- (2) Impound by wheel lock or towing:
- (a) Any vehicle with an accumulation of three or more unpaid parking violations, or any vehicle displaying a lost or stolen permit may be temporarily immobilized by use of a wheel lock device placed on a wheel. A thirty-five dollar fee will be assessed on vehicles which are immobilized with a wheel lock.
 - (b) Any vehicle may be towed away if the vehicle:
- (i) Has been immobilized by wheel lock more than twenty-four hours: or
- (ii) Is illegally parked in a marked tow-away zone; or
- (iii) Is a hazard or obstruction to vehicular or pedestrian traffic (including, but not limited to, vehicles parked at curbs or rails painted yellow or red or in crosswalks); or
 - (iv) Cannot be impounded with a wheel lock device.
- (c) The driver and/or owner of a towed vehicle shall pay towing and storage expenses.
- (d) Any vehicle immobilized by use of the wheel lock device in excess of twenty-four hours in a location where towing away is impossible or impractical will be assessed a storage fee of five dollars for each calendar day or portion thereof, beyond the first twenty-four hours.
- (e) The university assumes no responsibility in the event of damages resulting from towing, use of wheel lock devices, storage, or attempts to move a vehicle with a wheel lock device installed.
- (f) No vehicle impounded by towing or wheel lock devices, shall be released until the following fines are paid in cash:
- (i) All unpaid parking violation penalties against said vehicle and any other vehicle registered to the violator;
 - (ii) A thirty-five dollar wheel lock fee;
 - (iii) All towing and storage fees.
- (g) Any vehicle impounded pursuant to these regulations in excess of thirty calendar days shall be considered an abandoned vehicle and shall be disposed of in accordance with chapter 46.55 RCW.
- (h) A person wishing to challenge the validity of any fines or fees imposed under this subsection may appeal such fines or fees as elsewhere provided in these regulations. However, in order to secure release of the vehicle, such person must pay the amount of such fines or fees as a bond which will be refunded to the extent the appeal is successful.
- (i) An accumulation of six unpaid violations during any twelvemonth period, exclusive of meter violations, and overtime in time zone violations, will subject the violator to revocation or denial of parking privileges. Vehicles without permits which accumulate the above number of violations may be prohibited from parking on university property.
- (3) Failure to pay fines: Failure to pay a fine or comply with other penalties assessed pursuant to these regulations, after exhausting or failing to exercise appeals provided for in these regulations, constitutes a violation of RCW 28B.10.560. A citation or complaint for such violation may be issued and filed with the district court.

NEW SECTION

WAC 504-15-860 APPEALS PROCEDURE. (1) Purpose: The parking appeals committee serves two primary functions:

(a) To assure an impartial evaluation of the circumstances relating to a particular parking violation; and

(b) To aid in the appraisal of parking and traffic problems.

(2) Procedure: Any person who has received notice of a parking violation may appeal the alleged violation. The appellant may request more information from parking services. The appeal must be in writing and received at parking services in the safety building within ten days after receipt of notice of the violation. Forms for this purpose are available from parking services. The parking appeals committee will make an initial decision on the appeal within twenty days during the academic year and forty-five days during the summer months after receipt of the appeal. The committee will serve a brief statement of the reasons for its decision on appellant within ten days of the decision.

(3) Review of initial decision: If the appellant is dissatisfied with the initial decision, he/she may request a hearing before a hearing officer. Such request must be made within ten days of service of the notice of the initial decision. If no such request is received, the initial decision shall be final. During the review hearing the appellant and representatives of parking services may present and cross-examine witnesses. The hearing officer shall render a decision in writing and serve appellant with the decision within five days after the review hearing.

(4) Appeal to district court: RCW 28B.10.560 provides that a person who is not satisfied with the final decision of the university may appeal to district court. The application for appeal to district court shall be in writing and must be filed at the parking services office in the safety building within ten days after service of written notice of the final decision. Parking services will forward the documents relating to the appeal to the district court.

PART V: TRAFFIC RULES

NEW SECTION

WAC 504-15-900 SPEED LIMITS. Driving on campus roads and streets is permitted at any time, unless otherwise posted or restricted by signs and/or by these regulations. The maximum speed limit unless otherwise posted is twenty-five miles per hour.

NEW SECTION

WAC 504-15-920 CLOSED AND RESTRICTED AREAS. In certain designated areas on campus, such as the mall in the campus core, driving is restricted to mall service vehicles and vehicles bearing handicap permits.

NEW SECTION

WAC 504-15-940 PEDESTRIANS. (I) When traffic control signals are in place at intersections, pedestrians shall be subject to them.

(2) When traffic control signals are not in place or not in operation at pedestrian crossings, a vehicle must yield the right of way, by slowing down or stopping, when the pedestrian in the crossing is upon the same half of the roadway as the vehicle, or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger.

(3) No pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield.

(4) Pedestrians who are between adjacent intersections at which traffic control signals are in operation must not cross at any place except in a marked crosswalk.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 504-17-010 AUTHORIZATION.

WAC 504-17-020 PURPOSES OF REGULATIONS.
WAC 504-17-030 APPLICABLE PARKING AND TRAFFIC

REGULATIONS.

WAC 504-17-040 DEFINITIONS. WAC 504-17-050 EMERGENCIES.

WAC 504-17-060 SPEED LIMITS.

WAC 504-17-070 CLOSED AND RESTRICTED AREAS.

PEDESTRIANS.

WAC 504-17-080 WAC 504-17-090 MOTORCYCLES, MOPEDS AND

BICYCLES.

PARKING.

SPECIAL CONDITIONS.

WAC 504-17-100 WAC 504-17-110 WAC 504-17-120 PARKING AREAS.

WAC 504-17-130 PARKING PERMITS—GENERAL

INFORMATION.

WAC 504-17-140 PARKING PERMITS-STAFF.

WAC 504-17-150 PARKING PERMITS—STUDENTS.

WAC 504-17-160 WAC 504-17-170

PARKING PERMITS—VISITORS.
PARKING PERMITS—CONTRACTORS.
PARKING PERMITS—MOTORCYCLES. WAC 504-17-180

PARKING PERMIT FEES.

WAC 504-17-185 WAC 504-17-195 WSU/UI RECIPROCAL PARKING

AGREEMENT.

WAC 504-17-200 WAC 504-17-215 ADMINISTRATION.

RESPONSIBLE PERSONS.

WAC 504-17-220 ENFORCEMENT—FINES.

WAC 504-17-235 ENFORCEMENT—ACCUMULATED VIO-

LATIONS, WHEEL LOCK, WHEEL LOCK FEES, TOWING.

WAC 504-17-240 APPEALS PROCEDURE.

WAC 504-17-250 FAILURE TO PAY FINES.

WAC 504-17-900 REPEAL AND SAVINGS.

WAC 504-17-910 SEVERABILITY.

WAC 504-17-930 EFFECTIVE DATE.

WSR 90-05-061 PROPOSED RULES **DEPARTMENT OF LICENSING**

(Securities Division) [Filed February 21, 1990, 12:42 p.m.]

Supplemental Notice to WSR 90-02-087.

Title of Rule: Exempt transactions, WAC 460-44A-500 through 460-44A-508; and chapter 460-46A WAC.

Purpose: To amend the small offering exemptions for small business and better coordinate them with Securities and Exchange Commission Regulation D.

Statutory Authority for Adoption: RCW 21.20.450 and [21.20].320.

Statute Being Implemented: RCW 21.20.320.

Summary: The proposed rules expand and integrate our state's limited offering exemption rules into Regula-

Reasons Supporting Proposal: The proposed rules are intended to bring greater conformity between our rules and those of the Securities and Exchange Commission.

Name of Agency Personnel Responsible for Drafting: Michael E. Stevenson, Securities Examiner, Olympia, 753-6928; Implementation: Ken Mark, Assistant Director, Olympia, 753-1749; and Enforcement: Jack L. Beyers, Securities Administrator, Olympia, 753–6928.

Name of Proponent: Department of Licensing, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The rules integrate the limited offering exemption now found in WAC 460-44A-060 into the exempt transaction rules modeled on the Securities and Exchange Commission's Regulation D. The rule also changes the name of the exemption found in chapter 460-16A WAC to the small corporate stock limited offering exemption. These changes are intended to better

coordinate regulation of exempt transactions at the state level with such regulation at the federal level.

Proposal Changes the Following Existing Rules: The changes integrate an existing limited offering exemption into the existing Regulation D counterpart exemptions. The name of another limited offering exemption is changed to the small corporate stock limited offering exemption to better reflect the exemption's purpose.

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

Hearing Location: Department of Licensing, Securities Division, 7240 Martin Way, Olympia, WA 98506, on March 27, 1990, at 10:00 a.m.

Submit Written Comments to: Jack L. Beyers, Securities Administrator, P.O. Box 648, Olympia, WA 98504, by March 26, 1990.

Date of Intended Adoption: April 16, 1990.

February 20, 1990 Mary Faulk Director

AMENDATORY SECTION (Amending Order SDO-122-89, filed 8/17/89, effective 9/17/89)

WAC 460-44A-500 PRELIMINARY NOTES. (1) The rules of WAC 460-44A-501 through 460-44A-508 relate to transactions exempted from the registration requirements of the Federal Securities Act of 1933 and RCW 21.20.140. WAC 460-44A-504 is an exemption from registration for offerings exempted under Securities and Exchange Commission Rule 504 or Rule 147. WAC 460-44A-505 is an exemption from registration for offerings exempted under Securities and Exchange Commission Rule 505. WAC 460-44A-506 is an exemption from registration for offerings exempted under Securities and Exchange Commission Rule 506. Such transactions are not exempt from the anti-fraud, civil liability, or other provisions of the federal and state securities laws. Issuers are reminded of their obligation provide such further material information, if any, as may be necessary to make the information required under these rules, in light of the circumstances under which it is furnished, not misleading.

(2) Attempted compliance with the exemption of WAC 460-44A-504, 460-44A-505, or 460-44A-506 does not act as an exclusive election; the issuer can also claim the availability of any other applicable exemption.

(3) These rules are available only to the issuer of the securities and not to any affiliate of that issuer or to any other person for resale of the issuer's securities. The rules provide an exemption only for the transactions in which the securities are offered or sold by the issuer, not for the securities themselves.

(4) In any proceeding involving the rules in WAC 460-44A-501 through 460-44A-508, the burden of proving the exemption or an exception from a definition or condition is upon the person claiming it.

(5) The effective date of the adoption of rules WAC 460-44A-501, 460-44A-502, 460-44A-503, and 460-44A-506 is May 25, 1982. Existing rules WAC 460-44A-010 through 460-44A-045 will be repealed on the adoption and effectiveness of the permanent rules WAC 460-44A-501, 460-44A-502, 460-44A-503, and 460-44A-506; no filings for exemption under rules WAC 460-44A-010 through 460-44A-045 will be accepted after repeal. For those offerings made in compliance with WAC 460-44A-010 through 460-44A-045 which commence or commenced prior to the date of repeal and which continue past the date of repeal, no registration is required if the offering terminates before June 30, 1983.

(6) For offerings commenced but not completed prior to the amendment of WAC 460-44A-501 through 460-44A-508, issuers may opt to follow the rules in effect at the date of filing notice of the offering.

AMENDATORY SECTION (Amending Order SDO-122-89, filed 8/17/89, effective 9/17/89)

WAC 460-44A-501 DEFINITIONS AND TERMS. As used in rules WAC 460-44A-501 through 460-44A-508, the following terms shall have the meaning indicated:

- (1) "Accredited investor" shall mean any person who comes within any of the following categories, or who the issuer reasonably believes comes within any of the following categories, at the time of the sale of the securities to that person:
- (a) Any bank as defined in section 3 (a)(2) of the Securities Act of 1933, or any savings and loan association or other institution as defined in section 3 (a)(5)(A) of the Securities Act of 1933 whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934; any insurance company as defined in section 2(13) of the Securities Act of 1933; any investment company registered under the Investment Company Act of 1940 or a business development company as defined in section 2 (a)(48) of that act; any small business investment company licensed by the U.S. Small Business Administration under section 301 (c) or (d) of the Small Business Investment Act of 1958; any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of \$5,000,000; any employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974, if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such act, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of \$5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors:
- (b) Any private business development company as defined in section 202 (a)(22) of the Investment Advisers Act of 1940;
- (c) Any organization described in section 501 (c)(3) of the Internal Revenue Code, corporation, Massachusetts or similar business trust, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of \$5,000,000;
- (d) Any director, executive officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or general partner of a general partner of that issuer;
- (e) Any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his purchase exceeds \$1,000,000:
- (f) Any natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person's spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year.
- (g) Any trust, with total assets in excess of \$5,000,000, not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person as described in 17 CFR Sec. 230.506 (b)(2)(ii); and
- (h) Any entity in which all of the equity owners are accredited investors.
- (2) "Affiliate" an "affiliate" of, or person "affiliated" with, a specified person shall mean a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified;
- (3) "Aggregate offering price" shall mean the sum of all cash, services, property, notes, cancellation of debt, or other consideration to be received by an issuer for issuance of its securities. Where securities are being offered for both cash and noncash consideration, the aggregate offering price shall be based on the price at which the securities are offered for cash. Any portion of the aggregate offering price attributable to cash received in a foreign currency shall be translated into United States currency at the currency exchange rate in effect at a reasonable time prior to or on the date of the sale of the securities. If securities are not offered for cash, the aggregate offering price shall be based on the value of the consideration as established by bona fide sales of that consideration made within a reasonable time, or, in the absence of sales, on the fair value as determined by an accepted standard. Such valuations of noncash consideration must be reasonable at the time made:
- (4) "Business combination" shall mean any transaction of the type specified in paragraph (a) of Rule 145 under the Securities Act of 1933 and any transaction involving the acquisition by one issuer, in exchange for all or a part of its own or its parent's stock, of stock of another issuer if, immediately after the acquisition, the acquiring issuer has control of the other issuer (whether or not it had control before the acquisition);

- (5) "Calculation of number of purchasers." For purposes of calculating the number of purchasers under WAC 460-44A-504, 460-44A-505, and 460-44A-506 the following shall apply:
 - (a) The following purchasers shall be excluded:
- (i) Any relative, spouse or relative of the spouse of a purchaser who has the same principal residence as the purchaser;
- (ii) Any trust or estate in which a purchaser and any of the persons related to him as specified in WAC 460-44A-501 (5)(a)(i) or (iii) collectively have more than 50 percent of the beneficial interest (excluding contingent interests);
- (iii) Any corporation or other organization of which a purchaser and any of the persons related to him as specified in WAC 460-44A-501 (5)(a)(i) or (ii) collectively are beneficial owners of more than 50 percent of the equity securities (excluding directors' qualifying shares) or equity interests; and
 - (iv) Any accredited investor.
- (b) A corporation, partnership or other entity shall be counted as one purchaser. If, however, that entity is organized for the specific purpose of acquiring the securities offered and is not an accredited investor under WAC 460-44A-501 (1)(h), then each beneficial owner of equity securities or equity interests in the entity shall count as a separate purchaser for all provisions of WAC 460-44A-501 through 460-44A-508, except to the extent provided in (a) of this subsection.
- (c) A noncontributory employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974 shall be counted as one purchaser where the trustee makes all investment decisions for the plan.
- Note: The issuer must satisfy all the other provisions of WAC 460-44A-501 through 460-44A-506 for all purchasers whether or not they are included in calculating the number of purchasers. Clients of an investment adviser or customers of a broker-dealer shall be considered the "purchasers" under WAC 460-44A-501 through 460-44A-506 regardless of the amount of discretion given to the investment adviser or broker-dealer to act on behalf of the client or customer.
- (6) "Executive officer" shall mean the president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), or any other officer who performs a policy making function, or any other person who performs similar policy making functions for the issuer. Executive officers of subsidiaries may be deemed executive officers of the issuer if they perform such policy making functions for the issuer.
- (7) "Issuer" as defined in Section 2(4) of the Securities Act of 1933 or RCW 21.20.005(7) shall apply, except that in the case of a proceeding under the Federal Bankruptcy Code (11 U.S.C. 101 et seq.), the trustee or debtor in possession shall be considered the issuer in an offering under a plan or reorganization, if the securities are to be issued under the plan.
- (8) "Purchaser representative" shall mean any person who satisfies all of the following conditions or who the issuer reasonably believes satisfies all of the following conditions:
- (a) Is not an affiliate, director, officer or other employee of the issuer, or beneficial owner of 10 percent or more of any class of the equity securities or 10 percent or more of the equity interest in the issuer, except where the purchaser is:
- (i) A relative of the purchaser representative by blood, marriage or adoption and not more remote than a first cousin;
- (ii) A trust or estate in which the purchaser representative and any person related to him as specified in WAC 460-44A-501 (8)(a)(i) or (iii) collectively have more than 50 percent of the beneficial interest (excluding contingent interest) or of which the purchaser representative serves as trustee, executor, or in any similar capacity; or
- (iii) A corporation or other organization of which the purchaser representative and any persons related to him as specified in WAC 460-44A-501 (8)(a)(i) or (ii) collectively are the beneficial owners of more than 50 percent of the equity securities (excluding directors' qualifying shares) or equity interests;
- (b) Has such knowledge and experience in financial and business matters that he is capable of evaluating, alone, or together with other purchaser representatives of the purchaser, or together with the purchaser, the merits and risks of the prospective investment;
- (c) Is acknowledged by the purchaser in writing, during the course of the transaction, to be his purchaser representative in connection with evaluating the merits and risks of the prospective investment; and
- (d) Discloses to the purchaser in writing a reasonable time prior to the sale of securities to that purchaser any material relationship between himself or his affiliates and the issuer or its affiliates that then

exists, that is mutually understood to be contemplated, or that has existed at any time during the previous two years, and any compensation received or to be received as a result of such relationship.

- Note 1: A person acting as a purchaser representative should consider the applicability of the registration and antifraud provisions relating to broker-dealers under chapter 21.20 RCW and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq., as amended) and relating to investment advisers under chapter 21.20 RCW and the Investment Advisers Act of 1940.
- Note 2: The acknowledgment required by paragraph (8)(c) and the disclosure required by paragraph (8)(d) of this WAC 460-44A-501 must be made with specific reference to each prospective investment. Advance blanket acknowledgment, such as for "all securities transactions" or "all private placements." is not sufficient.
- "all private placements," is not sufficient.

 Note 3: Disclosure of any material relationships between the purchaser representative or his affiliates and the issuer or its affiliates does not relieve the purchaser representative of his obligation to act in the best interest of the purchaser.

AMENDATORY SECTION (Amending Order SDO-122-89, filed 8/17/89, effective 9/17/89)

WAC 460-44A-502 GENERAL CONDITIONS TO BE MET. The following conditions shall be applicable to offers and sales made under WAC 460-44A-504, 460-44A-505, or 460-44A-506:

(1) "Integration." All sales that are part of the same offering under these rules must meet all of the terms and conditions of these rules. Offers and sales that are made more than six months before the start of an offering or are made more than six months after completion of an offering, will not be considered part of that offering, so long as during those six month periods there are no offers or sales of securities by or for the issuer that are of the same or a similar class as those offered or sold under these rules, other than those offers or sales of securities under an employee benefit plan.

Note: The term "offering" is not defined in the securities acts. If the issuer offers or sells securities for which the safe harbor rule in WAC 460-44A-502(1) is unavailable, the determination as to whether separate sales of securities are part of the same offering (i.e. are considered "integrated") depends on the particular facts and circumstances.

The following factors should be considered in determining whether offers and sales should be integrated for purposes of the exemptions under these rules:

- (a) Whether the sales are part of a single plan of financing;
- (b) Whether the sales involve issuance of the same class of securities;
 - (c) Whether the sales have been made at or about the same time;
 - (d) Whether the same type of consideration is received; and
- (e) Whether the sales are made for the same general purpose. See Securities and Exchange Commission Release No. 33-4552 (November 6, 1962).
 - (2) Information requirements.
 - (a) When information must be furnished.
- If the issuer sells securities under WAC 460-44A-505 or 460-44A-506 to any purchaser that is not an accredited investor, the issuer shall furnish the information specified in WAC 460-44A-502 (2)(b) to such purchaser a reasonable time prior to sale. The issuer is not required to furnish the specified information when it sells securities under WAC 460-44A-504, or to any accredited investor.

Note: When an issuer provides information to investors pursuant to WAC 460-44A-502 (2)(a), it should consider providing such information to accredited investors as well, in view of the anti-fraud provisions of the federal and state securities laws.

- (b) Type of information to be furnished.
- (i) If the issuer is not subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934, at a reasonable time prior to the sale of securities the issuer shall furnish to the purchaser the following information, to the extent material to an understanding of the issuer, its business, and the securities being offered:
- (A) Offerings up to \$2,000,000. The same kind of information as would be required in Part II of Form 1-A, 17 CFR Sec. 239.90, except that the issuer's balance sheet, which shall be dated within one hundred twenty days of the start of the offering, must be audited.
- (B) Offerings up to \$7,500,000. The same kind of information as would be required in Part I of Form S-18 under the Securities Act of 1933, except that only the financial statements for the issuer's most recent fiscal year must be certified by an independent public or certified accountant. If Form S-18 is not available to an issuer, then the issuer shall furnish the same kind of information as would be required

in Part I of a registration statement filed under the Securities Act of 1933 on the form that the issuer would be entitled to use, except that only the financial statements for the most recent two fiscal years prepared in accordance with generally accepted accounting principles shall be furnished and only the financial statements for the issuer's most recent fiscal year shall be certified by an independent public or certified accountant. If an issuer, other than a limited partnership, cannot obtain audited financial statements without unreasonable effort or expense, then only the issuer's balance sheet, which shall be dated within 120 days of the start of the offering, must be audited. If the issuer is a limited partnership and cannot obtain the required financial statements without unreasonable effort or expense, it may furnish financial statements that have been prepared on the basis of federal income tax requirements and examined and reported on in accordance with generally accepted auditing standards by an independent public or certified accountant.

(C) Offerings over \$7,500,000. The same kind of information as would be required in Part 1 of a registration statement filed under the Securities Act of 1933 on the form that the issuer would be entitled to use. If an issuer, other than a limited partnership, cannot obtain audited financial statements without unreasonable effort or expense, then only the issuer's balance sheet, which shall be dated within 120 days of the start of the offering, must be audited. If the issuer is a limited partnership and cannot obtain the required financial statements without unreasonable effort or expense, it may furnish financial statements that have been prepared on the basis of federal income tax requirements and examined and reported on in accordance with generally accepted auditing standards by an independent public or certified accountant.

(D) If the issuer is a foreign private issuer eligible to use Form 20–F, the issuer shall disclose the same kind of information required to be included in a registration statement filed under the Securities Act of 1933 on the form that the issuer would be entitled to use. The financial statements need be certified only to the extent required by (2)(b)(i)(B) or (C) of this subsection, as appropriate.

(ii) If the issuer is subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934, at a reasonable time prior to the sale of securities the issuer shall furnish to the purchaser the information required by Securities and Exchange Commission Regulation D, Rule 502 (b)(2)(ii) as appropriate.

(iii) Exhibits required to be filed with the administrator of securities or the securities and exchange commission as part of a registration statement or report, other than an annual report to shareholders or parts of that report incorporated by reference in a Form 10-K report, need not be furnished to each purchaser that is not an accredited in vestor if the contents of material exhibits are identified and such exhibits are made available to a purchaser, upon his written request, a reasonable time prior to his purchase.

(iv) At a reasonable time prior to the sale of securities to any purchaser that is not an accredited investor in a transaction under WAC 460-44A-505 or 460-44A-506, the issuer shall furnish to the purchaser a brief description in writing of any material written information concerning the offering that has been provided by the issuer to any accredited investor but not previously delivered to such unaccredited purchaser. The issuer shall furnish any portion or all of this information to the purchaser, upon his written request a reasonable time prior to his purchase.

(v) The issuer shall also make available to each purchaser at a reasonable time prior to his purchase of securities in a transaction under WAC 460-44A-505 or 460-44A-506 the opportunity to ask questions and receive answers concerning the terms and conditions of the offering and to obtain any additional information which the issuer possesses or can acquire without unreasonable effort or expense that is necessary to verify the accuracy of information furnished under WAC 460-44A-502 (2)(b)(i) or (ii).

(vi) For business combinations or exchange offers, in addition to information required by Form S-4, 17 CFR Sec. 239.25, the issuer shall provide to each purchaser at the time the plan is submitted to security holders, or, with an exchange, during the course of the transaction and prior to sale, written information about any terms or arrangements of the proposed transactions that are materially different from those for all other security holders. For purposes of this subsection, an issuer which is not subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934 may satisfy the requirements of Part I.B. or C. of Form S-4 by compliance with (b)(i) of this subsection.

(vii) At a reasonable time prior to the sale of securities to any purchaser that is not an accredited investor in a transaction under WAC 460-44A-505 or 460-44A-506, the issuer shall advise the purchaser of the limitations on resale in the manner contained in subsection (4)(b) of this section. Such disclosure may be contained in other materials required to be provided by this paragraph.

(3) Limitation on manner of offering. Neither the issuer nor any person acting on its behalf shall offer or sell the securities by any form of general solicitation or general advertising, including, but not limited

to, the following:

(a) Any advertisement, article, notice or other communication published in any newspaper, magazine, or similar media or broadcast over television or radio; and

(b) Any seminar or meeting whose attendees have been invited by any general solicitation or general advertising.

(4) Limitations on resale. Securities acquired in a transaction under WAC 460-44A-501 through 460-44A-508 shall have the status of restricted securities acquired in a nonpublic offering transaction under section 4(2) of the Securities Act of 1933 and RCW 21.20.320(1) and cannot be resold without registration under the Securities Act of Washington or an exemption therefrom. The issuer shall exercise reasonable care to assure that the securities are restricted and that the purchasers of the securities are not underwriters within the meaning of Section 2(11) of the Securities Act of 1933, which reasonable care may be demonstrated by the following:

(a) Reasonable inquiry to determine if the purchaser is acquiring the securities for himself or for other persons;

- (b) Written disclosure to each purchaser prior to sale that the securities have not been registered under the Securities Act of 1933, and the Washington administrator of securities has not reviewed or recommended the offering or offering circular and the securities have not been registered under the Securities Act of Washington, chapter 21.20 RCW, and, therefore, cannot be resold unless they are registered under the Securities Act of 1933 and the Securities Act of Washington chapter 21.20 RCW or unless an exemption from registration is available; and
- (c) Placement of a legend on the certificate or other document that evidences the securities stating that the securities have not been registered under the Securities Act of 1933 and the Securities Act of Washington chapter 21.20 RCW and setting forth or referring to the restrictions on transferability and sale of the securities.
- (d) A written disclosure or legend will be deemed to comply with the provisions of WAC 460-44A-502 (4)(b) or (c) if it complies with the North American Securities Administrators Association Uniform Disclosure Guidelines on Legends, NASAA Reports CCH Para. 1352 (1989).

While taking these actions will establish the requisite reasonable care, it is not the exclusive method to demonstrate such care. Other actions by the issuer may satisfy this provision. In addition, WAC 460-44A-502 (2)(b)(vii) requires the delivery of written disclosure of the limitations on resale to investors in certain instances.

AMENDATORY SECTION (Amending Order SDO-122-89, filed 8/17/89, effective 9/17/89)

WAC 460-44A-503 FILING OF NOTICE AND PAYMENT OF FEE PRIOR TO SALE. (1) An issuer offering or selling securities in reliance on WAC 460-44A-504, 460-44A-505, or 460-44A-506 shall file with the administrator of securities of the department of licensing a notice and pay a filing fee as follows:

(a)(i) ((The issuer shall file the initial notice on Securities and Exchange Commission Form D checking box 505 (and box ULOE) or 506, as applicable, and pay a filing fee of three hundred dollars no later than ten business days (or such lesser period as the administrator may allow) prior to the receipt of consideration or the delivery of a signed subscription agreement by an investor in the state of Washington which results from an offer being made in reliance on the exemption of WAC 460-44A-505 or 460-44A-506)) (A) For an offering in reliance on Securities and Exchange Commission Rule 505 or Rule 506, under WAC 460-44A-505 or 460-44A-506, respectively, the issuer shall file the initial notice on Securities and Exchange Commission Form D checking box 505 (and box ULOE) or box 506, as applicable, and pay a filing fee of three hundred dollars no later than ten business days (or such lesser period as the administrator may allow) prior to receipt of consideration or the delivery of a signed subscription agreement by an investor in the state of Washington which results from an offer being made in reliance on the exemption of WAC 460-44A-505 or 460-44A-506;

- (B) For an offering in reliance on Securities and Exchange Commission Rule 504, under WAC 460-44A-504, the issuer shall file the initial notice on Securities and Exchange Commission Form D checking box 504 and pay a filing fee of fifty dollars no later than ten business days (or such lesser period as the administrator may allow) prior to receipt of consideration or the delivery of a signed subscription agreement by an investor in the state of Washington which results from an offer being made in reliance on the exemption of WAC 460-44A-504;
- (C) For an offering in reliance on Securities and Exchange Commission Rule 147, under WAC 460-44A-504, the issuer shall file the initial notice on Washington Securities Division Form WAC 460-44A-504/Rule 147 and pay a filing fee of fifty dollars no later than ten business days (or such lesser period as the administrator may allow) prior to receipt of consideration or the delivery of a signed subscription agreement by an investor in the state of Washington which results from an offer being made in reliance on the exemption of WAC 460-44A-504;
- (ii) The issuer shall also file with or on the initial notice a representation that the issuer has reviewed all the conditions of WAC 460-44A-504, 460-44A-505, or 460-44A-506 and such conditions shall be met: and
- (iii) Unless previously filed, the issuer shall include with the initial notice an executed uniform consent to service of process on Form U-2.
- (b) The issuer shall file with the administrator such other notices on Form D as are required to be filed with the Securities and Exchange Commission.
- (c) The issuer shall file a report of sales in the state of Washington on a form prescribed by the administrator no later than thirty days after the last sale of securities in the offering.
- (d) The <u>initial</u> notice or report of sales shall be manually signed by a person duly authorized by the issuer.
- (2) By filing for the exemption of WAC 460-44A-505 or 460-44A-506, the issuer undertakes to furnish to the administrator, upon request, the information to be furnished or furnished by the issuer under WAC 460-44A-502 (2)(b) to any purchaser that is not an accredited investor. Failure to submit the information in a timely manner will be a ground for denial or revocation of the exemption of WAC 460-44A-505 or 460-44A-506.

NEW SECTION

WAC 460-44A-504 EXEMPTION FOR LIMITED OFFERS AND SALES OF SECURITIES NOT EXCEEDING \$250,000 TO NOT MORE THAN TWENTY PURCHASERS. (1) Exemption. Offers and sales of securities by an issuer in compliance with the Securities Act of 1933, Regulation D, Rules 230.501 through 230.504 and 230.508 as made effective in Release No. 33-6389, and as amended in Release Nos. 33-6437, 33-6663, 33-6758, and 33-6825 or in compliance with the Securities Act of 1933, Rule 230.147 as made effective in Release No. 33-5450 that satisfy the conditions in subsections (2) and (3) of this section shall be exempt under RCW 21.20.320(9)

- (2) General conditions to be met. To qualify for exemption under this section, offers and sales must satisfy all the terms and conditions of WAC 460-44A-501 through 460-44A-503 and 460-44A-508.
 - (3) Specific conditions to be met.
- (a) Limitation on aggregate offering price. The aggregate offering price for an offering of securities under this section, as defined in WAC 460-44A-501(3), shall not exceed \$250,000, within or without this state, less the aggregate offering price for all securities sold within the twelve months before the start of and during the offering of securities under this section in reliance on any exemption under RCW 21.20.320(9) or sections 3(a) (11) or 3(b) of the Securities Act of 1933 or in violation of RCW 21.20.140 or section 5(a) of the Securities Act of 1933.
- (b) No commissions. No commission, fee, or other remuneration shall be paid or given, directly or indirectly, to any person for soliciting any prospective purchaser in the state of Washington.
- (c) Limitation on number of purchasers. There are no more than or the issuer reasonably believes that there are no more than twenty purchasers of securities in this state from the issuer in any offering in reliance on this section.
- (d) In all sales to nonaccredited investors in this state under this section the issuer and any person acting on its behalf shall have reasonable grounds to believe and after making reasonable inquiry shall believe that, as to each purchaser, one of the following conditions, (i) or (ii) of this subsection, is satisfied:

- (i) The investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to his other security holdings and as to his financial situation and needs. For the purpose of this condition only, it may be presumed that if the investment does not exceed ten percent of the purchaser's net worth, it is suitable. This presumption is rebuttable; or
- (ii) The purchaser either alone or with his purchaser representative(s) has such knowledge and experience in financial and business matters that he is or they are capable of evaluating the merits and risks of the prospective investment.
- (e) Disqualifications. No exemption under this section shall be available for the securities of any issuer if any of the parties described in the Securities Act of 1933, Regulation A, Rule 230.252, sections (c), (d), (e), or (f) is disqualified for any of the reasons listed in WAC 460-44A-505 (2)(d) unless inapplicable or waived as set forth in WAC 460-44A-505 (2)(d)(vi) and (vii).
- (f) Notice filing. The issuer shall file a notice, with a consent to service of process, and pay a filing fee as set forth in WAC 460-44A-503.
 - (g) Advice about the limitations on resale.

The issuer, at a reasonable time prior to the sale of securities, shall advise each purchaser of the limitations on resale in the manner contained in WAC 460-44A-502 (4)(b).

- (4) Transactions which are exempt under this section may not be combined with offers and sales exempt under any other rule or section of the Securities Act of Washington, however, nothing in this limitation shall act as an election. Should for any reason the offer and sale fail to comply with all of the conditions for the exemption of this section, the issuer may claim the availability of any other applicable exemption.
- Note 1: WAC 460-44A-504 is not the exclusive method by which issuers may make offerings under Securities and Exchange Commission Rules 504 and 147. For example, offers and sales of an issuer in compliance with Securities and Exchange Commission Rule 504 or Rule 147 may also be registered by qualification under chapter 21.20 RCW. An issuer that qualifies may elect to register an offering pursuant to the Uniform Limited Offering Registration as set out in chapter 460-17A WAC. An issuer may also elect to claim the small corporate offering exemption as set out in chapter 460-46A WAC.
- Note 2: Issuers are reminded that nothing in these rules alters their obligation under RCW 21.20.010. RCW 21.20.010(2) renders it unlawful "to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading . . ." In addition, issuers must otherwise comply with the antifraud provisions of the federal and state securities laws. No format for disclosure is prescribed. However, issuers may wish to consider the question and answer disclosure format of Form ULOR—C of chapter 460–17A WAC, or the small corporate stock limited offering exemption of chapter 460–46A WAC, in determining the disclosure they make. If either form is used, the issuer should indicate that the disclosure form is being used for an exempt offering under this section rather than in an offering under the chapters under which the form was adopted.

AMENDATORY SECTION (Amending Order SDO-122-89, filed 8/17/89, effective 9/17/89)

WAC 460-44A-508 INSIGNIFICANT DEVIATIONS FROM A TERM, CONDITION, OR REQUIREMENT OF WAC 460-44A-501 THROUGH 460-44A-506. (1) A failure to comply with a term, condition, or requirement of WAC ((460-44A-501 through)) 460-44A-504, 460-44A-505, or 460-44A-506 will not result in the loss of the exemption ((of WAC 460-44A-505 or 460-44A-506)) from the registration requirements of RCW 21.20.140 for any offer or sale to a particular individual or entity, if the person relying on the exemption shows:

- (a) The failure to comply did not pertain to a term, condition, or requirement directly intended to protect that particular individual or entity; and
- (b) The failure to comply was insignificant with respect to the offering as a whole: PROVIDED, That any failure to comply with WAC 460-44A-502(3), 460-44A-503, 460-44A-504 (3)(a), (c), and (e), 460-44A-505 (2)(d) and (e) and (3), 460-44A-506 (3) and (4), paragraph (c) of Securities and Exchange Commission Rule 502, paragraphs (b)(2)(i) and (ii) of Securities and Exchange Commission Rule 505 and paragraph (b)(2)(i) of Securities and Exchange Commission Rule 506 shall be deemed to be significant to the offering as a whole; and

(c) A good faith and reasonable attempt was made to comply with all applicable terms, conditions, and requirements of WAC 460-44A-

504, 460-44A-505, or 460-44A-506.

(2) A transaction made in reliance on WAC 460-44A-504, 460-44A-505, or 460-44A-506 shall comply with all applicable terms, conditions, and requirements of WAC 460-44A-501 through 460-44A-506. Where an exemption is established only through reliance upon subsection (1) of this section, the failure to comply shall nonetheless be actionable by the securities administrator under chapter 21-.20 RCW.

REPEALER

The following sections of the Washington Administrative Code are

WAC 460-44A-060 LIMITED OFFERING EXEMPTION

PURSUANT TO RCW 21.20.320(9). WAC 460-44A-065 NOTIFICATION OF CLAIM OF EX-EMPTION PURSUANT TO WAC 460-44A-060.

WAC 460-44A-070 REPORT OF SALES FOR OFFERING UNDER WAC 460-44A-060.

Chapter 460–46A WAC ((WASHINGTON STATE)) SMALL CORPORATE STOCK LIM-ITED OFFERING EXEMPTION

AMENDATORY SECTION (Amending Order SDO-035-89, filed 3/13/89)

WAC 460-46A-010 SMALL CORPORATE STOCK LIMITED OFFERING EXEMPTION—CONDITIONS TO BE MET. Transactions involving the offer and sale of securities made in accordance with all the conditions set forth in this chapter shall be exempted from registration under RCW 21.20.320(9). For offerings commenced but not completed prior to the amendment of this chapter, issuers may opt to follow the rules in effect at the date of commencement of the offering.

AMENDATORY SECTION (Amending Order SDO-114-86, filed 8/22/86)

WAC 460-46A-020 AVAILABILITY OF EXEMPTION. Only corporations may use the small corporate stock limited offering exemption. The small corporate stock limited offering exemption may be used by an issuer more than once provided that the aggregate amount raised by all offerings by the issuer and its affiliates under the small corporate stock limited offering exemption shall not exceed \$500,000. (The foregoing notwithstanding, offerings by affiliates of the issuer under the small corporate stock limited offering exemption with respect to business ventures unrelated to that of the issuer occurring twentyfour months prior to or twenty-four months after the offering of the issuer under consideration shall not be included in calculating the \$500,000 limitation as to the issuer.) The small corporate stock limited offering exemption is available only if one class of stock is outstanding after the offering provided however, that upon written request, this requirement may be waived by the administrator as not being necessary under the circumstances for the protection of investors. The small corporate stock limited offering exemption may not be used for the offer and sale of debt securities. The small corporate stock limited offering exemption is not available if the issuer or its affiliates have previously sold securities of such issuer or affiliate under the provisions of RCW 21.20.210 (registration by qualification) or RCW 21.20.180 (registration by coordination) or of similar provisions of the securities or blue sky laws of any other state. If an issuer has previously filed an application for registration of its securities in this or any state but no sales were made pursuant to that registration, the small corporate stock limited offering exemption remains available, but the issuer must advise the securities division of its prior applications for registration. The securities division may require disclosure of the reasons why no sales were made pursuant to the prior registration applications. The total amount of funds raised by the issuer and its affiliates under all exemptions, including the small corporate stock limited offering exemption, but excepting the statutory nonpublic offering exemption of RCW 21.20.320(1), may not exceed \$500,000 in any 12-month period during which the small corporate stock limited offering exemption is used.

AMENDATORY SECTION (Amending Order SDO-116-82, filed 10/5/82)

WAC 460-46A-025 NO SALES COMMISSION. No commission or other remuneration may be paid directly or indirectly for offering or making sales of shares under the small corporate stock limited offering exemption.

AMENDATORY SECTION (Amending Order SDO-80-87, filed 7/20/87)

WAC 460-46A-040 MAXIMUM NUMBER OF PURCHAS-ERS UNDER EXEMPTION. The maximum number of purchasers under the small corporate stock limited offering exemption in any consecutive twelve months shall be forty. Husband and wife shall be counted as one purchaser, as shall an estate. Each shareholder of a corporation and each beneficiary of a trust shall be counted separately as a purchaser in addition to the corporation or trust unless the shareholder or beneficiary has been such for at least six months prior to the purchase. This section shall be given retroactive effect to August 15, 1983

AMENDATORY SECTION (Amending Order SDO-035-89, filed 3/13/89)

WAC 460-46A-090 DISCLOSURE DOCUMENT. Each offeree under the small corporate stock limited offering exemption must be furnished a disclosure document on a form provided by the securities administrator (((called "Form LOE-82"))). A copy of such disclosure document with all attachments must be furnished to prospective purchasers twenty-four hours before either agreeing to purchase the shares or making any payment of consideration, whichever is earlier. A manually signed copy of the disclosure document and an additional copy must be filed with the securities administrator at least fifteen business days prior to commencement of the offering. If the financial statements attached to the disclosure document are audited, reviewed or compiled by an accountant, the written consent of the accountant to inclusion in the disclosure document of the accountant's report shall be filed with the securities administrator. If during the course of an offering made under the small corporate stock limited offering exemption there shall occur an event which would materially affect the issuer, its prospects or properties, or otherwise materially affect the accuracy or completeness of the information contained in the disclosure document, the disclosure document shall be promptly revised to reflect such event, filed with the securities administrator as so revised, and used for all sales of shares in the offering thereafter.

AMENDATORY SECTION (Amending Order SDO-035-89, filed 3/13/89)

WAC 460-46A-095 PRICE OF SHARES. All shares sold pursuant to the small corporate stock limited offering exemption must be sold for cash, must be of the same class, and must be offered and sold at the same price. Where good cause is shown the administrator may, in writing, waive the provisions of this section.

AMENDATORY SECTION (Amending Order SDO-116-82, filed 10/5/82)

WAC 460-46A-100 TIME PURCHASE OF SHARES UNDER SMALL CORPORATE STOCK LIMITED OFFERING EXEMP-TION. The terms of the subscription of purchase for all shares sold under the small corporate stock limited offering exemption must provide that such shares shall be fully paid for within ninety days of the date of subscription.

AMENDATORY SECTION (Amending Order SDO-035-89, filed 3/13/89)

WAC 460-46A-105 MAXIMUM AND MINIMUM OFFER-ING AMOUNTS. The issuer must specify the minimum amount of funds necessary to achieve the results anticipated in the disclosure document required under WAC 460-46A-090, and, unless the administrator finds a higher minimum amount is necessary, this shall be the minimum amount of funds to be raised under an offering under the small corporate stock limited offering exemption. The issuer must also establish a maximum amount of funds to be so raised.

AMENDATORY SECTION (Amending Order SDO-035-89, filed 3/13/89)

WAC 460-46A-110 MONIES TO BE DEPOSITED IN ESCROW ACCOUNT—PERIOD OF ESCROW AND OF OFFERING. The issuer must establish a separate escrow account with a bank acting as escrow agent for all funds received for sales of securities under the small-corporate-stock limited offering exemption until at least the minimum amount has been raised. If the minimum amount is not raised within twelve months of the date of effectiveness of the offering, then all funds, including any interest thereon, shall be promptly returned to the investors. In any event, the offering period may not exceed twelve months from the date of effectiveness of the offering.

AMENDATORY SECTION (Amending Order SDO-035-89, filed 3/13/89)

WAC 460-46A-145 RESTRICTIONS ON TRANSFERABILITY. The issuer must place a legend on the stock certificate evidencing the shares sold under the small_corporate_stock limited offering exemption in substantially the following form:

"These shares are not registered under the Securities Act of Washington and may not be offered, or sold, pledged (except a pledge pursuant to the terms of which any offer or sale upon foreclosure would be made in a manner that would not violate the registration provisions of the Securities Act of Washington) or otherwise distributed for value, unless registered under the act or unless an exemption from registration is available."

AMENDATORY SECTION (Amending Order SDO-035-89, filed 3/13/89)

WAC 460-46A-150 SUITABILITY OF INVESTORS. In all sales to investors in this state under the small corporate stock limited offering exemption the issuer and any person acting on its behalf shall have reasonable grounds to believe and after making reasonable inquiry shall believe that, as to each purchaser, the investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to his other security holdings and as to his financial situation and needs. For the purpose of this condition only, it may be presumed that if the investment does not exceed ten percent of the purchaser's net worth, it is suitable.

AMENDATORY SECTION (Amending Order SDO-035-89, filed 3/13/89)

WAC 460-46A-155 ATTORNEY'S OPINION. In order for the small corporate stock limited offering exemption to be available, an attorney, who is a member in good standing of a state bar association, must submit an opinion to the administrator that the shares to be sold in the offering have been duly authorized and when issued upon payment of the offering price will be legally and validly issued, fully paid and nonassessable.

AMENDATORY SECTION (Amending Order SDO-116-82, filed 10/5/82)

WAC 460–46A–160 SIGNING AND VERIFICATION OF INFORMATION IN DISCLOSURE DOCUMENT. All directors and the chief executive and accounting officers of the issuer shall sign the disclosure form under WAC 460–46A–090 and by such action shall certify that they each have made reasonable efforts to verify the material accuracy and completeness of the information therein contained. In order for this small corporate stock limited offering exemption to be available, the chief executive and accounting officers of the issuer shall make themselves and the issuer's books and records available to each investor to respond to questions and otherwise verify the information contained in the disclosure document prior to the investment by such investor.

AMENDATORY SECTION (Amending Order SDO-116-82, filed 10/5/82)

WAC 460-46A-165 ANNUAL REPORTS TO STOCKHOLD-ERS. Issuers using the small corporate stock limited offering exemption shall thereby undertake to investors in the small corporate stock limited offering to annually provide for 5 years thereafter written financial reports containing a balance sheet as of the end of the issuer's fiscal year and a statement of profits and losses for said fiscal year, all prepared in accordance with generally accepted accounting principles.

WSR 90-05-062 NOTICE OF PUBLIC MEETINGS UNIVERSITY OF WASHINGTON

[Memorandum—February 20, 1990]

The following is a revised meeting schedule for regular meetings to be held by the University of Washington's Washington Technology Center:

THE WASHINGTON TECHNOLOGY CENTER
BOARD OF DIRECTORS
PROPOSED REGULAR MEETING SCHEDULE-1990

March 1 Bothell, The Technology Corridor, HQ Office June 7 Seattle, University of Washington

September 6 Spokane, exact location to be determined

(9:30 a.m.)

December 6 Seattle, University of Washington

Unless otherwise indicated or announced, the board's regular meetings are held on the first Thursday every three months (starting in March) and will start at 9:00 a.m.

WSR 90-05-063 NOTICE OF PUBLIC MEETINGS UNIVERSITY OF WASHINGTON

[Memorandum—February 20, 1990]

The following is a revised meeting schedule for regular meetings to be held by the University of Washington's Department of Pharmacy Practice:

Faculty Meeting

Meeting Dates Location Time
January HSB T-339 3:00

March May

July September November

(2nd Tuesday)

Pharm. D. Committee

9:00

Meeting Dates Location Time

January-March HSB T-339

(3rd Friday) June

August October

December

(3rd Friday)

WSR 90-05-064 PROPOSED RULES **BUILDING CODE COUNCIL**

[Filed February 21, 1990, 3:25 p.m.]

Original Notice.

Title of Rule: Washington state energy code.

Purpose: To consider whether to adopt, amend and adopt, or repeal rules concerning chapter 51-12 WAC.

Statutory Authority for Adoption: Chapter 19.27A RCW.

Statute Being Implemented: RCW 19.27A.020.

Summary: The proposed rule includes clarification of combustion air requirements for solid fuel burning appliances and new definitions.

Reasons Supporting Proposal: RCW 19.27A.020.

Name of Agency Personnel Responsible for Drafting: Willy O'Neil, Ninth and Columbia Building, Olympia, Washington, (206) 586-0486; Implementation: Linda Ramsey, Ninth and Columbia Building, Olympia, Washington, (206) 586-0486; and Enforcement: Local governments.

Name of Proponent: Washington State Building Code Council, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The rule is intended to clarify regulations for providing combustion air to solid fuel burning appliances. The rule would provide more flexibility for installing combustion air to solid fuel burning appliances in existing residential units.

Proposal Changes the Following Existing Rules: Defines existing building and damper, back draft; and allows for make-up air for ventilation devices in lieu of combustion air sources directly ducted to solid fuel burning appliances.

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

The proposed rule changes merely clarify existing regulations, and provide more flexibility in meeting those regulations.

Hearing Location: Angle Lake Fire Hall, 2929 South 200th, Seattle, WA 98198, on April 20, 1990, at 9:00 a.m.

Submit Written Comments to: Marc Sullivan, Chair, State Building Code Council, Ninth and Columbia Building, Olympia, Washington 98504-4151, by April 19, 1990.

Date of Intended Adoption: April 20, 1990.

February 21, 1990 Marc J. Sullivan

Chair

AMENDATORY SECTION (Amending Resolution No. 86-17, filed 9/23/86)

WAC 51-12-201 SECTION 201. A.

ACCESSIBLE (as applied to Equipment). Allowing close approach, not guarded by locked doors, elevation or other effective means. (See READILY ACCESSIBLE.)

AIR CONDITIONING. The process of treating air so as to control simultaneously its temperature, humidity, cleanliness and distribution to meet requirements of the conditioned space.

AIR, MAKEUP. Air which is provided to replace air being exhausted.

AIR TRANSPORT FACTOR. The ratio of the rate of useful sensible heat removal from the conditioned space to the energy input to the supply and return fan motor(s), expressed in consistent units and under the designated operating conditions.

ANNUAL FUEL UTILIZATION EFFICIENCY (AFUE). The amount of energy delivered to the dwelling in the form of useable heat, as a percentage of the total energy input of the fuel consumed. AFUE refers to a performance rating required under the provision of the National Energy Policy and Conservation Act (NECPA), Pub. L95-619. AFUE's taken from the "Energy Guide" published by the Gas Appliance Manufacturers' Association (GAMA) meet this definition. When unlisted in GAMA directory, AFUE ratings for furnaces installed in nonweatherized unconditioned areas, such as garages and unheated basements, may be taken from the AFUE rating for installation within a conditioned space. In no case, except where specifically tested and listed for application in nonweatherized locations, shall credit for compliance be given for the use of vent dampers with furnaces installed in nonweatherized unconditioned spaces. AFUE's apply to all central residential sized furnaces (inputs of less than 225,000 Btu/h).

ASHRAE. American Society of Heating, Refrigeration, and Air Conditioning Engineers, Inc.

AUTOMATIC. Self-acting, operating by its own mechanism when actuated by some impersonal influence, as for example, a change in current strength, pressure, temperature or mechanical configuration.

AMENDATORY SECTION (Amending Order 85-14, filed 11/26/85)

WAC 51-12-202 SECTION 202. B.

BOILER CAPACITY. The rate of heat output in Btu/h measured at the boiler outlet at the design pressure and/or temperature and rated fuel input.

BUILDING ENVELOPE. The elements of a building which enclose conditioned spaces through which thermal energy may be transferred to or from the exterior.

BUILDING, EXISTING. Any structure that has had all required inspections approved and has been issued a certificate of occupancy. Any R-3 occupancy that has a final inspection approved by the local

BUILDING OFFICIAL. The officer or other designated authority charged with the administration and enforcement of this Code, or his duly authorized representative.

AMENDATORY SECTION (Amending Order 85-14, filed 11/26/85)

WAC 51-12-204 SECTION 204. D.

DAMPER, BAROMETRIC. For the purposes of this code shall be any listed nonmanual device that freely allows the flow of air in one direction, but does not allow conditioned air to escape. Any installed combustion air damper shall meet the installation requirements of the manufacturer.

DEGREE DAY, HEATING (DDH). A unit, based upon temperature difference and time, used in estimating fuel consumption and specifying nominal heating load of a building in winter. For any one day, when the mean temperature is less than 65°F there exist as many Degree Days as there are Fahrenheit degrees difference in temperature between the mean temperature for the day and 65°F.

ENERGY SOURCES. (See DEPLETABLE SOURCES.)

AMENDATORY SECTION (Amending Order 88-10, filed 1/31/89, effective 7/1/89)

WAC 51-12-411 SECTION 411. HVAC EQUIPMENT PER-FORMANCE REQUIREMENTS.

(a) The requirement of this section applies to equipment and component performance for heating, ventilating and airconditioning systems. Where equipment efficiency levels are specified, approved data furnished by the equipment supplier or certified under a nationally recognized certification program or rating procedure shall be used to satisfy these requirements. Equipment efficiencies shall be based on the standard rating conditions shown in Tables 4-9, 4-10 and 4-11.

- (b) HVAC-System Heating Equipment Heat Pumps—Heating Mode: Heat pumps whose energy input is entirely electric shall have a Coefficient of Performance (COP heating, as defined herein) not less than the values shown in Table 4-12.
 - These requirements apply to, but are not limited to, unitary heat pumps (air source and water source) in the heating mode and to heat pumps in the packaged terminal air-conditioner and room air-conditioner forms in the heating mode. Field assembled unitary heat pumps, consisting of one or more components, shall comply with this section.
 - Coefficient of Performance (COP) Heating: The ratio of the rate of net heat output to the rate of total energy input, expressed in consistent units and under designated rating conditions.

The rate of net heat output shall be defined as the change in the total heat content of the air entering and leaving the equipment (not including supplementary heat).

Total energy input shall be determined by combining the energy inputs to all elements, except supplementary heaters, of the heat pump, including, but not limited to, compressor(s), pump(s), supply-air fan(s), return-air fan(s), outdoor-air fan(s), cooling-tower fan(s), and the HVAC-system equipment control circuit.

3. Supplementary Heater: The heat pump shall be installed with a control to prevent supplementary heater operation when the heating load can be met by the heat pump alone. Supplementary heater operation is permitted during transient periods, such as start-ups, following room thermostat set-point advance, and during defrost, when the outdoor air temperature is below 55°F.

A two-stage thermostat, which controls the supplementary heat on its second stage, with outdoor air control, shall be accepted as meeting this requirement. The cut-on temperature for the compression heating shall be higher than the cut-on temperature for the supplementary heat, and the cut-off temperature for the compression heating shall be higher than the cut-off temperature for the supplementary heat. Supplementary heat may be derived from any source of electric resistance heating or combustion heating

- (c) HVAC-System-Combustion Heating Equipment: All commercial gas and oil-fired central heating plants shall show a minimum combustion efficiency of not less than those shown in Table 4-5.
 - All residential gas, oil, and propane central heating systems must have a minimum AFUE of .74. All other residential heating equipment fueled by gas, oil, or propane must be equipped with an intermittent ignition device.
- (d) Mechanical Ventilation. Each mechanical ventilation system (supply and/or exhaust) shall be equipped with a readily accessible or automatic means for either shut-off or volume reduction and shut-off when ventilation is not required.
- (e) Packaged and unitary HVAC-system equipment, electrically operated cooling mode. HVAC-system equipment as listed below whose energy input in the cooling mode is entirely electric, shall show a Coefficient of Performance (COP) cooling as defined herein not less than values shown in Table 4-13.
 - These requirements apply to, but are not limited to unitary cooling equipment (air-cooled, water-cooled and evaporatively-cooled); the cooling mode of unitary and packaged heat pumps (air source and water source); packaged terminal air-conditioners; and room air-conditioners.

EXCEPTION: These requirements do not apply to equipment used for refrigerated food or florists' and nurseries' coolers.

Coefficient of Performance (COP) Cooling: The ratio of the rate of net heat removal to the rate of total energy input, expressed in consistent units and under

designated rating conditions.

The rate of net heat removal shall be defined as the change in the total heat contents of the air entering and leaving the equipment (without reheat).

Total energy input shall be determined by combining the energy inputs to all elements of the equipment, including but not limited to compressor(s), pump(s), supply-air fan(s), return-air fan(s), condenser-air fan(s), cooling-tower fan(s), circulating water pump(s), and the HVAC-system equipment control circuit.

- (f) Applied HVAC-system components, electrically operated cooling-mode. HVAC-system components, as listed in Table 4-14 whose energy input is entirely electric, shall show a Coefficient of Performance (COP) cooling, as defined herein, and not less than the values shown in Table 4-14
 - Coefficient of Performance (COP) Cooling. The ratio of the rate of net heat removal to the rate of total energy input, expressed in consistent units and under designated rating conditions.
 - The rate of net heat removal is defined as the difference in total heat contents of the water or refrigerant entering and leaving the component.
 - Total energy input shall be determined by combining the energy inputs to all elements and accessories of the component, including but not limited to, compressor(s), internal circulating pump(s), condenser-air fan(s), evaporative-condenser cooling water pump(s), purge, and the HVAC-system component control circuit.
- (g) HVAC-system equipment—heat operated cooling mode. Efficiency limitation equipment: Heat operated cooling equipment shall show a (COP) cooling not less than the values shown in Table 4-15. These requirements apply to, but are not limited to, absorption equipment, engine driven equipment, and turbine driven equipment.
- (h) Fireplaces. Fireplaces shall be provided with:
 - Tightly fitting flue dampers, operated with a readily accessible manual or approved automatic control.

EXCEPTION: Fireplaces with gas logs installed in accordance with UMC 803 shall be equipped with tightly fitting glass or metal doors.

- An outside source for combustion air. The duct shall be at least six square inches in area, and shall be provided with a readily operable damper.
- Solid fuel burning appliances shall be provided with combustion air ducted directly to the appliance.

Combustion air shall be provided as per manufacturers specifications.

EXCEPTIONS: Combustion air may be supplied to the room in which the solid fuel burning appliance is located in lieu of direct ducting, in an existing building((;)). The combustion air terminus shall be located as close to the solid fuel burning appliance as possible and shall be provided with a barometric damper or equivalent (see definitions 204d). The combustion air source shall be no less than 6 square inches provided that each room provided with an exhaust system shall have air supplied to the room equal to the amount of air being exhausted (except bathrooms). Makeup diffusers shall be located to prevent a short-circuiting of air furnished to the exhaust system. Windows and doors shall not be used for the purpose of providing make-up air. This exception may be taken provided that:

- The solid fuel burning appliance is not designed for directly connected outside combustion air or;
- The existing construction prohibits the introduction of outside combustion air directly to the solid fuel burning appliance.
- ((The combustion air source shall be located as close to the solid fuel burning appliance as possible, shall be provided with a backdraft damper, and shall be no less than six inches in diameter.
- 4:)) The solid fuel burning appliance is part of a central heating system and is installed in a room designed to house it.

AMENDATORY SECTION (Amending Order 88-10, filed 1/31/89, effective 7/1/89)

WAC 51-12-602 SECTION 602. LOW-RISE RESIDENTIAL BUILDING MECHANICAL SYSTEMS.

All HVAC devices, components and their elements shall conform to the requirements of this section.

(a) Heating and Mechanical Cooling Devices.

- 1. All heating and mechanical cooling devices shall meet the required efficiency factor specified herein or in Tables 4-12, 4-13, 4-14, and 4-15, 6-3, and 6-4, for the specific type of device.
- Combustion Heating Equipment. All gas and oilfired heating equipment shall meet the minimum combustion efficiencies as specified in Table 6-4.

3. Fireplaces shall be provided with:

A. Tightly fitting flue dampers, operated with a readily accessible manual or approved automatic control.

EXCEPTION: Fireplaces with gas logs installed in accordance with UMC 803 shall be equipped with tightly fitting glass or metal doors.

- B. An outside source for combustion air. The duct shall be at least six square inches in area, and shall be provided with a readily operable damper.
- Solid fuel burning appliances shall be provided with combustion air ducted directly to the appliance.
 Combustion air shall be provided as per manufacturers specifications.

EXCEPTIONS: Combustion air may be supplied to the room in which the solid fuel burning appliance is located in lieu of direct ducting, in an existing home((;)). The combustion air terminus shall be located as close to the solid fuel burning appliance as possible and shall be provided with a barometric damper or equivalent (see definitions 204d). The combustion air source shall be no less than 6 square inches provided that each room provided with an exhaust system shall have air supplied to the room equal to the amount of air being exhausted (except bathrooms). Makeup diffusers shall be located to prevent a short-circuiting of air furnished to the exhaust system. Windows and doors shall not be used for the purpose of providing make-up air. This exception may be taken provided that:

- The solid fuel burning appliance is not designed for directly connected outside combustion air or;
- B. The existing construction prohibits the introduction of outside combustion air directly to the solid fuel burning appliance.
- C. ((The combustion air source shall be located as close to the solid fuel burning appliance as possible, shall be provided with a backdraft damper, and shall be no less than six inches in diameter.)) The solid fuel burning appliance is not a part of the central heating system and is installed in a room designed to house it.
- 5. Calculation of Heating and Cooling Loads. Heating and cooling design loads for the purpose of sizing HVAC systems are required and shall be calculated in accordance with accepted engineering practice. The design parameters specified in Chapter 3 shall apply for all computations.

HVAC equipment for low-rise residential buildings shall be sized no greater than 150 percent of the design load as calculated above.

EXCEPTION: The following exemption from the sizing limit shall be allowed, however, in all cases heating and/or cooling design load calculations shall be submitted. For equipment which provides both heating and cooling in one package unit, including heat pumps with electric heating and cooling and gas-pack units with gas heating and electric cooling, compliance need only be demonstrated for either the space heating or space cooling system size.

(b) Temperature Control.

Each heating system shall be provided with at least one thermostat for the regulation of temperature. Each thermostat shall be capable of being set as follows:

Where used to control heating only-55-75°;

Where used to control cooling only-70-85°;

Where used to control both heating and cooling, it shall conform to the requirements of Section 415.

(c) Zoning for Temperature Control.

Group R-3 Occupancy

At least one thermostat for regulation of space temperature shall be provided for each separate HVAC system. In addition, a readily accessible manual or automatic means shall be provided to partially restrict or shut off the heating or cooling input to each zone or floor.

EXCEPTION: Nonconditioned basements and garages.

Group R-1 Occupancy.

For multifamily dwellings, each individual dwelling unit shall be considered separately and shall meet the requirements of Section 602. Spaces other than living units shall meet the requirements of section 415 (c) 3.

- 3. Control Setback and Shutoff: Group R-1 and R-3. The thermostat required in (a) and (b) or an alternate means such as a switch or clock, shall provide a readily accessible, manual or automatic means for reducing the energy required for heating and cooling during periods of nonuse or reduced need such as, but not limited to, unoccupied periods and sleeping hours. Lowering thermostat set points to reduce energy consumption of heating systems shall not cause energy to be expended to reach the reduced setting.
- Duct Insulation.

All ducts, plenums and enclosures installed in or on buildings shall be thermally insulated and constructed in accordance with Section 416.

5. Pipe Insulation.

All piping installed to serve buildings or within buildings shall be thermally insulated in accordance with Table 4-17.

EXCEPTION: For service water heating systems, see Section 603.

WSR 90-05-065 PROPOSED RULES DEPARTMENT OF AGRICULTURE

[Filed February 21, 1990, 3:34 p.m.]

Original Notice.

Title of Rule: Chapter 16-400 WAC, Horticultural inspection fees.

Purpose: To increase the inspection fees for apples by two and one-half cents per hundred weight or one cent per standard carton.

Other Identifying Information: The proposal, if adopted, will make permanent the emergency rule filed on January 12, 1990.

Statutory Authority for Adoption: Chapter 15.17 RCW.

Statute Being Implemented: Chapter 15.17 RCW.

Summary: The rule will increase the inspection fees for apples by two and one-half cents per hundred weight.

Reasons Supporting Proposal: Increased inspection staff is necessary to implement and enforce the rules governing minimum firmness of apples. The inspection service is funded solely by fees charged to applicants for service, and fees are deposited in the local horticultural inspection fund. The increase in fees will provide the necessary funding for the required additional personnel to ensure enforcement of apple quality.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: James R. Archer, Olympia, Washington, (206) 753-5054.

Name of Proponent: Washington State Horticultural Association Grade and Pack Committee, private.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Agency recommends approval.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The rule sets a schedule of fees for inspection of fruits and vegetables. Fees are paid by producers and users of the inspection service. The effect of the rule change will be to generate additional revenue which will offset the increased expense of additional inspection personnel. Staffing levels have been increased to effect improved enforcement of quality standards.

Proposal Changes the Following Existing Rules: The fees charged to users will increase.

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

Hearing Location: Red Lion Inn, 1225 North Wenatchee Avenue, Wenatchee, WA, on March 27, 1990, at 10:00 a.m; and at the Holiday Inn, 9 North 9th Street, Yakima, WA, on March 28, 1990, at 10:00 a.m.

Submit Written Comments to: Washington State Department of Agriculture, Commodity Inspection Division, 406 General Administration Building, AX-41, Olympia, WA 98504, by March 28, 1990.

Date of Intended Adoption: April 11, 1990.

February 21, 1990 J. Allen Stine Assistant Director Commodity Inspection

AMENDATORY SECTION (Amending Order 2001, filed 3/31/89)

WAC 16-400-010 GRADE AND CONDITION CERTIFICATES—FRUITS. Charges for grade and condition certificates for all fruits shall be:

(1) The minimum charge for all fruits shall be nine dollars.

(2) For all fresh market fruits of apples, pears, and soft fruit in containers—wrapped, place pack, face and fill, in bags, master containers, consumer packages, or loose in bulk cartons, boxes, crates, bins, or in bags, per cwt. or fraction thereof:

(a) For federal-state certification:

$(\frac{13\phi}{})) \ \underline{15} \ 1/2\phi$
21¢
12¢
16¢
(12ϕ)) 14 1/2¢
tl¢

(3) For all apples, pears, stone fruits, berries, and grapes in bulk or in containers for processing, or for quality condition and/or size determination, charges shall be two dollars fifty cents per ton net weight or fraction thereof. When inspection is requested only for the purpose of verifying the product, conveyance, markings, or other factors not related to quality, the charges shall be at the hourly rate but not less than the minimum certificate charge of nine dollars.

AMENDATORY SECTION (Amending Order 2001, filed 3/31/89)

WAC 16-400-100 CERTIFICATES. Certificate charges shall be in accordance with the following provisions:

- (1) Consolidation certificates shall be charged as specified in WAC 16-400-010 and 16-400-040 and shall have an additional charge of three dollars for each additional local lot.
- (2) Condition certificate charges shall be two-thirds of the grade and condition certificates with the following exceptions:
- (a) Previously inspected lots shall have a minimum charge of nine dollars.
- (b) When the lot has had no prior inspection for quality or grade and it is requested that the certificate carry out-bound car, truck, or state lot number, the grade and condition certificate schedule shall apply.
- (c) Out-of-state products reported on state certificates shall be charged on the applicable grade and condition certificate schedule, except there shall be an hourly charge of twenty dollars.
- (d) For lots of controlled atmosphere storage apples which were previously certified, a state condition certificate or quality control inspection may be issued without additional charge.
- (3) Car hook-up, loading or unloading certificate shall be charged at the rates specified in subsection (2)(a) of this section.
- (4) Sanitary and quarantine certificate charges for fruits and vegetables shall be:
- (a) Six dollars for the issuance of a certificate, plus the hourly rates specified in WAC 16-400-210 (1)(a) when the shipment is not covered by federal-state or state certificates.
- (b) Six dollars per set when the shipment is covered by federal-state or state certificates.
- (5) Container weight, or checkloading certificates shall be charged at the rates specified in WAC 16-400-210 (1)(a).
- (6) Federal-state certification shall meet the criteria for sampling as established by United States Department of Agriculture, Agricultural Marketing Service. When the federal-state inspector or inspector's aide must physically obtain samples from lots blocked out for loading or from lots in storage, charges of seven and one-half cents per cwt. shall be made in addition to inspection fees. When assistance is provided by the applicant's personnel, charges for sampling shall be reduced accordingly.

AMENDATORY SECTION (Amending Order 2001, filed 3/31/89)

WAC 16–400–210 OTHER CHARGES. Other miscellaneous charges are listed below:

(1) Charges for platform inspection shall be:

(a) Platform inspections, time taking samples, extra time, phytosanitary and/or quarantine inspection, and all other services, shall be charged at the hourly rate of twenty dollars.

(b) Time allowance – Where a platform inspector is working full time at one house and also doing certification inspection, the inspector shall allow credit for the time according to limits outlined in the schedule for such certification at the hourly rate of twenty dollars.

Should the certificate charges divided by the respective hourly rates equal or exceed the number of hours worked, no platform charge shall be assessed. Should the certificate charges divided by the respective hourly rates be less than the number of hours worked, the platform charge shall be made to bring the total to the appropriate charge.

- (2) Fumigation charges The minimum charge for supervision of fumigation shall be eighteen dollars. Additional or unnecessary stand-by time shall be charged as specified in subsection (1)(a) of this section. In temporary, nonpermanent facilities or those lacking adequate devices for maintenance of acceptable treatment temperatures, no fumigations shall be started after 3:00 p.m. from October 1 to May 31, nor after 10:00 p.m. from June 1 to September 30.
- (3) Field or orchard inspections made at the applicant's request for determination of presence or absence of disease or insect infestation, or for other reason, shall be at the rate of two dollars fifty cents per acre or fraction thereof or at the rate specified in subsection (1)(a) of this section
- (4) Seed sampling fees shall be arranged with the chemical and plant services division for services performed.
- (5) Extra charges on services provided shall be assessed according to provisions listed below.
- (a) The minimum inspection charge for each commodity and requested form shall be at the rate specified in subsection (1)(a) of this section.

(b) If, through no fault of the inspection service, time over the maximum allowance as supported by unit rates for each commodity and requested form is required, such excess time shall be at the rate as specified in subsection (1)(a) of this section.

(c) For all inspection services performed beyond a regularly scheduled eight-hour week day shift or on Saturdays, or Sundays, or state legal holidays, an hourly charge shall be made equivalent to twenty-seven dollars.

These charges shall be made for actual hours spent in performance of duties. This shall include unit charges, plus, if necessary, overtime charges to equal the respective overtime hourly rates.

The following are state legal holidays: New Year's Day, Veteran's Day, Memorial Day (the last Monday of May), Independence Day, Labor Day (the first Monday in September), Thanksgiving Day (the fourth Thursday in November) and the day following Thanksgiving Day, Christmas Day, Martin Luther King, Jr. Day (third Monday in January), and Presidents' Day (third Monday in February).

(d) When the per unit charge for inspection in any one day equals or exceeds the basic hourly and/or overtime charge, no additional hourly or overtime charges shall be assessed.

or overtime charges shall be assessed.

(6) Mileage—Whenever necessary, mileage shall be charged at the rate established by the state office of financial management.

(7) Electronic transmission of documents—Telegrams, facsimile, or electronic transmission of inspection documents shall be charged at the rate of four dollars per transmission in addition to Western Union charges made directly to the applicant.

(8) Services provided to other agencies—Services provided to other agencies, commissions, and organizations shall be charged at the rate specified in subsection (1)(a) of this section.

(9) Timely payment—Payment of fees and charges is due within thirty days after date of statement, provided:

(a) If payment is not received within thirty days, service may be withheld until the delinquent account is paid; or

(b) In the case of such delinquent accounts, cash payment for subsequent service may be required; and

(c) A penalty of twelve percent per annum shall be assessed on the delinquent account balance.

(10) USDA positive lot identification—Certification utilizing positive lot identification shall be charged at the rates specified in this section and WAC 16-400-010, 16-400-040, and 16-400-100 with an additional charge of ten percent. The minimum shall be twelve dollars per inspection. Service will be provided first in those instances in which positive lot identification is a mandatory condition of the sales transaction. Other requests for positive lot identification will be serviced upon adequate notification to the inspection service and availability of in-

(11) Controlled atmosphere license fee—The application for an annual license to engage in the business of operating a controlled atmosphere storage warehouse or warehouses shall be accompanied by an annual license fee of five dollars per room, with a minimum fee estab-

lished at twenty-five dollars for five rooms or less.

(12) Inspection fees may be waived on inspections of fruits and vegetables when donated to bona fide nonprofit organizations: PROVID-ED, That shipping containers shall be conspicuously labeled or marked as "not for resale."

WSR 90-05-066 PROPOSED RULES DEPARTMENT OF AGRICULTURE

[Filed February 21, 1990, 3:36 p.m.]

Original Notice.

spection personnel.

Title of Rule: Chapter 16-403 WAC, Standards for apples marketed within Washington.

Purpose: To increase the amount of color required in the Washington extra fancy and fancy grades of Red Delicious apples for all markets except off shore export and to increase the firmness requirements of Red Delicious, Delicious and Golden Delicious varieties by approximately one pound pressure test. Other Identifying Information: This rule was filed on December 20, 1989, WSR 90-01-113; and withdrawn on January 12, 1990, WSR 90-03-036.

Statutory Authority for Adoption: Chapter 15.17 RCW.

Statute Being Implemented: Chapter 15.17 RCW.

Summary: The rule will increase color to 75% for Washington extra fancy grade, 55% for Washington fancy grade (currently at 66% and 40% respectively), and require United States grades to meet the same requirement with the exception of off shore export shipments. The firmness rule will result in a more stringent requirement for condition at time of shipment.

Reasons Supporting Proposal: Color, there is currently a practice of packing several quality levels within the extra fancy and fancy grades. The result is overlap and confusion in the market area, possibly contributing to poor returns to the producer. The rule change is intended to eliminate some of the levels of grades within grades and to lessen the degree of confusion. Firmness, the rule is intended to provide apples that are more crisp, have better shelf life and overall condition at the retail level resulting in increased consumer acceptance and satisfaction.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: James R. Archer, Olympia, Washington, (206) 753-5054.

Name of Proponent: Apple producers by petition, private.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Enforcement will be contingent upon adequate collection of inspection fees, chapter 16–400 WAC.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The rule will upgrade quality and condition of the affected varieties, reduce confusion by the buyers and sellers, and satisfy consumer demands for a crispier apple. The anticipated effect is increased consumer demand for Washington apples which are in plentiful supply, and improved returns to the producer.

Proposal Changes the Following Existing Rules: Upgrade in color requirements on Red Delicious variety. Upgrade in firmness requirements on Red Delicious, Delicious, and Golden Delicious varieties.

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

Hearing Location: Red Lion Inn, 1225 North Wenatchee Avenue, Wenatchee, WA, on March 27, 1990, at 10 a.m.; and at the Holiday Inn, 9 North 9th Street, Yakima, WA, on March 28, 1990, at 10 a.m.

Submit Written Comments to: Washington State Department of Agriculture, Commodity Inspection Division, 406 General Administration Building, AX-41, Olympia, WA 98504, by March 28, 1990.

Date of Intended Adoption: April 11, 1990.

February 21, 1990 J. Allen Stine Assistant Director Commodity Inspection AMENDATORY SECTION (Amending Order 2012, filed 6/28/89, effective 9/1/89)

WAC 16-403-142 RED DELICIOUS, DELICIOUS, AND GOLDEN DELICIOUS—MINIMUM FIRMNESS. At the time of shipment, Red Delicious, and Delicious((, and Golden Delicious apples of all grades shall not be further advanced in maturity than firm ripe)) varieties shall pressure test not less than twelve pounds: PROVIDED, That those apples failing to pressure test twelve pounds may be considered as meeting the requirements of this section when the individual apple exhibits edible qualities and texture of flesh comparable to other apples of the same variety which pressure test twelve pounds or more.

At the time of shipment, Golden Delicious variety shall pressure test not less than ten pounds: PROVIDED, That those apples failing to pressure test ten pounds may be considered as meeting the requirements of this section when the individual apple exhibits edible qualities and texture of flesh comparable to other apples of the same variety which pressure test ten pounds or more.

AMENDATORY SECTION (Amending Order 1374, filed 7/26/74, effective 9/1/74)

WAC 16-403-155 COLOR REQUIREMENTS. In addition to the requirement specified for the grades set forth in WAC 16-403-145 and 16-403-150, apples of these grades shall have the percentage of color specified for the variety appearing in this section.

(1) Solid red varieties. For the solid red varieties the percentage stated refers to the area of the surface which must be covered with a good shade of solid red characteristic of the variety: PROVIDED, That an apple having color of a lighter shade of solid red or striped red than that considered as a good shade of red characteristic of the variety may be admitted to a grade provided it has sufficient additional area covered so that the apple has as good an appearance as one with the minimum percentage of good red characteristic of the variety required for the grade, subject to the limitations set forth below.

VARIETY	EXTRA FANCY PERCENT	FANCY PERCENT
Black Ben	66 ⁽¹⁾ 66 ⁽¹⁾ 66 ⁽¹⁾	40 ⁽³⁾ 40 ⁽³⁾ 40 ⁽³⁾
Gano	66(1)	40(3)
Winesaps	66(1)	40(3)
Other similar varieties	66 ⁽¹⁾ 75 ⁽⁵⁾	40 ⁽³⁾ 55 ⁽⁶⁾
Red Delicious sport varieties ⁽²⁾		55(6)
Other red sport varieties(2)	66 ⁽⁴⁾	40(3)

- (1) Must have at least 50 percent good shade of red color characteristic of the variety.
- (2) When the red sport varieties are marked as such, they shall meet the color requirements of red sport varieties, and the containers must also bear the name of the parent variety.
- (3) Must have at least 33 percent good shade of red color; characteristic of the variety.
- (4) Must have at least 66 percent good shade of red color; characteristic of the variety.
- (5) Must have at least 75 percent good shade of red color; characteristic of the variety.
- (6) Must have at least 55 percent good shade of red color; characteristic of the variety; except that color requirements for offshore export shipments shall be 40 percent, of which at least 33 percent shall be a good shade of red color; characteristic of the variety.
- (2) Striped or partial red varieties. For the striped or partial red varieties the percentage stated refers to the area of the surface in which the stripes of a good shade of red characteristic of the variety shall predominate over stripes of lighter red, green or yellow. However, an apple having color of a lighter shade than that considered as a good shade of red characteristic of the variety may be admitted to a grade, provided it has sufficient additional area covered so that the apple has as good an appearance as one with the minimum percentage of stripes of a good red characteristic of the variety required for the grade, subject to the limitations set forth below. Faded brown stripes shall not be considered as color.

VARIETY	EXTRA FANCY PERCENT	FANCY PERCENT		
Delicious	50	25		
Rome Beauty	50 50 ⁽¹⁾	33 ⁽²⁾		
Wealthy	50	25		
Stayman	50	33		
Other similar varieties	50	25		

VARIETY	EXTRA FANCY PERCENT	FANCY PERCENT
Jonathan	66 ⁽¹⁾ 50 ⁽¹⁾	33 ⁽²⁾ 33 ⁽²⁾
McIntosh	50 ⁽¹⁾	33 ⁽²⁾
Cortland	50	33
Other similar varieties	50,	33,73
Red Delicious sport varieties ⁽⁵⁾	75 ⁽⁶⁾	55 ⁽⁷⁾
Other red sport varieties(3)	66 ⁽⁴⁾	40(3)

- (1) Must have at least 35 percent good shade of red color characteristic of the variety.
- (2) Must have at least 15 percent good shade of red color characteristic of the variety.
- (3) Must have at least 33 percent good shade of red color characteristic of the variety.
- (4) Must have at least 66 percent good shade of red color characteristic of the variety.
- (5) When the red sport varieties are marked as such, they shall meet the color requirements of red sport varieties, and the containers must also bear the name of the parent variety.
- (6) Must have at least 75 percent good shade of red color; characteristic of
- (7) the variety.

 Must have at least 55 percent good shade of red color; characteristic of the variety; except that color requirements for offshore export shipments shall be 40 percent, of which at least 33 percent shall be a good shade of red color; characteristic of the variety.
- (3) Red cheeked or blushed varieties.

VARIETY	EXTRA FANCY PERCENT	FANCY PERCENT	
Winter Banana Other similar varieties	Blush Cheek Blush Cheek	Tinge of color Tinge of color	

(4) In no case shall the color requirements for any variety be less than those required under the United States standards for grades of apples, effective September 1, 1964, as amended October 1, 1966, and July 25, 1972, and March 25, 1976, for the comparable Washington grade and variety.

AMENDATORY SECTION (Amending Order 2012, filed 6/28/89, effective 9/1/89)

WAC 16-403-190 TOLERANCES. In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the following tolerances are provided as specified:

(1) Defects: Washington extra fancy, Washington fancy and Washington C grade.

Ten percent of the apples in any lot may fail to meet the requirements of the grade, but not more than one-half of this amount, or 5 percent, shall be allowed for apples which are seriously damaged, including therein not more than one percent for apples affected by decay or internal breakdown.

(2) When applying the foregoing tolerances to combination grades, no part of any tolerance shall be allowed to reduce, for the lot as a whole, the percent of apples of the higher grade required in the combination.

Combinations requiring 80 percent of the higher grade for the lot shall have not less than 65 percent of the higher grade in individual samples.

Combinations requiring 50 percent of the higher grade for the lot shall have not less than 40 percent of the higher grade in individual samples.

- (3) Size. When size is designated by the numerical count for a container, not more than 5 percent of the apples in the lot may vary more than 1/4 inch in diameter. When size is designated by minimum or maximum diameter, not more than 5 percent of the apples in any lot may be smaller than the designated minimum and not more than 10 percent may be larger than the designated maximum.
- (4) Firmness. Not more than ((5)) ten percent of the apples in any lot of Red Delicious, Delicious, and Golden Delicious varieties shall ((be further advanced in maturity than firm ripe)) fail to meet the firmness requirements as defined in WAC 16-403-142.

AMENDATORY SECTION (Amending Order 1374, filed 7/26/74, effective 9/1/74)

WAC 16-403-220 MARKING REQUIREMENTS-OPEN OR CLOSED CONTAINERS. (1) The containers shall bear the correct name of the variety or "variety unknown," the name of the grower,

packer, or distributor, and his address, the grade, the numerical count or the minimum diameter of apples packed in a closed container, and the net contents either in terms of dry measure or weight. All open containers and consumer packages must bear statement of net weight without exception.

- (a) When the numerical count is not shown, the minimum diameter shall be plainly stamped, stenciled, or otherwise marked on the container in terms of whole inches, or whole inches and not less than eight inch fractions thereof.
- (b) The word "minimum," or its abbreviation, when following a diameter size marking, means that the apples are of the size marked or larger.
- (2) Over-wrapped consumer units may be marked with count, if all specimens can be counted.
- (3) Any of these marks may be placed on either the end or side of the container. (California requires end markings.)
- (4) When containers are marked as to number, each container shall contain the correct number of apples designated by the markings.
- (5) Grade markings on consumer-type packages must be at least one-fourth inch in height.
- (6) Containers of the Red Delicious variety, when packed for offshore export, shall have placed on the principal display panel, the words, "for offshore export."

AMENDATORY SECTION (Amending Order 2012, filed 6/28/89, effective 9/1/89)

WAC 16-403-280 ADOPTION OF UNITED STATES STAN-DARDS AS STATE STANDARDS. In addition to the standards for apples prescribed in WAC 16-403-140 through 16-403-275, there are hereby adopted, as additional standards of the state of Washington for apples, the United States standards for grades of apples, effective September 1, 1964, as amended October 1, 1966, July 25, 1972, and March 25, 1976, adopted by the United States Department of Agriculture, as they apply to U.S. extra fancy, U.S. fancy, U.S. No. 1 and U.S. No. 1 hail, provided, that when used on Red Delicious variety, except for offshore export shipments, the U.S. extra fancy and fancy grades shall meet the color requirements of WAC 16-403-155 and provided, the color requirements specified for U.S. No. 1 and U.S. No. 1 hail must be good shade of red color and the percentage of color required for U.S. No. 1 and U.S. No. 1 hail for Delicious shall be 25 percent good shade of red color and provided further, that all the United States grades as applied to Red Delicious, Delicious, and Golden Delicious varieties shall meet the firmness requirements of WAC 16-403-142.

WSR 90-05-067 PROPOSED RULES DEPARTMENT OF AGRICULTURE

[Filed February 21, 1990, 3:39 p.m.]

Original Notice.

Title of Rule: Chapter 16-403 WAC, Standards for apples marketed within Washington.

Purpose: To increase minimum firmness of Red Delicious and Golden Delicious varieties of apples shipped from Washington state for fresh market. The revised rule will raise the pressure test requirement by approximately one pound.

Other Identifying Information: The proposal, if adopted, will make permanent the emergency rule filed on January 12, 1990.

Statutory Authority for Adoption: Chapter 15.17 RCW.

Statute Being Implemented: Chapter 15.17 RCW.

Summary: The rule will require minimum pressure test of twelve pounds for Red Delicious and Delicious varieties of apples; minimum ten pound pressure test for Golden Delicious variety.

Reasons Supporting Proposal: The rule is intended to provide apples that are more crisp, have better shelf life and overall condition at the retail level resulting in increased consumer acceptance and satisfaction.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: James R. Archer, Olympia, Washington, (206) 753-5054.

Name of Proponent: Washington State Horticultural Association Grade and Pack Committee, private.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The rule will make current quality standards more stringent on the specified varieties. The upgraded level of quality is in response to consumer demands for a crisp apple. The anticipated effect is increased consumer demand for Washington apples which will result in improved returns to the producer.

Proposal Changes the Following Existing Rules: The proposal increases current firmness guidelines by approximately one pound and references pressure tests in the apple standards as a means of measuring firmness. The rule affects Red Delicious, Delicious and Golden Delicious varieties only.

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

Hearing Location: Red Lion Inn, 1225 North Wenatchee Avenue, Wenatchee, WA, on March 27, 1990, at 10:00 a.m.; and at the Holiday Inn, 9 North 9th Street, Yakima, WA, on March 28, 1990, at 10:00 a.m.

Submit Written Comments to: Washington State Department of Agriculture, Commodity Inspection Division, 406 General Administration Building, AX-41, Olympia, WA 98504, by March 28, 1990.

Date of Intended Adoption: April 11, 1990.

February 21, 1990
J. Allen Stine
Assistant Director
Commodity Inspection

AMENDATORY SECTION (Amending Order 2012, filed 6/28/89, effective 9/1/89)

WAC 16-403-142 RED DELICIOUS, DELICIOUS, AND GOLDEN DELICIOUS—MINIMUM FIRMNESS. At the time of shipment, Red Delicious, ((Delicious,)) and ((Golden)) Delicious ((apples of all grades shall not be further advanced in maturity than firm ripe)) varieties shall pressure test not less than twelve pounds: PRO-VIDED, That those apples failing to pressure test twelve pounds may be considered as meeting the requirements of this section when the individual apple exhibits edible qualities and texture of flesh comparable to other apples of the same variety which pressure test twelve pounds or more.

At the time of shipment, Golden Delicious variety shall pressure test not less than ten pounds: PROVIDED, That those apples failing to pressure test ten pounds may be considered as meeting the requirements of this section when the individual apple exhibits edible qualities and texture of flesh comparable to other apples of the same variety which pressure test ten pounds or more.

AMENDATORY SECTION (Amending Order 2012, filed 6/28/89, effective 9/1/89)

WAC 16-403-190 TOLERANCES. In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the following tolerances are provided as specified:

(1) Defects: Washington extra fancy, Washington fancy and Washington C grade.

Ten percent of the apples in any lot may fail to meet the requirements of the grade, but not more than one-half of this amount, or 5 percent, shall be allowed for apples which are seriously damaged, including therein not more than one percent for apples affected by decay or internal breakdown.

(2) When applying the foregoing tolerances to combination grades, no part of any tolerance shall be allowed to reduce, for the lot as a whole, the percent of apples of the higher grade required in the combination.

Combinations requiring 80 percent of the higher grade for the lot shall have not less than 65 percent of the higher grade in individual samples

Combinations requiring 50 percent of the higher grade for the lot shall have not less than 40 percent of the higher grade in individual samples.

(3) Size. When size is designated by the numerical count for a container, not more than 5 percent of the apples in the lot may vary more than 1/4 inch in diameter. When size is designated by minimum or maximum diameter, not more than 5 percent of the apples in any lot may be smaller than the designated minimum and not more than 10 percent may be larger than the designated maximum.

(4) Firmness. Not more than ((5)) ten percent of the apples in any lot of Red Delicious, Delicious, and Golden Delicious varieties shall ((be further advanced in maturity than firm ripe)) fail to meet the

firmness requirements as defined in WAC 16-403-142.

WSR 90-05-068 WITHDRAWAL OF PROPOSED RULES DEPARTMENT OF AGRICULTURE

[Filed February 21, 1990, 3:40 p.m.]

Please withdraw the proposal WSR 89-19-065, filed September 20, 1989, new chapter 16-557 WAC, to establish a Washington Asparagus Commission. It did not receive the required producer approval.

Arthur C. Scheunemann Managing Director

WSR 90-05-069 RULES COORDINATOR DEPARTMENT OF AGRICULTURE

[Filed February 21, 1990, 3:41 p.m.]

In accordance with RCW 34.05.310, the rules coordinator for the Washington State Department of Agriculture is Dannie M. McQueen, 4th Floor General Administration Building, Mailstop AX-41, Olympia, Washington 98504, phone (206) 753-5035 or 234-5035 scan.

Michael V. Schwisow Deputy Director

WSR 90-05-070 CENTENNIAL COMMISSION

[Filed February 21, 1990, 3:49 p.m.]

The 1989 Washington Centennial Commission will cease operations at close of business March 30, 1990. All billings, invoices, or other claims must be received by the commission on or before March 23, 1990, to ensure timely processing.

WSR 90-05-071 PERMANENT RULES DEPARTMENT OF LICENSING (Board of Registration for Professional Engineers and Land Surveyors)

[Filed February 21, 1990, 4:13 p.m.]

Date of Adoption: January 19, 1990.

Purpose: Regulate the practice of engineering and land surveying in the state of Washington.

Citation of Existing Rules Affected by this Order: Repealing WAC 196-08-030; and amending WAC 196-24-090 and 196-27-020.

Statutory Authority for Adoption: RCW 18.43.035.

Pursuant to notice filed as WSR 89-24-057 on December 5, 1989.

Changes Other than Editing from Proposed to Adopted Version: Editing revisions to amend WAC 196-27-020 (5)(a) replacing the word "should" with "shall."

Effective Date of Rule: Thirty—one days after filing.

January 29, 1990

Alan E. Rathbun, P.E.

Registrar

AMENDATORY SECTION (Amending Order 81–10, filed 12/18/81)

WAC 196-24-090 BRANCH OFFICES. (1) A branch office of an engineering or land surveying firm shall be defined as an office established to solicit and/or provide engineering and/or land surveying services. A resident professional engineer/land surveyor shall be defined as a person holding a valid certificate of registration in this state and who maintains said branch office as his normal place of business. A professional engineer or professional land surveyor may be the resident licensee at only one place of business at any given time.

- (2) Each branch office of an engineering firm shall have a resident professional engineer in responsible charge. Each branch office of a surveying firm shall have a resident professional land surveyor in responsible charge.
- (3) Branch office restrictions shall not apply to project offices. A project office shall be defined as an office established to provide:
- (a) Supervision for construction of a project designed elsewhere.
- (b) Supervision of or providing a convenient work place for a specific land surveying or engineering project.
- (((4) No new work shall be solicited by the firm's representative located at a project office:))

NEW SECTION

WAC 196-24-092 OFFER TO PRACTICE. The offer to practice engineering or land surveying services shall include, but not be limited to, identification of the scope of work and/or estimated cost of said services. Said offer to practice shall be performed by or under the direct supervision of a licensee qualified to offer said services under the provisions of chapter 18.43 RCW.

AMENDATORY SECTION (Amending Order PM 606, filed 6/4/87)

WAC 196-27-020 FUNDAMENTAL CANONS AND GUIDELINES FOR PROFESSIONAL PRACTICE. (1) Registrants shall hold paramount the safety, health, and welfare of the public in the performance of their professional duties.

- (a) Registrants shall recognize that the lives, safety, health, and welfare of the general public are dependent upon engineering/land surveying judgments, decisions, and practices incorporated into structures, machines, products, processes, and devices.
- (b) Registrants shall approve or seal only those design documents, prepared by them or under their direct supervision, which are determined to be safe for public health and welfare in conformity with accepted standards.
- (c) Registrants whose professional judgment is overruled under circumstances where the safety, health, and welfare of the public are endangered shall inform their clients or employers of the possible consequences.
- (d) Registrants who have knowledge or reason to believe that another person or firm may be in violation of any of the provisions of chapter 18.43 RCW or these rules of professional conduct shall present such information to the board in writing and shall cooperate with the board in furnishing such further information or assistance as may be required.
- (2) Registrants shall perform services only in areas of their competence.
- (a) Registrants shall undertake to perform assignments only when qualified by education or experience in the technical field of engineering or land surveying involved.
- (b) Registrants may accept an assignment requiring education or experience outside their own fields of competence, provided their services are restricted to those phases of the project in which they are qualified. All other phases of such project shall be performed by qualified associates, consultants or employees.
- (c) Registrants shall not affix their signatures or seals to any plan or document dealing with subject matter in which they lack competence by virtue of education or experience or to any such plan or document not prepared under their supervisory control.
- (3) Registrants shall issue public statements only in an objective and truthful manner.
- (a) Registrants should endeavor to extend the public knowledge of engineering or land surveying and shall not participate in the dissemination of untrue, unfair, or exaggerated statements regarding said professions.
- (b) Registrants shall be objective and truthful in professional reports, statements, or testimony. They shall include all relevant and pertinent information in such reports, statements, or testimony.
- (c) Registrants when serving as expert witness, shall express and engineering or land surveying opinion only when it is founded upon adequate knowledge of the facts, upon a background of technical competence, and upon honest conviction.

- (d) Registrants shall issue no statements, criticisms, or arguments on engineering or land surveying matters which are inspired or paid for by interested parties, unless they indicate on whose behalf the statements are made.
- (4) Registrants shall act in professional matters for each employer or client as faithful agents or trustees, and shall avoid conflicts of interest.
- (a) Registrants shall avoid all known or potential conflicts of interest with their employers or clients and shall promptly inform their employers or clients of any business association, interest, or circumstances which could influence their judgment or the quality of their services.
- (b) Registrants shall not accept compensation from more than one party for services on the same project, or for services pertaining to the same project, unless the circumstances are fully disclosed to and agreed to, by all interested parties.
- (c) Registrants shall not solicit or accept gratuities, directly or indirectly, from contractors, their agents, or other parties dealing with their clients or employers in connection with work for which they are responsible.
- (d) Registrants in public service as members, advisors, or employees of a governmental body or department shall not participate in considerations or actions with respect to services solicited or provided by them or their organization in private or public engineering/land surveying practice.
- (e) Registrants shall advise their employers or clients when, as a result of their studies, they believe a project will not be successful.
- (f) Registrants shall not use confidential information coming to them in the course of their assignments as a means of making personal profit if such action is adverse to the interests of their clients, employers or the public.
- (g) Registrants shall not accept professional employment outside of their regular work or interest without the knowledge of their employers.
- (5) Registrants shall build their professional reputation on the merit of their services and shall not compete unfairly with others.
- (a) Registrants shall ((not give, solicit or receive either directly or indirectly, any commission, political contribution, or a gift or other consideration in order to secure work, exclusive of)) not offer money, goods or other favors as inducement to receive favorable consideration for a professional assignment. Also, registrants shall not accept money, goods or other favors as inducement to approve, authorize or influence the granting of a professional assignment. This shall not preclude the securing of salaried positions through employment agencies.
- (b) Registrants should negotiate contracts for professional services fairly and on the basis of demonstrated competence and qualifications for the type of professional service required.
- (c) Registrants shall not request, propose or accept professional commissions on a contingent basis under circumstances in which their professional judgments may be compromised.

- (d) Registrants shall not falsify or permit misrepresentation of their academic or professional qualifications or experience.
- (e) Registrants ((may)) shall not advertise professional services in a way that ((does not contain self-laudatory or misleading language)) is false or misleading as to the qualification, experience, or capability of the registrant.
- (f) Registrants shall not participate in a selection process or be employed in an assignment where said selection was awarded by a process determined to be in violation of chapter 39.80 RCW.
- (6) Registrants shall continue their professional development throughout their careers, and shall provide opportunities for the professional development of those individuals under their supervision.
- (7) Registrants shall respond to any legal request for information by the board and/or appear before the board in the time frame established by the board or their staff designee.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 196-08-030 APPEARANCE AND PRACTICE BEFORE AGENCY—SOLICITATION OF BUSINESS UNETHICAL.

WSR 90-05-072 PROPOSED RULES DEPARTMENT OF LICENSING (Real Estate Commission)

[Filed February 21, 1990, 4:14 p.m.]

Continuance of WSR 90-02-102, due to inclement weather on Friday, February 16, 1990.

Title of Rule: Amending WAC 308–124H–035, 308–124H–036 and 308–124H–037; repealing WAC 308–124H–020, 308–124H–030, 308–124H–033, 308–124H–038, 308–124H–040, 308–124H–043, 308–124H–045, 308–124H–050, 308–124H–055, 308–124H–060, 308–124H–065 and 308–124H–070; and new sections WAC 308–124H–011, 308–124H–021, 308–124H–025, 308–124H–041, 308–124H–051, 308–124H–061, 308–124H–062, 308–124H–210, 308–124H–220, 308–124H–230, 308–124H–240, 308–124H–250, 308–124H–260, 308–124H–270, 308–124H–280, 308–124H–290, 308–124H–300, 308–124H–310, 308–124H–320, 308–124H–330, 308–124H–340, 308–124H–510, 308–124H–520, 308–124H–550, 308–124H–550, 308–124H–560, 308–124H–570 and 308–124H–580.

Purpose: The WAC changes reflect a comprehensive real estate education approval procedure. The changes are designed to augment and clarify the current procedure.

Statutory Authority for Adoption: RCW 18.85.040. Statute Being Implemented: RCW 18.85.040.

Summary: The new and amendatory sections of the WAC rules reflect a comprehensive procedure for real

estate education for applicants and licensees. The repealer sections are replaced with more comprehensive rules.

Reasons Supporting Proposal: See above Purpose.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Shirley Baenen, P.O. Box 9012, Olympia, WA 98504, (206) 753-3194.

Name of Proponent: Department of Licensing, Real Estate Commission, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: See above Purpose and Summary.

Proposal Changes the Following Existing Rules: Extensive changes to the current real estate education procedure are proposed to be implemented. The proposed changes are more specific and reflect a comprehensive procedure which will address real estate education approval processes.

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

Hearing Location: Stouffer Madison Hotel, 515 Madison Street, Seattle, WA 98104, on April 5, 1990, at 9:00 a.m.

Submit Written Comments to: Shirley Baenen, P.O. Box 9012, Olympia, WA 98504, by 5:00 p.m., April 3, 1990.

Date of Intended Adoption: April 5, 1990.

February 20, 1990 Linda M. Moran Assistant Attorney General

Chapter 308–124H WAC
REAL ESTATE COURSE((S)) APPROVAL—REGULATION OF
REAL ESTATE BROKERS AND ((SALESMEN)) SALESPERSONS

PART A COURSE APPROVAL

NEW SECTION

WAC 308-124H-011 COURSE APPROVAL REQUIRED. Any school or instructor desiring to offer clock hour courses must be approved by the department prior to the date on which it first offers courses for clock hour credit.

NEW SECTION

WAC 308-124H-021 APPROVAL OF COURSES. (1) Each application for approval of a course shall be submitted to the department on the appropriate application form provided by the department by the established deadline. The most recent application form should be obtained from the department prior to submission.

(2) The director shall approve, disapprove, or conditionally approve applications upon the advice and recommendation of the commission. The director shall approve only complete applications which in the opinion of the director meet the requirements of this chapter.

(3) Upon approval, disapproval or conditional approval, the applicant will be so advised in writing by the department. Notification of disapproval shall include the reasons therefor.

(4) Review of applications will be scheduled for the first regularly scheduled meeting of the commission to be held thirty days following receipt of the application by the department. Only complete applications for approval shall be accepted by the commission.

(5) Approval shall expire two years after the effective date of approval provided that a complete application for renewal of approval is submitted at least thirty days prior to the expiration date. Approval

shall remain in effect until action to approve or disapprove the application is taken by the director. Renewal of approval is processed in the same manner as applications for approval.

NEW SECTION

WAC 308-124H-025 APPLICATION FOR COURSE AP-PROVAL. Courses shall meet the following requirements:

- (1) Provide practical information related to the practice of real estate, and deal with substantive real estate subject matter such as, but not limited to, legal aspects of real estate, real estate principles and practices, real estate finance, appraising, and deposit receipts and earnest money agreements. Courses which will assist the licensee in improving their business skills and business management need not include substantive real estate subject matter;
- (2) Have a minimum of three hours of classroom work for the student. A classroom hour is a period of fifty minutes of actual classroom or workshop instruction, exclusive of examination time;
- (3) Be under the supervision of an approved instructor approved to teach the course in the classroom at all sessions and offered by an approved school provided that, if the instructional methods include the use of prerecorded audio and/or visual instructional materials, presentation shall be under the supervision of a monitor at all times and an approved instructor who shall, at a minimum, be available to respond to specific questions from students;
- (4) Include a comprehensive examination(s) and answer key(s) of no fewer than three questions per clock hour with a minimum of ten questions, and a requirement of passing course grade of at least seventy percent; essay question examination keys shall identify the material to be tested and the points assigned for each question;
- (5) Include textbook or instructional materials approved by the director, which shall be kept accurate and current. Course materials shall be updated no later than thirty days after the effective date of a change in statute or rules;
- (6) Include in its title the phrase "real estate fundamentals," "real estate brokerage management," or "real estate law" if submitted for approval for clock hours in real estate fundamentals pursuant to WAC 308-124H-035, real estate brokerage management pursuant to WAC 308-124H-036, or real estate law pursuant to WAC 308-124H-037. No other courses shall use these phrases in their titles;
- (7) Not have a title which misleads the public as to the subject matter of the course;
- (8) Be offered by a tax-supported, public vocational-technical institution, community college or any other institution of higher learning that may certify clock hours as indicated in RCW 18.85.010(9) or by a private entity approved by the director to operate as a school;
- (9) Any change in course content or material other than updating, for statute or rule changes, shall be submitted to the department no later than twenty days prior to the date of using the changed course content material for approval by the director;
- (10) Changes in course instructors may be made only if the substitute instructors are currently approved to teach the course pursuant to chapter 308-124J WAC;
- (11) A course completed in another jurisdiction may be approved for clock hour credit if:
- (a) The course was offered by a tax-supported, public vocational-technical institution, community college, or any other institution of higher learning, or by a national institution with uniform scope and quality of representation, or was approved to satisfy an education requirement for real estate licensing or renewal and offered by an entity approved to offer the course by the real estate licensing agency in that jurisdiction; and
- (b) The course satisfies the requirements of subsections (1) through (5) of this section, and includes a comprehensive examination and requirement of a passing course grade of at least seventy percent; and/or
- (c) If the director determines that the course substantially satisfies the requirements of the real estate fundamentals course required under RCW 18.85.095 or satisfies the requirements of the law and brokerage management courses required under RCW 18.85.090.

AMENDATORY SECTION (Amending Order PM 811, filed 12/7/88)

WAC 308-124H-035 REAL ESTATE FUNDAMENTALS COURSE CONTENT. ((Schools)) When applying for approval of

real estate fundamentals ((will)) follow the outline prescribed below((:)).

The real estate fundamentals course ((will)) required by RCW 18-85.095 shall be completed, within five years prior to applying for examination and shall include:

Fiduciary commitment, agency, ethics, real estate law and agency relationships	
and disclosure rules	4 hours
Market analysis	3 hours
Contracts and documents	9 hours
Financing (including qualifying	
the buyer)	8 hours
Closing (costs etc.)	3 hours
Government rules and regulations	3 hours

AMENDATORY SECTION (Amending Order PM 595, filed 5/12/86, effective 10/1/86)

WAC 308-124H-036 REAL ESTATE BROKERAGE MANAGEMENT COURSE CONTENT. ((Schools)) When applying for approval of real estate brokerage management ((will)) follow the outline prescribed below((:)).

The real estate brokerage management course ((will)) required by RCW 18.85.090 shall include:

Agency and Washington state law	3 hours
Government impact rules	3 hours
Trust account procedures	3 hours
Basic management concepts relative	
to real estate brokerage	3 hours
Planning and organizing a real estate	
office, staffing	6 hours
In house training (recruiting, selecting,	
training)	3 hours
Direction and control (marketing)	6 hours
Real estate and its future (horizontal	
and vertical expansion)	3 hours

AMENDATORY SECTION (Amending Order PM 606, filed 8/1/86, effective 10/1/86)

WAC 308-124H-037 REAL ESTATE LAW COURSE CONTENT. ((Schools)) When applying for approval of real estate law ((will)) follow the outline prescribed below.

The real estate law class ((will)) required by RCW 18.85.090 shall include:

Introduction to law and legal systems; land/property and related concerns Forms of ownership (including community property concepts); limited partnerships; easements;	3 hours
nonpossessory rights; leasehold estates and leases	3 hours
Title and transfer of title; title insurance; recording	
acts; conveyancing and closing	3 hours
Fraud and deceit; negligence; misrepresentation and agency, dual agency and unauthorized prac-	
tice of law	6 hours
Contract law and documents (including options and	o nours
options to purchase)	3 hours
Real estate security documents (real estate con-	0
tracts, mortgages and deeds of trust)	3 hours
Landlord tenant, Washington State Fair Housing	2
Law, discrimination, Regulation Z	3 hours
Condominiums, Cooperatives and Securities Law	1 hours
Public and Private Land Use Control	2 hours
Regulation, Duties and Liabilities of Licensees	3 hours

NEW SECTION

WAC 308-124H-041 CERTIFICATE OF COMPLETION. Each approved school shall issue a certificate of completion on a form, sample provided by the department, to students which shall include the following information:

- (1) School's identification number issued by the department of licensing;
 - (2) Student's name;
- (3) The course commencement date and completion date;

- (4) Course title;
- (5) Clock hours for the course.

NEW SECTION

WAC 308-124H-051 DISCIPLINARY ACTION-PROCE-DURES-INVESTIGATION. (1) The department shall have the authority, on its own motion or upon complaint made to it to investigate or audit any course to determine compliance with chapter 18.85 RCW and with the rules and regulations of this chapter.

(2) Complaints concerning approved courses should be made in writing to the department and contain the following information when appropriate:

(a) The complainant's name, address, and telephone number;

(b) School name, address, and telephone number;

(c) Instructor(s) name;

- (d) Nature of complaint and facts detailing dates of attendance, termination date, date of occurrence, names, addresses and positions of school officials contacted, and any other pertinent information;
- (e) An explanation of what efforts if any, have been taken to resolve the problem with the school;
 - (f) Copies of pertinent documents, publications, and advertisements.
- (3) All approved courses shall be subject to periodic visits by an official representative of the department who shall observe classroom activities, evaluate course content and instructor proficiency to ensure that courses are being taught in accordance with the provisions set forth.

NEW SECTION

WAC 308-124H-061 GROUNDS FOR DENIAL OR WITH-DRAWAL OF COURSE APPROVAL. Approval may be denied or withdrawn if the instructor or any owner, employee, or administrator

- (1) Has had any disciplinary action taken against his/her professional license in this or any other jurisdiction;
 - (2) Falsified any student records or clock hour certificates;
- (3) Falsified any application or any other information required to be submitted to the department;
- (4) Attempted in any manner to discover, or to impart to any license candidate, the content of and/or answer to any real estate license examination question(s);
- (5) Violated any provision in chapter 18.85 RCW or the rules promulgated thereunder;
- (6) Failed to cooperate with the department in any investigation or
 - (7) Has been convicted of a crime;
- (8) Violated any of the provisions of any local, state, or federal antidiscrimination law;
- (9) Continued to teach or offer any real estate subject matter whereby the interests of the public are endangered, after the director, by order in writing, stated objections thereto;
- (10) Offered, sold, or awarded any clock hours without requiring the student to successfully complete the clock hours for which the course was approved;
- (11) Accepted registration fees and not supplied the service and/or failed to refund the fees within thirty days of not supplying the service;
- (12) Represented in any manner that the school is associated with a "college" or "university" unless it meets the standards and qualifications of and has been approved by the state agency having jurisdiction;
- (13) Represented that a school is recommended or endorsed by the state of Washington or by the department, provided that a school authorized to offer clock hours under this chapter may state: "This school is approved under chapter 18.85 RCW"
 - (14) Advertised false or misleading information;
- (15) Solicited, directly or indirectly, information from applicants for a real estate license following the administration of any real estate examination to discover the content of and/or answer to any examination question or questions;
 - (16) Has failed to meet the requirements of this chapter.

NEW SECTION

WAC 308-124H-062 HEARING PROCEDURE. Upon notice of disapproval or issuance of charges, a person is entitled to a hearing conducted in accordance with the Administrative Procedure Act, chapter 34.05 RCW.

To exercise the right to a hearing under this section, a person must request a hearing within twenty days after receipt of the notice of disapproval or charges.

Any person aggrieved by a final decision of the director is entitled to judicial review under the provisions of the Administrative Procedure Act, chapter 34.05 RCW.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 308-124H-020 ADMINISTRATION.

FILING OF COURSES.

WAC 308-124H-030 WAC 308-124H-033 **UPDATING OF COURSE MATERIALS**

IN THE EVENT OF A STATUTE OR RULE CHANGE.

WAC 308-124H-038 WAC 308-124H-040 COURSE TITLES.

APPROVAL OF CLASSES. WAC 308-124H-043 **TEMPORARY APPROVAL OF**

INSTRUCTORS.

WAC 308-124H-045 RECORDKEEPING.

WAC 308-124H-050 REVIEW APPLICATIONS.

WAC 308-124H-055 **BROKER REAL ESTATE EDUCATION** REQUIREMENTS.

WAC 308-124H-060 TEACHERS AND/OR INSTRUCTORS.

WAC 308-124H-065 INSPECTION OF RECORDS.

WAC 308-124H-070 COMPLETION OF COURSES.

PART B SCHOOL APPROVAL

NEW SECTION

WAC 308-124H-210 SCHOOL APPROVAL REQUIRED. Any school desiring to offer clock hour courses must be approved by the department prior to the date on which it first offers courses for clock hour credit.

NEW SECTION

WAC 308-124H-220 APPROVAL OF SCHOOLS. (1) Each application for approval of a school shall be submitted to the department on the appropriate application form provided by the department by the established deadline. The most recent application form should be obtained from the department prior to submission.

(2) The director shall approve, disapprove, or conditionally approve such applications upon the advice and recommendation of the commission. The director shall approve only complete applications which in the opinion of the director meet the requirements of this chapter.

(3) Upon approval, disapproval, or conditional approval the applicant will be so advised in writing by the department. Notification of disapproval or conditional approval shall include the reasons therefor.

(4) Review of applications will be scheduled for the first regularly scheduled meeting of the commission to be held thirty days following receipt of the application by the department. Only complete applications for approval shall be accepted by the commission.

(5) No school for which approval is required shall promote a course for clock hour credit prior to approval of the school.

(6) No school shall allow an instructor for whom approval is required to supervise a course for clock hour credit prior to approval of the instructor.

(7) No school shall issue to a student certification for completion of an approved course unless the course had been approved prior to the first day of instruction.

(8) Approval shall expire two years after the effective date of approval provided that a complete application for renewal of approval is submitted at least thirty days prior to the expiration date. Approval shall remain in effect until action to approve or disapprove the application is taken by the director. Renewal of approval is processed in the same manner as applications for approval.

(9) School names submitted that are similar to those previously approved shall not be granted approval.

NEW SECTION

WAC 308-124H-230 APPLICATION FOR SCHOOL AP-PROVAL. An application for school approval shall include the following information attested to by the school's administrator, who shall be responsible for administration of the school:

- (1) The complete legal name of the school, current telephone number, current mailing address, the school's administrative office address, and date of establishment;
- (2) The form of ownership of the school, whether sole proprietorship, partnership, limited partnership, or corporation;
- (3) The name(s) of the corporation, partnership, limited partnership or sole proprietorship, and the names, addresses and telephone numbers of all directors, with the exception of trade association directors, officers, and all those with ten percent or more ownership interest;
- (4) If the school is a corporation or a subsidiary of another corporation, current evidence of registration with the Washington secretary of state's office and the name, address, and telephone number of the corporation's registered agent;
- (5) The administrator's name, address, telephone number, and evidence of previous experience in administration;
 - (6) The publication required under WAC 308-124H-260.

NEW SECTION

WAC 308-124H-240 ADMINISTRATOR QUALIFICA-TIONS. Each application from a school seeking approval or consideration of courses shall designate a person responsible for administration of the real estate school. The school administrator shall file with the real estate administrator evidence showing previous experience in administration of educational institutions, courses or programs, previous experience in the administration of business activities related to real estate, or administrative experience in the field of real estate. In the case of a public community college, university, or vocational-technical school, the head of the real estate department shall be conclusively presumed to meet the requirements.

NEW SECTION

WAC 308-124H-250 NOTICE OF ACTIONS BY GOVERN-MENTAL ENTITIES OR ACCREDITING COMMISSIONS. School applicants and approved schools shall present the department with written details of any consent orders with the Federal Trade Commission and any final actions which have been taken against the school, its administrator, its owners, officers, or directors by any federal or state agencies, including courts or accrediting commissions, of which the school has knowledge and inform the department in writing of actions being taken to correct deficiencies cited. Directors, officers, and owners shall advise the administrator of any such actions taken against the directors, officers, or owners. School applicants and approved schools shall not purposely avoid gaining knowledge of such actions. Final actions shall not include traffic violations or traffic convictions. Directors of trade associations are exempt from this section.

NEW SECTION

WAC 308-124H-260 REQUIRED PUBLICATION. Each school shall have available to prospective and enrolled students a publication containing the following information:

(1) Date of publication;

(2) Name and address of school. The name of the administrator and telephone number(s) of the school's administrative offices;

- (3) A list of courses, including the clock hours approved for each course and the specific educational requirements under chapter 18.85 RCW that will be met by completion of the course. Such lists shall be accurate as of the date of publication;
 - (4) Description of all course prerequisites;
 - (5) The school's policy regarding:
 - (a) Admission procedure;
 - (b) Causes for dismissal and conditions for readmission;
- (c) Attendance requirements, leave, absences, makeup work, and tardiness;
- (d) Standards of progress required of the student, including a definition of the grading system of the school, the minimum grades considered satisfactory, and the conditions for reentrance for those students whose course of study is interrupted;
- (e) Refund policy of registration or tuition fees, record retrieval fee, or any other charges, including procedures a student shall follow to cancel enrollment before or after instruction has begun;
- (6) The statement that: "This school is approved under chapter 18-.85 RCW; inquiries regarding this or any other real estate school may be made to the: Washington State Department of Licensing, Professional Licensing Services, Real Estate/Escrow/Appraiser Section, P.O. Box 9012, Olympia, Washington 98504 (206/753-0775)";

(7) Dated supplements or errata sheets so as to maintain accuracy of the information in the publication, which shall clearly indicate that such information supersedes that which it contradicts and/or replaces elsewhere in the publication.

NEW SECTION

WAC 308-124H-270 COURSE DESCRIPTION. Each approved school shall have available for distribution to prospective and enrolled students a course description containing the following information:

- (1) Name of approved school;
- (2) Date(s) and location of the course;
- (3) The course title;
- (4) The educational objectives of the course;
- (5) The type of instruction (e.g., classroom, lecture, audio visual, computer assisted) in the course and the length of time required for completion;
- (6) The number of clock hours approved for the course, or, a statement that an application for approval is pending;
 - (7) Name(s) of instructors when available;
 - (8) Equipment and supplies which the student must provide;
 - (9) Fees for the course;
- (10) The specific education requirements under chapter 18.85 RCW or chapter 308-124H WAC which will be met upon completion of the course:
 - (11) Cancellation policy;
 - (12) Tuition refund policy.

NEW SECTION

WAC 308-124H-280 CERTIFICATE OF SCHOOL APPROV-AL. Upon approval a school shall be issued a certificate of approval containing the school's name, address, identification number, date of approval, and name of administrator.

No school shall adopt or make a change in its name of its administrative office prior to payment of the required fee and receipt of a new certificate from the department.

NEW SECTION

WAC 308-124H-290 CHANGE OF OWNERSHIP OR CIR-CUMSTANCES. A change in the sole proprietor of a school, in the majority interest of general partners of a partnership owning a school, or in a majority stock ownership of a school shall be deemed a change of ownership.

Upon change of ownership, administrator or address of school, approval shall continue provided that a new application for approval shall be submitted to the department within twenty days after a change of ownership, administrator, or address. The administrator must submit notarized statement of the change asserting that all conditions required in these rules are being met. The school may continue to offer courses under the prior approval until action is taken on the new application.

In case of bankruptcy, a notarized statement reporting the information shall be filed with the department within twenty days.

Unless the above conditions are met, school approval shall be terminated upon a change of ownership.

NEW SECTION

WAC 308-124H-300 DISCIPLINARY ACTION—PROCE-DURES—INVESTIGATION. (1) The department shall have the authority, on its own motion or upon complaint made to it, to investigate or audit any school to determine compliance with chapter 18.85 RCW and with the rules and regulations of this chapter.

- (2) Complaints concerning approved schools should be made in writing to the department and contain the following information when appropriate:
 - (a) The complainant's name, address, and telephone number;
 - (b) School name, address, and telephone number;
 - (c) Instructor(s) name;
- (d) Nature of complaint and facts detailing dates of attendance, termination date, date of occurrence, names, addresses and positions of school officials contacted, and any other pertinent information;
- (e) An explanation of what efforts if any, have been taken to resolve the problem with the school;
 - (f) Copies of pertinent documents, publications, and advertisements.
- (3) All approved schools shall be subject to periodic visits by an official representative for the department who shall observe classroom activities, evaluate course content, exams and instructor proficiency to

ensure that courses are being taught in accordance with the provisions set forth.

NEW SECTION

WAC 308-124H-310 GROUNDS FOR DENIAL OR WITH-DRAWAL OF SCHOOL APPROVAL. Approval may be denied or withdrawn if the instructor or any owner, employee, or administrator of a school:

- (1) Has had any disciplinary action taken against his/her professional license in this or any other jurisdiction;
 - (2) Falsified any student records or clock hour certificates;
- (3) Falsified any application or any other information required to be submitted to the department;
- (4) Attempted in any manner to discover, or to impart to any license candidate, the content of and/or answer to any real estate license examination question(s);
- (5) Violated any provision in chapter 18.85 RCW or the rules promulgated thereunder;
- (6) Failed to cooperate with the department in any investigation or hearing;
 - (7) Has been convicted of a crime;
- (8) Violated any of the provisions of any local, state, or federal antidiscrimination law;
- (9) Continued to teach or offer any real estate subject matter whereby the interests of the public are endangered, after the director, by order in writing, stated objections thereto;
- (10) Offered, sold, or awarded any clock hours without requiring the student to successfully complete the clock hours for which the course was approved;
- (11) Accepted registration fees and not supplied the service and/or failed to refund the fees within thirty days of not supplying the service;
- (12) Represented in any manner that the school is associated with a "college" or "university" unless it meets the standards and qualifications of and has been approved by the state agency having jurisdiction;
- (13) Represented that a school is recommended or endorsed by the state of Washington or by the department, provided that a school authorized to offer clock hours under this chapter may state: "This school is approved under chapter 18.85 RCW";
 - (14) Advertised false or misleading information;
- (15) Solicited, directly or indirectly, information from applicants for a real estate license following the administration of any real estate examination to discover the content of and/or answer to any examination question or questions;
 - (16) Has failed to meet the requirements of this chapter.

NEW SECTION

WAC 308-124H-320 HEARING PROCEDURE. Upon notice of disapproval or issuance of charges, a person is entitled to a hearing conducted in accordance with the Administrative Procedure Act, chapter 34.05 RCW.

To exercise the right to a hearing under this section, a person must request a hearing within twenty days after receipt of the notice of disapproval or charges.

Any person aggrieved by a final decision of the director is entitled to judicial review under the provisions of the Administrative Procedure Act, chapter 34.05 RCW.

NEW SECTION

WAC 308-124H-330 RECORD RETENTION. (1) Each school shall maintain for a minimum of five years each student's record and each edition of a required publication;

- (2) A "student record" shall include:
- (a) The name, address, and telephone number of the school;
- (b) Full name, address, and telephone number of the student;
- (c) Beginning and ending dates of attendance and date of registration agreement if the refund policy relates to the registration date;
 - (d) Clock hour courses completed and examination results.
- (3) Each school shall provide a copy of a student's record to the student upon request.

NEW SECTION

WAC 308-124H-340 SCHOOL CLOSING/CHANGE OF STATUS. (1) A school shall make plans and take measures to protect the rights of present and former students if it goes out of business.

- (2) Upon cessation of instruction or termination of approved status, a school shall immediately furnish to the department by certified mail or hand delivery:
 - (a) Its certificate of approval;
- (b) Name, address, and telephone number of the person who will be responsible for closing arrangements;
- (c) The student's name, address and telephone number, the name of the course, the amount of class time remaining to complete the course, and the total amount of tuition and fees paid by the student for the course:
- (d) A copy of a written notice which shall be mailed to all enrolled students in clock hour courses who have not completed a current course because of cessation of instruction; the notice shall explain the procedures students must follow to secure refunds or to continue their education:
- (e) Procedures for disbursement of refunds to enrolled students, in the full amount to which they are entitled, no later than thirty days from the last day of instruction.
- (3) Upon closing, a school shall arrange for a person approved by the department to retain the records required under WAC 308-124H-330. If a school closes without arranging for record retention, the department may obtain the records to protect the former students.

PART C INSTRUCTOR APPROVAL

NEW SECTION

WAC 308-124H-510 INSTRUCTOR APPROVAL RE-QUIRED. Any instructor desiring to teach clock hour courses must be approved by the department prior to the date on which the school first offers courses for clock hour credit.

NEW SECTION

WAC 308-124H-520 APPROVAL OF INSTRUCTORS. (1) Each application for approval of an instructor shall be submitted to the department on the appropriate application form provided by the department and filed by the established deadline. The most recent application form should be obtained from the department prior to submission.

- (2) The director shall approve, disapprove, or conditionally approve instructor applications upon the advice and recommendation of the commission. The director shall approve only complete applications which in the opinion of the director meet the requirements of this chapter.
- (3) Upon approval, disapproval or conditional approval, the applicant will be so advised in writing by the department. Notification of disapproval or conditional approval shall include the reasons therefor.
- (4) Review of applications will be scheduled for the first regularly scheduled meeting of the commission to be held thirty days following receipt of the application by the department. Only complete applications for approval shall be accepted by the commission.
- (5) Approval shall expire two years after effective date of approval provided that a complete application for renewal of approval is submitted at least thirty days prior to the expiration date. Approval shall remain in effect until action to approve or disapprove the application is taken by the director. Renewal of approval is processed in the same manner as applications for approval.
- (6) No instructor for whom approval is required shall supervise a course for clock hour credit prior to approval of the instructor.
- (7) Applicants shall identify on the application form the specific course he or she proposes to teach. A separate application form shall be submitted for each course for which an instructor desires approval.

NEW SECTION

WAC 308-124H-530 CERTIFICATE OF INSTRUCTOR AP-PROVAL. Upon approval an instructor shall be issued a certificate of approval containing the instructor's name, address, date of approval, and department identification number.

NEW SECTION

WAC 308-124H-540 QUALIFICATIONS OF INSTRUCTORS. Each instructor shall be qualified in techniques of instruction. Instructor qualifications in techniques of instruction shall be evidenced by one of the following:

- (1) One hundred fifty classroom hours as an instructor within two years preceding application in courses acceptable to the director;
- (2) Possession of the professional designation, DREI, from the Real Estate Educators Association (REEA);
- (3) Successful completion of an instructor training course approved by the director upon recommendation of the commission and two years fulltime experience in real estate or a related field within the five years immediately preceding the date of application;
- (4) A bachelors or advanced degree in education and either two years teaching experience, or two years experience in real estate or a related field within the last five years;
- (5) A current teaching certificate issued by an authorized governmental agency. The instruction must have been in a field allied to that which the instructor has applied to teach.
- (6) At least ninety clock hours as an instructor in real estate within two years preceding the application;
- (7) Ninety hours as an instructor at an institution of higher learning within two years preceding the application. The instruction must have been in a field allied to that which the instructor has applied to teach.
- (8) Instructors selected by national organizations who have courses currently approved by the director.

NEW SECTION

CHANGES IN INSTRUCTORS. WAC 308-124H-550 Changes in course instructors may be made only if the substitute instructors are currently approved to teach the course pursuant to WAC 308-124H-520.

NEW SECTION

WAC 308-124H-560 DISCIPLINARY ACTION-PROCE-DURES-INVESTIGATION. (1) The department shall have the authority, on its own motion or upon complaint made to it, to investigate or audit any instructor to determine compliance with chapter 18.85 RCW and with the rules and regulations of this chapter.

- (2) Complaints concerning approved instructors should be made in writing to the department and contain the following information when appropriate:
 - (a) The complainant's name, address, and telephone number;
 - (b) School name, address, and telephone number;
 - (c) Instructor(s) name;
- (d) Nature of complaint and facts detailing dates of attendance, termination date, date of occurrence, names, addresses and positions of school officials contacted, and any other pertinent information;
- (e) An explanation of what efforts, if any, have been taken to resolve the problem with the school;
 - (f) Copies of pertinent documents, publications, and advertisements.
- (3) All approved instructors shall be subject to periodic visits by an official representative of the department who shall observe classroom activities, evaluate course content and instructor proficiency to ensure that courses are being taught in accordance with the provisions set forth.

NEW SECTION

WAC 308-124H-570 GROUNDS FOR DENIAL OR WITH-DRAWAL OF INSTRUCTOR APPROVAL. Approval may be denied or withdrawn if the instructor:

- (1) Has had any disciplinary action taken against his/her professional license in this or any other jurisdiction;
 - (2) Falsified any student records or clock hour certificates;
- (3) Falsified any application or any other information required to be submitted to the department;
- (4) Attempted in any manner to discover, or to impart to any license candidate, the content of and/or answer to any real estate license examination question(s);
- (5) Violated any provision in chapter 18.85 RCW or the rules promulgated thereunder;
- (6) Failed to cooperate with the department in any investigation or hearing;
 - (7) Has been convicted of a crime;
- (8) Violated any of the provisions of any local, state, or federal antidiscrimination law;
- (9) Continued to teach or offer any real estate subject matter whereby the interests of the public are endangered, after the director, by order in writing, stated objections thereto;

- (10) Offered, sold, or awarded any clock hours without requiring the student to successfully complete the clock hours which the course was approved.
- (11) Accepted registration fees and not supplied the service or failed to refund the fees within thirty days of not supplying the service;
- (12) Represented in any manner that the school is associated with a "college" or "university" unless it meets the standards and qualifications of and has been approved by the state agency having jurisdiction;
- (13) Represented that a school is recommended or endorsed by the state of Washington or by the department, provided that a school authorized to offer clock hours under this chapter may state: "This school is approved under chapter 18.85 RCW"
 - (14) Advertised false or misleading information;
- (15) Solicited, directly or indirectly, information from applicants for a real estate license following the administration of any real estate examination to discover the content of and/or answer to any examination question or questions:
 - (16) Has failed to meet the requirements of this chapter.

NEW SECTION

WAC 308-124H-580 HEARING PROCEDURE. Upon notice of disapproval or issuance of charges, a person is entitled to a hearing conducted in accordance with the Administrative Procedure Act, chapter 34.05 RCW.

To exercise the right to a hearing under this section, a person must request a hearing within twenty days after receipt of the notice of disapproval or charges.

Any person aggrieved by a final decision of the director is entitled to judicial review under the provisions of the Administrative Procedure Act, chapter 34.05 RCW.

WSR 90-05-073 PROPOSED RULES DEPARTMENT OF LICENSING (Real Estate Commission)

[Filed February 21, 1990, 4:15 p.m.]

Continuance of WSR 90-02-103, due to inclement weather on Friday, February 16, 1990.

Title of Rule: Amending WAC 308-124E-014(5).

Purpose: Deletes references to Landlord-Tenant

Statutory Authority for Adoption: RCW 18.85.040.

Statute Being Implemented: RCW 18.85.310.

Summary: This change is intended to clarify the language of the rule.

Reasons Supporting Proposal: See above Summary.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Robert Mitchell, P.O. Box 9012, Olympia, WA 98504, (206) 753-0775.

Name of Proponent: Department of Licensing, Real Estate Commission, governmental.

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

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

Proposal Changes the Following Existing Rules: See above Purpose.

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

Hearing Location: Stouffer Madison Hotel, 515 Madison Street, Seattle, WA 98104, on April 5, 1990, at

Submit Written Comments to: Bob Mitchell, P.O. Box 9012, Olympia, WA 98504, by 5:00 p.m., April 3, 1990.

Date of Intended Adoption: April 5, 1990.

February 20, 1990 Linda M. Moran Assistant Attorney General

AMENDATORY SECTION (Amending WSR 90-01-046, filed 12/14/89, effective 1/14/90)

WAC 308-124E-014 ADMINISTRATION OF FUNDS HELD IN TRUST—PROPERTY MANAGEMENT. Any real estate broker who receives funds or moneys from any principal or any party to property management agreement or contract/mortgage collection agreement shall hold the funds or moneys in trust for the purposes of the agreement, and shall not utilize such funds or moneys for the benefit of the broker or any person not entitled to such benefit. These procedures are applicable to property management and contract/mortgage collection agreements, and are in addition to the general trust account procedures in WAC 308-124E-012.

- (1) Bank accounts shall be designated as trust accounts in the firm name of the real estate broker as licensed. Trust bank accounts for property management transactions are exempt from the interest-bearing requirement of RCW 18.85.310. However, interest-bearing accounts for property management transactions may be established as described in this section.
- (a) Interest-bearing trust bank accounts or dividend-earning investment accounts containing only funds held on behalf of an individual owner of income property managed by the broker may be established when directed by written property management agreement or directive signed by the owner: PROVIDED, That all interest or earnings shall accrue to the owner:
- (b) Interest-bearing trust bank accounts containing only damage or security deposits received from tenants of residential income properties managed by the broker for an individual owner may be established by the broker when directed by written management agreement, and the interest on such trust bank accounts may be paid to the owner, if the broker is by written agreement designated a "representative of the landlord" under the provisions of RCW 59.18.270, Residential Landlord-Tenant Act;
- (c) The broker is not required to establish individual interest-bearing accounts for each owner when all owners assign the interest to the broker:
- (d) A common account, usually referred to as a "clearing account" may be established if desired. No funds which belong to the broker or firm or are related to transactions on property owned by the broker or firm shall be maintained in this account.
- (2) Any property management accounting system is to be an accounting of cash received and disbursed by the managing broker only. Any other method of accounting offered to owners for their rental properties, unit and/or complexes are to be supplementary to the brokers accounting of all cash received and disbursed through his/her trust account(s). All owners' summary statements must include this accounting.
- (3) The preauthorization of disbursements or deductions by the financial institution for recurring expenses such as mortgage payments on behalf of the owner is not permitted if the account contains tenant security deposits or funds belonging to more than one client.
- (4) A single check may be drawn on the real estate trust bank account, payable to the broker as licensed, in payment of all property management fees and commissions, if such check is supported by a schedule of commissions identified to each individual client. Property management commissions shall be withdrawn at least once monthly.
- (5) No disbursements from the real estate trust bank account shall be made of funds received as damage or security deposit on a lease or rental contract for property managed by the broker to the owner or any other person without the written agreement of the tenant, until the end of the tenancy when the funds are to be disbursed to the person persons entitled to the funds as provided by the terms of the rental or lease agreement ((and consistent with the provisions of RCW 59.18-270, Residential Landiord-Tenant Act, or other appropriate statute)).
- (6) When the management agreement between the owner(s) and the broker is terminated, the owner(s) funds shall be disbursed according to the agreement. Funds held as damage or security deposits shall be disbursed to the owner(s) or successor property manager, and the tenants so notified by the disbursing broker consistent with the provisions of RCW 59.18.270, Residential Landlord-Tenant Act.

WSR 90-05-074 PROPOSED RULES DEPARTMENT OF ECOLOGY

[Filed February 21, 1990, 4:23 p.m.]

Original Notice.

Title of Rule: WAC 173-19-2520 Renton, city of.

Purpose: Adoption of revised shoreline master program into state master program, chapter 173-19 WAC.

Statutory Authority for Adoption: RCW 90.58.200.

Statute Being Implemented: Chapter 90.58 RCW, Shoreline Management Act of 1971.

Summary: The amendment revises the shoreline master program for city of Renton.

Reasons Supporting Proposal: Shoreline master programs and revisions thereto are developed by local governments and submitted to the department for approval. The programs do not become effective until adopted by the department in accordance with the Shoreline Management Act and the Administrative Procedure Act.

Name of Agency Personnel Responsible for Drafting: Nora Jewett, Department of Ecology, Mailstop PV-11, Olympia, 98504, (206) 459-6789; Implementation and Enforcement: D. Rodney Mack, Department of Ecology, Mailstop PV-11, Olympia, 98504, (206) 459-6777.

Name of Proponent: Department of Ecology, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The proposed amendment is a total rewrite of the docks and piers section of the shoreline master program for the city of Renton. The changes address recreational piers, joint—use piers, and piers for single family and multifamily development use. While pier size limits have been expanded, additional regulatory constraints have been added.

Proposal Changes the Following Existing Rules: Amends WAC 173-19-2520, Renton, city of.

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

Hearing Location: City Council Chambers, 200 Mill Avenue South, Renton, WA, on Wednesday, March 29, 1990, at 7:00 p.m.

Submit Written Comments to: Master Program Coordinator, Washington State Department of Ecology, Shorelands and Coastal Zone Management Program, Mailstop PV-11, Olympia, Washington 98504, by April 5, 1990.

Date of Intended Adoption: May 1, 1990.

February 21, 1990 Fred Olson Deputy Director

AMENDATORY SECTION (Amending Order DE 84-28[, filed 9/14/84])

WAC 173-19-2520 RENTON, CITY OF. City of Renton master program approved January 23, 1976. Revision approved February 23, 1977. Revision approved September 12, 1984. Revision approved May 1, 1990.

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

WSR 90-05-075 PROPOSED RULES DEPARTMENT OF ECOLOGY

[Filed February 21, 1990, 4:27 p.m.]

Original Notice.

Title of Rule: WAC 173-19-3601 Friday Harbor, town of.

Purpose: Adoption of revised shoreline master program into state master program, chapter 173-19 WAC.

Statutory Authority for Adoption: RCW 90.58.200. Statute Being Implemented: Chapter 90.58 RCW, Shoreline Management Act of 1971.

Summary: The amendment revises the shoreline master program for the town of Friday Harbor.

Reasons Supporting Proposal: Shoreline master programs and revisions thereto are developed by local governments and submitted to the department for approval. The programs do not become effective until adopted by the department in accordance with the Shoreline Management Act and the Administrative Procedure Act.

Name of Agency Personnel Responsible for Drafting: Barry Wenger, Mailstop PV-11, Olympia, 98504, (206) 438-7785; Implementation and Enforcement: D. Rodney Mack, Department of Ecology, Mailstop PV-11, Olympia, 98504, (206) 459-6777.

Name of Proponent: Department of Ecology, government.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The proposed amendment constitutes a complete rewrite of the existing shoreline master program. Regulations pertaining to commercial, residential, aquaculture and industrial uses have been revised as well as regulations affecting public access and docks and piers; environment designation maps have been updated; and procedures and policies have been brought into conformance with the most recent revisions to the Shoreline Management Act and Washington Administrative Code.

Proposal Changes the Following Existing Rules: Amends WAC 173-19-3601 Friday Harbor, town of.

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

Hearing Location: Town Council Chambers, 60 Second Street, Friday Harbor, WA, on Monday, April 2, 1990, at 7:00 p.m.

Submit Written Comments to: Master Program Coordinator, Washington State Department of Ecology, Shorelands and Coastal Zone Management Program, Mailstop PV-11, Olympia, Washington 98504, by April 9, 1990.

Date of Intended Adoption: May 1, 1990.

February 21, 1990 Fred Olson Deputy Director

AMENDATORY SECTION (Amending Order DE 79-34, filed 1/30/80)

WAC 173-19-3601 FRIDAY HARBOR, TOWN OF. Town of Friday Harbor master program approved July 14, 1978. Revision approved January 5, 1979. Revision approved May 1, 1990.

WSR 90-05-076 PROPOSED RULES DEPARTMENT OF ECOLOGY

[Filed February 21, 1990, 4:30 p.m.]

Original Notice.

Title of Rule: WAC 173-19-4201 Bucoda, town of; 173-19-4202 Lacey, city of; 173-19-4203 Olympia, city of; 173-19-4204 Tenino, town of; 173-19-4205 Tumwater, city of; and 173-19-4206 Yelm, town of.

Purpose: Adoption of revised shoreline master program into state master program, chapter 173-19 WAC.

Statutory Authority for Adoption: RCW 90.58.200. Statute Being Implemented: Chapter 90.58 RCW, Shoreline Management Act of 1971.

Summary: The amendment revises the shoreline master program for the towns of Bucoda, Tenino and Yelm; and the cities of Lacey, Olympia and Tumwater.

Reasons Supporting Proposal: Shoreline master programs and revisions thereto are developed by local governments and submitted to the department for approval. The programs do not become effective until adopted by the department in accordance with the Shoreline Management Act and the Administrative Procedure Act.

Name of Agency Personnel Responsible for Drafting: Peter Skowlund, Department of Ecology, Mailstop PV-11, Olympia, 98504, (206) 438-7430; Implementation and Enforcement: D. Rodney Mack, Department of Ecology, Mailstop PV-11, Olympia, 98504, (206) 459-6777.

Name of Proponent: Department of Ecology, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: These amendments to the shoreline master program for the Thurston region have been submitted to the state for adoption by the six cities included in this notice and by Thurston County. Notice of the proposed rule making for Thurston County was published in Notice No. WSR 90-01-095 filed with the code reviser's office on December 20, 1989. The date of intended adoption for Thurston County has been continued from March 20, 1990, to May 1, 1990, so that the proposed changes will become effective simultaneously in all seven jurisdictions. The amendments address policies relating to boating facilities, over-water buildings, landfill, and bulkheads; clarify wetland jurisdiction; define special area management plan; create a new "Suburban" environment designation; redefine "water-dependency"; establish a process for major revisions to the shoreline master program; establish shoreline "open space" tracts; and incorporate definition changes to bring the shoreline master program into compliance with the Shoreline Management Act and Washington Administrative Code.

Proposal Changes the Following Existing Rules: Amends WAC 173-19-4201 Bucoda, town of; 173-19-4202 Lacey, city of; 173-19-4203 Olympia, city of; 173-19-4204 Tenino, town of; 173-19-4205 Tumwater, city of; and 173-19-4206 Yelm, town of.

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

Hearing Location: Lacey City Council Chambers, 120 College Street S.E., Lacey, WA 98503, on Wednesday, March 28, 1990, at 7:00 p.m.

Submit Written Comments to: Master Program Coordinator, Washington State Department of Ecology, Shorelands and Coastal Zone Management Program, Mailstop PV-11, Olympia, Washington 98504, by April 4, 1990.

Date of Intended Adoption: May 1, 1990.

February 21, 1990 Fred Olson Deputy Director

AMENDATORY SECTION (Amending Order DE 84-30, filed 9/14/84)

WAC 173-19-4201 BUCODA, TOWN OF. Town of Bucoda master program approved May 21, 1976. Revision approved August 30, 1984. Revision approved May 1, 1990.

AMENDATORY SECTION (Amending Order DE 84-30, filed 9/14/84)

WAC 173-19-4202 LACEY, CITY OF. City of Lacey master program approved May 21, 1976. Revision approved January 5, 1982. Revision approved August 30, 1984. Revision approved May 1, 1990.

AMENDATORY SECTION (Amending Order DE 87-28, filed 9/30/87)

WAC 173-19-4203 OLYMPIA, CITY OF. City of Olympia master program approved May 21, 1976. Revision approved March 29, 1984. Revision approved April 30, 1984. Revision approved August 30, 1984. Revision approved September 29, 1987. Revision approved May 1, 1990.

AMENDATORY SECTION (Amending Order DE 84-30, filed 9/14/84)

WAC 173-19-4204 TENINO, TOWN OF. Town of Tenino master program approved May 21, 1976. Revision approved August 30, 1984. Revision approved May 1, 1990.

AMENDATORY SECTION (Amending Order DE 87-28, filed 9/30/87)

WAC 173-19-4205 TUMWATER, CITY OF. City of Tumwater master program approved May 21, 1976. Revision approved August 30, 1984. Revision approved September 29, 1987. Revision approved May 1, 1990.

AMENDATORY SECTION (Amending Order DE 84-30, filed 9/24/84 [9/14/84])

WAC 173-19-4206 YELM, TOWN OF. Town of Yelm master program approved May 21, 1976. Revision approved January 5, 1982. Revision approved August 30, 1984. Revision approved May 1, 1990.

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

WSR 90-05-077 PROPOSED RULES DEPARTMENT OF ECOLOGY

[Filed February 21, 1990, 4:34 p.m.]

Continuance of WSR 90-01-095.

Title of Rule: WAC 173-19-420 Thurston County. Purpose: Continues adoption date from March 20 to May 1, 1990, so that the shoreline master program for

May 1, 1990, so that the shoreline master program for Thurston region will become effective in the county and the six municipalities on the same date. See WSR 90-

05-076 filed this date for cities of Lacey, Olympia and Tumwater, and towns of Bucoda, Tenino and Yelm.

Statutory Authority for Adoption: RCW 90.58.200. Statute Being Implemented: Chapter 90.58 RCW, Shoreline Management Act of 1971.

Date of Intended Adoption: May 1, 1990.

February 21, 1990 Fred Olson Deputy Director

WSR 90-05-078 PERMANENT RULES COMMITTEE FOR DEFERRED COMPENSATION [Filed February 21, 1990, 4:44 p.m.]

Date of Adoption: February 13, 1990.

Purpose: Modifications to eliminate unnecessary restrictions; to keep terminology consistent; to clarify; and general housekeeping changes.

Citation of Existing Rules Affected by this Order: Repealing WAC 154-04-035, 154-04-110 and 154-12-107; and amending WAC 154-08-050, 154-12-010, 154-12-015, 154-12-030, 154-12-050, 154-12-070, 154-12-080, 154-12-085, 154-12-086, 154-12-087, 154-12-090, 154-12-110, 154-24-010, 154-32-010, 154-32-020, 154-40-010, 154-44-010 and 154-64-050.

Statutory Authority for Adoption: RCW 41.04.260. Pursuant to notice filed as WSR 90-02-086 on January 3, 1990.

Effective Date of Rule: Thirty-one days after filing.

February 13, 1990

Lee Dreisbach

Executive Director

NEW SECTION

WAC 154-04-041 ACCUMULATED DEFER-RALS. "Accumulated deferrals" means compensation deferred under the plan, adjusted until date of payment by income received, increases or decreases in investment value, fees, and any prior distributions made.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 154-04-035 AMOUNTS DEFERRED. WAC 154-04-110 DEFERRED COMPENSATION REVOLVING FUND.

AMENDATORY SECTION (Amending Order 82-3, filed 6/11/82)

WAC 154-08-050 DEFERRED COMPENSA-TION REVOLVING FUND. All deferred compensation hereunder shall be paid into a special fund created in the treasury of the state of Washington called the "deferred compensation revolving fund." All costs of administration and staffing of the plan, expenses of the committee, and such other amounts determined by the committee and permitted by law, shall be paid as necessary out of the deferred compensation revolving fund. Amounts in the deferred compensation revolving fund may be invested pursuant to RCW 41.04.250 as directed by the committee. All ((benefits)) accumulated deferrals payable to participants or their respective beneficiary or beneficiaries shall be paid from the deferred compensation revolving fund unless otherwise paid.

AMENDATORY SECTION (Amending WSR 89-20-021, filed 9/27/89, effective 10/28/89)

WAC 154-12-010 ENROLLMENT. (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"))) specified must equal at least thirty dollars per month((. Once a participant has specified an amount of deferral, such specification)) and shall continue ((unless)) until 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 WSR 89-20-021, filed 9/27/89, effective 10/28/89)

WAC 154-12-015 ((ACCEPTANCE OF INTERPLAN)) PLAN TO PLAN 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 committee may require in 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.)) The only rollovers or transfers allowable under Section 457 of the Internal Revenue Code are from one eligible Section 457 plan to another eligible Section 457 plan.

If a participant, prior to making a final election under WAC 154-12-090(2) regarding the method of payment, accepts employment with an employer who offers an eligible Section 457 plan, and the participant becomes a participant in that plan, then accumulated deferrals may, at the election of the participant and after written notice to the committee, be transferred to the other plan, provided that plan provides for the acceptance of such transfers.

(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 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.))

AMENDATORY SECTION (Amending Order 89-03, filed 5/8/89)

WAC 154-12-030 CATCH-UP PROVISION. For one or more of the participant's last three taxable years ending before attaining normal retirement age under the plan, the maximum deferral shall be the lesser of:

- (1) Fifteen thousand dollars for the taxable year, reduced in the same manner as the seven thousand five hundred dollars limitation is reduced in WAC 154-12-020, or
 - (2) The sum of:
- (a) The limitations established for purposes of WAC 154-12-020 of the plan for the taxable year (determined without regard to this section), plus
- (b) So much of the limitation established under WAC 154-12-020 for taxable years before the taxable year as has not theretofore been used under WAC 154-12-020 or 154-12-030. A prior taxable year shall be taken into account only if:
 - (i) It begins after December 31, 1978;
- (ii) The participant was eligible to participate in the plan during all or any portion of the taxable year, and;
- (iii) Compensation deferred (if any) under the plan during the taxable year was subject to a maximum limitation (as established under WAC 154-12-020).

A prior taxable year includes a taxable year in which the participant was eligible to participate in an eligible plan sponsored by another entity. In no event can the participant elect to have the catch-up provision apply more than once whether or not the full catch-up had been utilized.

"Normal retirement age," as used in chapters 154-01 through 154-68 WAC, means the range of ages:

Ending not later than age seventy and one-half; and

Beginning not earlier than the earliest age at which the participant has the right to retire under a state authorized pension for which the participant is eligible without consent of the state and under which the participant will receive immediate retirement benefits without actuarial adjustment due to retirement prior to some later specified age in a state authorized pension plan.

((Provided, however, if the participant elects to defer amounts in excess of the maximum deferral allowed by WAC 154-12-020 but within the limited catch-up permitted by this section, the participant thereby establishes a date (i.e., a specific "normal retirement age"):

Before which date, amounts deferred can be paid to the participant only under the unforeseeable emergency exception in WAC 154-24-010 (even if the participant separates from service); and

After which date, if the participant separates from service or has separated from service, amounts deferred must be paid out as described in WAC 154-12-090 (1)(b).))

This catch—up provision may not be used in the year in which the participant attains age seventy and one half, and may not be used in any year thereafter.

AMENDATORY SECTION (Amending Order 89-03, filed 5/8/89)

WAC 154-12-050 MODIFICATION OF DE-FERRAL OR INVESTMENT OPTION(S). A participant may change his/her deferral or investment option(s) not more than four times in any calendar year. Changes in the amount of deferral must equal at least ten dollars or more per month. (Beneficiaries entitled to receive accumulated deferrals may also change investment options not more than four times per year.)

An increase (or an increase and a change in investment option(s) which are effective the same date) shall not be counted as a change. Only a decrease in the amount of deferral, a transfer, or a change in investment option(s) not accompanied by an increase, shall be counted as a change.

Any combination of a decrease, a transfer, or a change in investment option(s) effective the same date, shall be considered one change.

A change (whether counted as such or not) shall be effective for any calendar month only if the participant signs a new participation agreement and it is approved by the committee or its designee before the beginning of that calendar month. All participation agreements indicating changes in investment option(s) must be filed with the committee no later than fifteen days prior to the established pay date for which the change will occur. The committee reserves the right to defer the effective date of any change.

During the payout process, the committee may periodically liquidate mutual fund shares in amounts necessary to meet distribution requirements for a six-month period.

AMENDATORY SECTION (Amending Order 89-03, filed 5/8/89)

WAC 154-12-070 SUSPENSION AND REIN-STATEMENT OF DEFERRALS. SUSPENSION. A participant may at any time direct that deferrals under the participant's participation agreement cease by completing the proper form and filing it with the committee no later than the last day of the payroll period prior to the payroll period during which the deferrals are to cease; however, ((accrued benefits)) accumulated deferrals shall only be paid as provided in WAC 154-12-080 through 154-12-110.

REINSTATEMENT. A participant who has directed the cessation of deferrals may resume deferrals for any calendar month commencing no sooner than six months after such deferrals ceased by executing a new participation agreement to defer compensation. The six-month waiting period shall not apply to participants who are on leave without pay as discussed in WAC 154-28-010.

AMENDATORY SECTION (Amending Order 89-03, filed 5/8/89)

WAC 154-12-080 DESIGNATION OF BENEFI-CIARIES. Each participant shall have the right to designate a beneficiary or beneficiaries to receive ((any benefit to which said participant may be entitled)) accumulated deferrals in the event of the participant's death ((prior to the complete distribution of benefits)). If no such designation is in effect on a participant's death, the beneficiary shall be the surviving spouse. If there be no such surviving spouse, then the beneficiary shall be the participant's estate. A participant may change his/her beneficiary designation at any time by filing a change of beneficiary form with the committee. A participant may also change his/her beneficiary designation by completing the beneficiary designation portion of a participation agreement form.

The participant may name:

- (1) A designated organization or person (including without limitation his/her unborn or later adopted children). If unborn or later adopted children are to be included, the designation must so indicate. The date of birth must be furnished for any living person who is named and who is under the age of eighteen.
 - (2) His or her estate:
- (3) A trust which is in existence, or which is to be established under the participant's last will. For an existing trust, the participant must provide the name of the trust and the date it was established.

The participant may name contingent beneficiaries in addition to primary beneficiaries.

AMENDATORY SECTION (Amending Order 89-03, filed 5/8/89)

WAC 154-12-085 DISTRIBUTION TO PAR-TICIPANT AFTER SEPARATION FROM SER-VICE. After separation from service, ((an amount equal to the sum of all compensation theretofore deferred under the plan, together with investment income or loss thereon to the date of payment, calculated in accordance with WAC 154-12-107)) accumulated deferrals shall be paid to the participant in one or more installments as elected by the participant pursuant to WAC 154-12-090.

AMENDATORY SECTION (Amending Order 89-03, filed 5/8/89)

WAC 154-12-086 DISTRIBUTION IN THE EVENT OF DEATH OF PARTICIPANT. Should the participant die at any time, whether before or after separation from service, ((an amount)) accumulated deferrals shall be paid to the beneficiary or beneficiaries designated by the participant pursuant to WAC 154-12-080 ((which is equal to the sum of all compensation theretofore deferred under the plan; together with investment income or loss thereon to the date of payment, calculated in accordance with WAC 154-12-107)). The ((amount)) accumulated deferrals shall be paid out as provided in WAC 154-12-080 through 154-12-110. If no beneficiary is designated as provided in the participation agreement, or if the designated beneficiary does not survive by a period of thirty days, then a lump sum or series of payments shall be paid, in accordance with WAC 154-12-080 through 154-12-110, to the surviving spouse, or if none, a lump sum shall be paid to the estate of the participant.

AMENDATORY SECTION (Amending Order 89-03, filed 5/8/89)

WAC 154-12-087 DISTRIBUTION IN EVENT OF DEATH OF BENEFICIARY. In the event a beneficiary survives the participant by thirty days and becomes entitled to receive ((benefits, the remaining amount deferred)) accumulated deferrals, accumulated deferrals shall become payable to the beneficiary's estate on the twenty-fifth day of the second month following the beneficiary's death, unless benefits are being paid in the form of an annuity, in which case the disposition of the remaining amount shall be determined by the annuity contract. Such annuity contracts shall be issued pursuant to the rules set forth in WAC 154-12-110.

AMENDATORY SECTION (Amending Order 89-03, filed 5/8/89)

WAC 154-12-090 ELECTIONS REGARDING DISTRIBUTION. Each participant (or in the event of death, each beneficiary other than an organization, an estate, or a trust) shall elect when his/her payout will begin and the payout period.

(1) Election regarding time of payment. The election regarding the time when payment will begin shall be made when a participant separates from service (or dies having separated from service and having previously elected when payment will begin).

Once made, the election regarding when payout will begin is irrevocable as to the participant or beneficiary making the election. The election regarding when payment will begin:

(a) By a participant who separates from service other than by reason of death, ((and who has not used catch-up,)) must be made not later than ((the earlier of:

- (i))) sixty days after separation from service((; or
- (ii) January 31st following the year of separation;)). Payment may begin on the central payroll date nearest the twenty-fifth day of the month following the month in which an election is filed with the committee on forms provided for that purpose, and payment must begin within the time prescribed by WAC 154-12-110;
- (b) ((By a participant who separates from service other than by reason of death and who has used the catch—up provision in WAC 154-12-030, will be deemed to have been made by use of catch—up; payment will begin on the central payroll date nearest the twenty-fifth day of the month following the month in which he/she separates from service having reached normal retirement age.
- (c))) By a beneficiary, other than an organization, estate or trust, where the participant was not already receiving payments, must be made not later than ((the earlier of:
 - (i))) sixty days after the participant's death((; or
- (ii) The January 31st following the year in which the participant died;)). Payment may begin on the central payroll date nearest the twenty-fifth day of the month following the month in which an election is filed with the committee on forms provided for that purpose, and payment must begin within the time prescribed by WAC 154-12-110.
- (2) Election regarding method of payment. The participant (beneficiary) who makes an election regarding the date payment will begin, may also elect the period over which payments will be made. The payout period election may be made either at the time he/she elects a beginning date for payout or at any time not later than sixty days prior to the date payout is to begin. Once having made this election, the participant (or beneficiary, other than an organization, estate, or trust) may change the payout period election not later than sixty days prior to the date payout is to begin. Such a beneficiary may also make this election where the participant was already receiving payments but, as provided in WAC 154-12-110 (3)(a), must receive distribution at least as rapidly as it was being distributed to the participant. Such a beneficiary must make the payout period election not later than sixty days after the death of the participant and payout will be suspended following the participant's death until the beneficiary either makes a payout period election or begins receiving payment as provided in subsection (4) of this section. Provided, if the participant was receiving payout in the form of an annuity contract, then the successor's right shall be limited by the terms of that contract.
- (3) How elections are made. A participant or beneficiary makes elections allowed under this section by completing and filing applicable payment request forms with the committee. ((As described in subsection (1)(b) of this section, a participant who uses the catch-up provision is deemed to have made an irrevocable election regarding the time payment will begin.))
- (4) Consequences in absence of a timely election regarding time of payment. Absent a timely election regarding when payout is to begin, payout will begin on the central payroll date nearest the twenty-fifth day of

the month following the month in which the election period ends, and will be made, in a lump sum if the ((amounts deferred)) accumulated deferrals as of the end of the election period are less than twenty-five thousand dollars or, if the ((amounts deferred)) accumulated deferrals are twenty-five thousand dollars or more, in equal monthly installments over a period of one hundred twenty months or such lesser period:

- (a) As may be necessary under the minimum payout requirements of Section 457 (d)(2)(B)(i)(I) of the Internal Revenue Code, requiring amounts to be paid not later than as determined under Section 401 (a)(9)(G) of the Internal Revenue Code; or
- (b) As may be necessary under Section 457 (d)(2)(B)(i)(II) of the Internal Revenue Code, requiring amounts not distributed to the participant during his/her life to be distributed at least as rapidly as they were being distributed as of the participant's death.
- (5) Effects of certain employment changes. Transfers from the plan are allowed in the circumstances described in WAC 154-12-015(2).
- (6) Consequences in absence of a timely election regarding method of payment. In the absence of a timely election regarding the period of time over which payment will be made, payment will be made in the manner described in subsection (4) of this section.
- (((6))) (7) Payment to an organization, estate, or trust. Any amount payable to an organization, estate, or trust shall be paid in a lump sum as prescribed in WAC 154-12-110(3).

AMENDATORY SECTION (Amending Order 89-03, filed 5/8/89)

WAC 154-12-110 DISTRIBUTION OF DEFER-RALS. (1) General rule. Assuming a timely election is allowed and has been made pursuant to WAC 154-12-090, payment will be made in at least annual, substantially nonincreasing amounts. Payments are also subject to the limitations in subsections (2) through (5) of this section.

- (2) Distribution to participant. A participant must either:
- (a) Receive his/her entire interest prior to the latest of:
- (i) The ((March)) April 1st immediately following the close of the plan year in which the participant attains age seventy and one-half; or
- (ii) The ((March)) April 1st immediately following the close of the plan year in which the participant separates from service with the employer; or
- (b) Begin receiving his/her interest not later than the time specified in (a) of this subsection and receive it over a period not longer than either:
 - (i) The life of the participant;
- (ii) The life of the participant and a beneficiary designated by the participant;
 - (iii) The life expectancy of the participant; or
- (iv) The life expectancy of the participant and a designated beneficiary.
- ((However, if the participant has used the catch-up provision in WAC 154-12-030, the date before which the participant must receive, or begin to receive payment

is the March 1st immediately following the year established by use of catch-up as his/her normal retirement age as defined in WAC 154-12-030.))

Payment must be sufficiently rapid to satisfy the requirements of Section 457 (d)(2)(B)(i)(I) and Section 401 (a)(9)(G) of the Internal Revenue Code. Provided, that until tables are issued by the Secretary of the Treasury, if provision is made for the payment of a portion of the benefits to a beneficiary, the amount payable to the participant actuarially must exceed two-thirds of the maximum amount payable to the participant had no provision been made for payments to the beneficiary (determined as of the commencement of the distribution).

Once payments to a participant begin, the participant may accelerate the payment schedule only in the event of an unforeseeable emergency (and subject to the provisions of WAC 154-24-010 regarding such emergencies).

- (3) Distribution to beneficiaries.
- (a) When distribution begins prior to the participant's death, then payout must be made at least as rapidly as it was being made to the participant. When the beneficiary is an organization, estate or trust, then payment will be payable in a lump sum on the twenty-fifth day of the second month following the participant's death.
- (b) When distribution does not begin prior to the participant's death, and is to be made:
- (i) To an organization, estate or trust, then payment will be payable in a lump sum on the twenty-fifth day of the second month following the participant's death;
- (ii) To a living beneficiary designated by the participant other than the participant's surviving spouse, and, by election, not to begin within one year of the participant's death, then payment must be made within five years of the participant's death;
- (iii) To a living beneficiary designated by the participant other than the participant's surviving spouse, and, by election, beginning within one year of the participant's death, then payment must be made within fifteen years of the participant's death;
- (iv) To the participant's surviving spouse, whether as designated beneficiary, or by default, then payment must begin prior to the ((March)) April 1st immediately following the later of the close of the plan year in which the participant would have attained age seventy and one-half or, if later, the year in which the participant separated from service, and payment may be made over the lifetime of the surviving spouse or over a period not longer than the life expectancy of the surviving spouse. ((Provided, if the participant used the catch-up provision in WAC 154-12-030, then payment must begin prior to the March 1st immediately following the year in which the participant attained (or would have attained) normal retirement age as defined in WAC 154-12-030.))
- (4) For purposes of this section, life expectancies will be computed by use of the expected return multiples in Treasury Department Regulation 1.72-9 or, if distribution is to be effected through a contract issued by an insurance company, by use of the mortality tables of such company. Where payment is being made over the joint

lives of the participant and the participant's surviving spouse, the life expectancy of the participant and the participant's surviving spouse may be recalculated annually.

(5) Notwithstanding anything in this plan to the contrary, distributions from the plan will be made in compliance with the minimum distribution rules of Section 457 (d)(2) of the Internal Revenue Code, and in compliance with Treasury Department Regulations issued under Sections 401 (a)(9) and 457 (d)(2) of the Internal Revenue Code.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 154-12-107 AMOUNTS DEFERRED REDUCED BY COSTS.

AMENDATORY SECTION (Amending Order 89-03, filed 5/8/89)

WAC 154-24-010 UNFORESEEABLE EMER-GENCY. Notwithstanding any other provisions in plan chapters 154-01 through 154-68 WAC, in the event of an unforeseeable emergency, a participant (or a beneficiary entitled to accumulated deferrals) may request the committee to pay ((benefits)) out all or a portion of accumulated deferrals. If the application for payment is approved by the committee, payment will be made within sixty days following such an approval. ((Benefits to be)) The amount paid shall be limited strictly to that amount reasonably necessary to satisfy the emergency need.

For purposes of this plan, an unforeseeable emergency shall be severe financial hardship to the participant resulting from:

- (1) A sudden and unexpected illness or accident of the participant or of a dependent (as defined in Section 152(a) of the Internal Revenue Code) of the participant,
- (2) Loss of the participant's property due to casualty, or
- (3) Other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant. The circumstances that will constitute an unforeseeable emergency will depend upon the facts of each case, but, in any case, payment shall not be made to the extent that such hardship is or may be relieved (a) through reimbursement or compensation by insurance or otherwise; (b) by liquidation of the participant's assets, to the extent liquidation of such assets would not itself cause severe financial hardship; or (c) by cessation of deferrals under the plan. Examples of what shall not be considered to be unforeseeable emergencies include the need to send a participant's child to college or the desire to purchase a home.

AMENDATORY SECTION (Amending Order 89-03, filed 5/8/89)

WAC 154-32-010 TERMINATION OF PLAN. The employer or the committee may at any time terminate this plan. Upon such termination, ((benefits)) accumulated deferrals will be paid ((to each participant)) pursuant to chapter 154-12 WAC of the plan. ((Each participant's full compensation on a nondeferred basis will thereupon be restored)) The participants' deferrals will cease.

AMENDATORY SECTION (Amending Order 89-03, filed 5/8/89)

WAC 154-32-020 AMENDMENT OF PLAN. The committee may also amend the provisions of this plan at any time: PROVIDED, HOWEVER, That no amendment shall affect the rights of participants or their beneficiaries ((to the receipt of payment of benefits, to the extent of any compensation deferred before the time of the amendment and investment income or loss thereon accrued to the date of the amendment, calculated in accordance with WAC 154-12-107 and 154-12-075)) regarding accumulated deferrals at the time of the amendment.

Chapter 154-40 WAC TRANSFER IN LIEU OF ((BENEFITS)) CASH

AMENDATORY SECTION (Amending Order 82-3, filed 6/11/82)

WAC 154-40-010 ASSETS IN LIEU OF CASH. Upon the occurrence of any event requiring the payment of ((benefits)) accumulated deferrals under this plan, the committee may, in its sole discretion, elect to honor a request from the participant to substitute the transfer in kind and assignment of any asset which the employer has acquired, at fair market value.

AMENDATORY SECTION (Amending Order 82-3, filed 6/11/82)

WAC 154-44-010 ((BENEFITS)) ACCUMULATED DEFERRALS NOT ASSIGNABLE. It is agreed that neither the participant, nor the participant's beneficiary or beneficiaries, nor any other designee, shall have any right to commute, sell, assign, transfer, or otherwise convey the right to receive any payments hereunder, which payments and right thereto are expressly declared to be nonassignable and nontransferable; and in the event of attempt to assign or transfer, the employer shall have no further liability hereunder, nor shall any unpaid ((benefits)) accumulated deferrals be subject to attachment, garnishment or execution, or be transferable by operation of law in event of bankruptcy, insolvency, except to the extent otherwise required by law.

AMENDATORY SECTION (Amending Order 82-3, filed 6/11/82)

WAC 154-64-050 COMMITTEE MAY RE-QUIRE COURT ORDER. The committee or the employer, if in doubt concerning the correctness of their action in making a payment of ((a benefit,)) accumulated deferrals may suspend ((that benefit)) payment until satisfied as to the correctness of the payment or the person to receive the payment or to allow the filing in any state court of competent jurisdiction of a civil action seeking a determination of the ((benefits)) amounts to be paid and the persons to receive them. The committee and the employer shall comply with the final orders of the court in any such suit and the participant, for the participant and the participant's beneficiary or beneficiaries, consents to be bound thereby. Whenever payment of accumulated deferrals is suspended pursuant to this section, the time for a participant or beneficiary making any election under WAC 154-12-090 shall not begin until amount(s) and person(s) entitled are determined either by a written agreement of all parties concerned or by a court judgment that has become final.

KEY TO TABLE

Symbols:

AMD = Amendment of existing section

NEW = New section not previously codified

OBJEC = Notice of objection by Joint Administrative Rules

Review Committee

PREP = Preproposal comments

RE-AD = Readoption of existing section

REP = Repeal of existing section

REAFF = Order assuming and reaffirming rules

REMOV = Removal of rule pursuant to RCW 34.04.050(5)

RESCIND = Rescind previous emergency rule REVIEW = Review of previously adopted rule

STMT = Statement regarding previously adopted rule

Suffixes:

-P = Proposed action

-C = Continuance of previous proposal

-E = Emergency action

-S = Supplemental notice

-W = Withdrawal of proposed action

No suffix means permanent action

This table covers the current calendar year through this issue of the Register and should be used to locate rules amended, adopted, or repealed subsequent to the publication date of the latest WAC or Supplement.

WAC # shows the section number under which an agency rule is or will be codified in the Washington Administrative Code.

WSR # shows the issue of the Washington State Register where the document may be found; the last three digits show the sequence of the document within the issue.

WAC #		WSR #	WAC #		WSR #	WAC #		WSR #
16-86	AMD-E	90-05-049	16-318-390	NEW	90-03-026	51-04-040	NEW	90-02-10
16-86-005	AMD-E	90-05-049	16-318-395	NEW	90-03-026	51-04-050	NEW	90-02-10
16-86-093	NEW-E	90-05-049	16-318-400	NEW	90-03-026	51-04-060	NEW	90-02-10
16-230-805	REP-P	90-04-109	16-318-405	NEW	90-03-026	51-04-070	NEW	90-02-10
16-230-835	AMD-P	90-04-109	16-318-410	NEW	90-03-026	51-06-010	AMD	90-02-10
16-230-839	NEW-P	90-04-109	16-318-415	NEW	90-03-026	51-06-020	AMD	90-02-10
16-230-840	REP-P	90-04-109	16-318-420	NEW	90-03-026	51-06-030	REP	90-02-10
16-230-845	AMD-P	90-04-109	16-400-010	AMD-E	90-03-034	51-06-040	REP	90-02-10
16-230-850	REP-P	90-04-109	16-400-010	AMD-P	90-05-065	51-06-050	REP	90-02-10
16-230-855	AMD-P	90-04-109	16-400-100	AMD-E	90-03-034	51-06-060	REP	90-02-10
16-230-859	NEW-P	90-04-109	16-400-100	AMD-P	90-05-065	51-06-070	AMD	90-02-10
	REP-P	90-04-109	16-400-100	AMD-E	90-03-034	51-06-080	REP	90-02-10
16-230-860	NEW-P	90-04-109	16-400-210	AMD-P	90-05-065	51-06-090	REP	90-02-10
16-230-861			16-403-142	AMD-E	90-03-035	51-06-100	REP	90-02-10
16-230-862	NEW-P	90-04-109		AMD-E AMD-W	90-03-035	51-06-110	REP	90-02-10
16-230-863	NEW-P	90-04-109	16-403-142 16-403-142	AMD-W AMD-P	90-05-066	51-06-120	AMD	90-02-10
16-316-285	AMD-P	90-03-090			90-05-067	51-08-010	AMD	90-02-10
16-316-290	AMD-P	90-03-090	16-403-142	AMD-P		51-10	AMD	90-02-1
16-317-040	AMD	90-04-003	16-403-155	AMD-W	90–03–036 90–05–066	51-10-201	AMD-P	90-05-0
16-317-050	AMD	90-04-003	16-403-155	AMD-P	90-03-086	51-12-201	AMD-P	90-05-00
16-317-060	AMD	90-04-003	16-403-190	AMD-E				90-05-00
16-317-090	REP	90-04-003	16-403-190	AMD-W	90-03-036	51-12-204	AMD-P	
16-318-040	AMD	90-03-026	16-403-190	AMD-P	90-05-066	51-12-220	AMD AMD	90-02-1 90-02-1
16-318-065	NEW	90-03-026	16-403-190	AMD-P	90-05-067	51-12-403		90-02-11
16-318-200	NEW	90-03-026	16-403-220	AMD-W	90-03-036	51-12-404	AMD	90-02-1
16-318-205	NEW	90-03-026	16-403-220	AMD-P	90-05-066	51-12-411	AMD-P AMD	90-03-00
16-318-210	NEW	90-03-026	16-403-280	AMD-W	90-03-036	51-12-426	AMD	90-02-11
16-318-215	NEW	90-03-026	16-403-280	AMD-P	90-05-066	51-12-601	AMD-P	90-02-1
16-318-220	NEW	90-03-026	16-494-001	AMD-P	90-03-090	51-12-602	AMD-P	90-03-0
16-318-225	NEW	90-03-026	16-494-010	AMD-P	90-03-090	51-12-608		90-02-1
16-318-230	NEW	90-03-026	16-555-010	AMD-P	90-05-059	51-16-030	AMD	
16-318-235	NEW	90-03-026	16-555-040	AMD-P	90-05-059	51-16-050	AMD NEW	90-02-1 90-02-1
16-318-240	NEW	90-03-026	16-557-010	NEW-W	90-05-068	51-18-010	NEW	
16-318-300	NEW	90-03-026	16-557-020	NEW-W	90-05-068	51-18-020	NEW NEW	90-02-1
16-318-305	NEW	90-03-026	16-557-030	NEW-W	90-05-068	51-18-030	NEW	90-02-1
16-318-310	NEW	90-03-026	16-557-040	NEW-W	90-05-068	51-18-040	NEW NEW	90-02-1
16-318-315	NEW	90-03-026	16-557-041	NEW-W	90-05-068	51-18-050		90-02-1
16-318-320	NEW	90-03-026	16-557-050	NEW-W	90-05-068	113-12-130	REP-P	90-04-0
16-318-325	NEW	90-03-026	16-557-060	NEW-W	90-05-068	113-12-160	REP-P	90-04-0
16-318-330	NEW	90-03-026	16-557-070	NEW-W	90-05-068	113-12-161	REP-P	90-04-0
16-318-335	NEW	90-03-026	16-557-080	NEW-W	90-05-068	113-12-200	AMD-P	90-04-0
16-318-340	NEW	90-03-026	16-570-040	AMD-P	90-03-071	114-12-136	AMD	90-04-09
16-318-345	NEW	90-03-026	50-36-090	AMD-P	90-03-105	131-16-055	NEW-E	90-04-0
16-318-350	NEW	90-03-026	51-04-010	AMD	90-02-108	132D-108-010	NEW	90-05-04
16-318-355	NEW	90-03-026	51-04-015	NEW	90-02-108	132D-108-020	NEW	90-05-04
16-318-360	NEW	90-03-026	51-04-018	NEW	90-02-108	132D-108-030	NEW	90-05-04
16-318-365	NEW	90-03-026	51-04-020	AMD	90-02-108	132D-108-040	NEW	90-05-04
16-318-370	NEW	90-03-026	51-04-025	NEW	90-02-108	132D-108-050	NEW	90-05-04
16-318-375	NEW	90-03-026	51-04-030	NEW	90-02-108	132D-108-060	NEW	90-05-0
16-318-380	NEW	90-03-026	51-04-035	NEW	90-02-108	132D-108-070	NEW	90-05-0
16-318-385	NEW	90-03-026	51-04-037	NEW	90-02-108	132D-108-080	NEW	90-05-04

WAC #		WSR #	WAC #		WSR #	WAC #		WSR #
132D-108-090	NEW	90-05-045	132H-108-210	REP-P	90-03-077	132L-280-040	NEW	9005004
132D-130-010	NEW	9005045	132H-108-210	REP-E	90-03-079	132L-280-050	NEW	90-05-004
132D-130-020	NEW	90-05-045	132H-108-220	REP-P	90-03-077	132L-280-060	NEW	90-05-004
132D-130-030	NEW NEW	90-05-045 90-05-045	132H-108-220	REP-E REPP	90-03-079	132L-280-070	NEW NEW	90-05-004 90-05-004
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132D-130-045	NEW	90-05-045	132H-108-240	REP-P	90-03-077	132L-280-100	NEW	90-05-004
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132E-108-010	NEW-P	90-03-012	132H-108-320	REP-P	90-03-077	132S-01-050	NEW-P	90-03-082
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132E-133-020	NEW-P	90-03-019	132H-108-430	NEW-P	90-03-077	132S-30-037	NEW-P	90-03-082
132E-400-010	NEW-P	90-03-021	132H-108-430	NEW-E	90-03-079	132S-40-130	NEW-P	90-03-082
132E-400-020	NEW-P	90-03-021	132H-108-440	NEW-P	90-03-077	132S-40-135	NEW-P	90-03-082
132E-400-030	NEW-P NEW-P	90-03-021 90-03-021	132H-108-440 132H-108-450	NEW-E NEW-P	90–03–079 90–03–077	132S-40-140 132S-40-145	NEW-P NEW-P	90–03–082 90–03–082
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132H-108-005	REP-E	90-03-079	132H-108-460	NEW-P	90-03-077	132S-40-155	NEW-P	90-03-082
132H-108-010	REP-P	90-03-077	132H-108-460	NEW-E	90-03-079	132T-104-010	REP	90-03-065
132H-108-010	REP-E	90-03-079	132H-108-470	NEW-P	90-03-077	132T-104-020	REP	90-03-065
132H-108-020	REP-P	90-03-077	132H-108-470	NEW-E	90-03-079	132T-104-030	REP	90-03-065
132H-108-020 132H-108-030	REP-E REP-P	90–03–079 90–03–077	132H-108-480 132H-108-480	NEW-P NEW-E	90–03–077 90–03–079	132T-104-040 132T-104-060	REP REP	90–03–065 90–03–065
132H-108-030	REP-E	90-03-079	132H-200-040	NEW-P	90-03-076	132T-104-000	REP	90-03-065
132H-108-040	REP-P	90-03-077	132H-200-040	NEW-E	90-03-080	132T-104-080	REP	90-03-065
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132H-108-060 132H-108-060	REP-P REP-E	90–03–077 90–03–079	132H-400-010 132H-400-020	NEW-E NEW-P	90-03-081 90-03-078	132T-104-120 132T-104-121	REP REP	90-03-065 90-03-065
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132H-108-090	REP-P	90-03-077	132H-400-040	NEW-E	90-03-081	132T-104-250	REP	90-03-065
132H-108-090 132H-108-100	REP-E REP-P	90–03–079 90–03–077	132L-20-090 132L-108-010	REP NEW-E	90-05-004 90-03-074	132T-104-260 132T-104-265	RÉP REP	90–03–065 90–03–065
132H-108-100	REP-E	90-03-079	132L-108-010	NEW	90-05-005	132T-104-203	REP	90-03-065
132H-108-110	REP-P	90-03-077	132L-108-020	NEW-E	90-03-074	132T-104-280	REP	90-03-065
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132H-108-120	REP-P	90-03-077	132L-108-030	NEW-E	90-03-074	132U-03-020	NEW	90-05-043
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132H-108-150	REP-E	90-03-079	132L-108-060	NEW	90-05-005	132U-400-010	NEW	90-05-043
132H-108-160	REP-P	90-03-077	132L-108-070	NEW-E	90-03-074	132V-400-010	NEW-P	90-03-094
132H-108-160 132H-108-170	REP-E REP-P	90–03–079 90–03–077	132L-108-070 132L-108-080	NEW NEW-E	90-05-005 90-03-074	132V-400-020 132V-400-030	NEW-P NEW-P	90-03-094 90-03-094
132H-108-170	REP-P REP-E	90-03-077 90-03-079	132L-108-080	NEW-E NEW	90-03-074 90-05-005	132V-400-030	NEW-P	90-03-094
132H-108-170	REP-P	90-03-077	132L-133-020	NEW-E	90-03-074	132Y-108-010	NEW-P	90-02-062
132H-108-180	REP-E	90-03-079	132L-133-020	NEW	9005005	132Y-108-020	NEW-P	90-02-062
132H-108-190	REP-P	90-03-077	132L-280-010	NEW	90-05-004	132Y-108-030	NEW-P	90-02-062
132H-108-190	REP-E	90-03-079	132L-280-015	NEW	90-05-004	132Y-108-040	NEW-P	90-02-062
132H-108-200 132H-108-200	REP-P REP-E	90–03–077 90–03–079	132L-280-020 132L-280-030	NEW NEW	90-05-004 90-05-004	132Y-108-050 132Y-108-060	NEW-P NEW-P	9002062 9002062
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132Y-108-080	NEW-P	90-02-062	173-166-100	NEW-P	90-02-096	173-340-330	NEW-P	90-02-098
132Y-133-020 139-05-925	NEW-P NEW-P	90-02-063	173-166-110	NEW-P NEW-P	90-02-096 90-02-096	173-340-340 173-340-340	NEW-W NEW-P	90-02-097
154-04-035	REP-P	90-03-085 90-02-086	173–166–120 173–166–130	NEW-P	90-02-096	173-340-350	NEW-P	90-02-098 90-02-097
154-04-035	REP	90-05-078	173-306-010	NEW-P	90-02-088	173-340-350	NEW-P	90-02-098
154-04-041	NEW-P	90-02-086	173-306-050	NEW-P	90-02-088	173-340-360	NEW-W	90-02-097
154-04-041	NEW	90-05-078	173-306-100	NEW-P	90-02-088	173-340-360	NEW-P	90-02-098
154-04-110	REP-P	90-02-086	173-306-150	NEW-P	90-02-088	173-340-400	NEW-W	90-02-097
154-04-110 154-08-050	REP AMD-P	90-05-078	173-306-200	NEW-P NEW-P	90-02-088 90-02-088	173-340-400 173-340-410	NEW-P NEW-W	90–02–098 90–02–097
154-08-050	AMD-P AMD	90-02-086 90-05-078	173–306–300 173–306–310	NEW-P	90-02-088	173-340-410	NEW-P	90-02-098
154-12-010	AMD-P	90-02-086	173-306-320	NEW-P	90-02-088	173-340-420	NEW-W	90-02-097
154-12-010	AMD	90-05-078	173-306-330	NEW-P	90-02-088	173-340-420	NEW-P	90-02-098
154-12-015	AMD-P	90-02-086	173-306-340	NEW-P	90-02-088	173-340-430	NEW-W	90-02-097
154-12-015	AMD	90-05-078	173-306-345	NEW-P	90-02-088	173-340-430	NEW-P	90-02-098
154-12-030 154-12-030	AMD-P AMD	90-02-086 90-05-078	173–306–350 173–306–400	NEW-P NEW-P	90-02-088 90-02-088	173–340–500 173–340–500	NEW-W NEW-P	90-02-097 90-02-098
154-12-050	AMD-P	90-02-086	173-306-405	NEW-P	90-02-088	173-340-510	NEW-W	90-02-097
154-12-050	AMD	90-05-078	173-306-410	NEW-P	90-02-088	173-340-510	NEW-P	90-02-098
154-12-070	AMD-P	90-02-086	173-306-440	NEW-P	90-02-088	173-340-520	NEW-W	90-02-097
154-12-070	AMD	90-05-078	173-306-450	NEW-P	90-02-088	173-340-520	NEW-P	90-02-098
154-12-080 154-12-080	AMD-P AMD	90-02-086 90-05-078	173–306–470 173–306–480	NEW-P NEW-P	90-02-088 90-02-088	173-340-530 173-340-530	NEW-W NEW-P	90–02–097 90–02–098
154-12-085	AMD-P	90-02-086	173-306-490	NEW-P	90-02-088	173-340-540	NEW-W	90-02-097
154-12-085	AMD	90-05-078	173-306-495	NEW-P	90-02-088	173-340-540	NEW-P	90-02-098
154-12-086	AMD-P	90-02-086	173-306-500	NEW-P	90-02-088	173-340-550	NEW-W	90-02-097
154-12-086	AMD	90-05-078	173-306-900	NEW-P	90-02-088	173-340-550	NEW-P	90-02-098
154-12-087 154-12-087	AMD-P AMD	90-02-086 90-05-078	173–306–9901 173–336–010	NEW-P REP-W	90-02-088 90-02-097	173–340–560 173–340–560	NEW-W NEW-P	90–02–097 90–02–098
154-12-090	AMD-P	90-02-086	173-336-010	REP-P	90-02-098	173-340-600	NEW-P	90-02-097
154-12-090	AMD	90-05-078	173-336-020	REP-W	90-02-097	173-340-600	NEW-P	90-02-098
154-12-107	REP-P	90-02-086	173-336-020	REP-P	90-02-098	173-340-610	NEW-W	90-02-097
154-12-107	REP	90-05-078	173-336-030	REP-W	90-02-097	173-340-610	NEW-P	90-02-098
154-12-110 154-12-110	AMD-P AMD	90-02-086 90-05-078	173–336–030 173–338–010	REP-P REP-W	90–02–098 90–02–097	173–340–700 173–340–700	NEW-W NEW-P	90–02–097 90–02–098
154-24-010	AMD-P	90-02-086	173-338-010	REP-P	90-02-098	173-340-800	NEW-W	90-02-097
154-24-010	AMD	90-05-078	173-338-020	REP-W	90-02-097	173-340-800	NEW-P	90-02-098
154-32-010	AMD-P	90-02-086	173-338-020	REP-P	90-02-098	173-340-810	NEW-W	90-02-097
154-32-010 154-32-020	AMD AMD–P	90–05–078 90–02–086	173–338–030 173–338–030	REP-W REP-P	90–02–097 90–02–098	173-340-810 173-340-820	NEW-P NEW-W	90-02-098 90-02-097
154-32-020	AMD-F	90-05-078	173-338-030	REP-W	90-02-097	173-340-820	NEW-P	90-02-098
154-40	AMD-P	90-02-086	173-338-040	REP-P	90-02-098	173-340-830	NEW-W	90-02-097
154-40	AMD	90-05-078	173-338-050	REP-W	90-02-097	173-340-830	NEW-P	90-02-098
154-40-010	AMD-P AMD	90–02–086 90–05–078	173–338–050 173–340	REP-P AMD-W	90-02-098	173-340-840	NEW-W	90-02-097
154-40-010 154-44-010	AMD-P	90–03–078 90–02–086	173-340	AMD-W AMD-P	90–02–097 90–02–098	173-340-840 173-340-850	NEW-P NEW-W	90–02–098 90–02–097
154-44-010	AMD	90-05-078	173-340-010	REP-W	90-02-097	173-340-850	NEW-P	90-02-098
154-64-050	AMD-P	90-02-086	173-340-010	REPP	90-02-098	173-340-860	NEW-W	90-02-097
154-64-050	AMD	90-05-078	173-340-020	REP-W	90-02-097	173-340-860	NEW-P	90-02-098
173-18-090 173-18-200	AMD-C AMD-C	90-02-107 90-02-107	173-340-020 173-340-030	REP-P REP-W	90-02-098 90-02-097	173–340–870 173–340–870	NEW-W NEW-P	90–02–097 90–02–098
173-19-1104	AMD	90-02-105	173-340-030	REP-P	90-02-098	173-340-880	NEW-W	90-02-097
173-19-220	AMD-P	90-03-112	173-340-040	REP-W	90-02-097	173-340-880	NEW-P	90-02-098
173-19-2512	AMD	90-02-106	173-340-040	REP-P	90-02-098	173-340-890	NEW-W	90-02-097
173-19-2519	AMD	90-02-101	173-340-050	REP-W	90-02-097	173-340-890	NEW-P	90-02-098
173-19-2520 173-19-3514	AMD-P AMD-P	90-05-074 90-03-110	173–340–050 173–340–100	REP-P NEW-W	90-02-098 90-02-097	173-342-010 173-342-020	NEW NEW	90–03–020 90–03–020
173-19-360	AMD-P	90-03-111	173-340-100	NEW-P	90-02-098	173-342-030	NEW	90-03-020
173-19-3601	AMD-P	90-05-075	173-340-110	NEW-W	90-02-097	173-342-040	NEW	90-03-020
173-19-420	AMD-C	90-05-077	173-340-110	NEW-P	90-02-098	173-342-050	NEW	90-03-020
173-19-4201 173-19-4202	AMD-P AMD-P	90-05-076 90-05-076	173–340–120 173–340–120	NEW-W NEW-P	90–02–097 90–02–098	173-400-010 173-400-020	AMD-P AMD-P	90-05-052 90-05-052
173-19-4202	AMD-P	90-05-076	173-340-130	NEW-W	90-02-097	173-400-020	AMD-P	90-05-052
173-19-4204	AMD-P	90-05-076	173-340-130	NEW-P	90-02-098	173-400-040	AMD-P	90-05-052
173-19-4205	AMD-P	90-05-076	173-340-140	NEW-W	90-02-097	173-400-050	AMD-P	90-05-052
173-19-4206	AMD-P	90-05-076	173-340-140	NEW-P	90-02-098	173-400-060	AMD-P	90-05-052
173-166 173-166	AMD-P AMD-C	90-02-096 90-05-048	173-340-200 173-340-200	NEW-W NEW-P	90-02-097 90-02-098	173-400-070 173-400-075	AMD-P AMD-P	90–05–052 90–05–052
173-166-010	AMD-P	90-02-096	173-340-210	NEW-W	90-02-097	173-400-100	AMD-P	90-05-052
173-166-020	AMD-P	90-02-096	173-340-210	NEW-P	9002098	173-400-105	AMD-P	90-05-052
173-166-030	AMD-P	90-02-096	173-340-300	NEW-W	90-02-097	173-400-110	AMD-P	90-05-052
173-166-040	AMD-P	90-02-096	173-340-300	NEW-P	90-02-098	173-400-115	AMD-P	90-05-052
173-166-050 173-166-060	AMD–P AMD–P	90-02-096 90-02-096	173-340-310 173-340-310	NEW-W NEW-P	90-02-097 90-02-098	173-400-120 173-400-131	AMD-P NEW-P	90–05–052 90–05–052
173–166–070	AMD-P	90-02-096	173-340-310	NEW-W	90-02-097	173-400-136	NEW-P	90-05-052
173-166-080	NEW-P	90-02-096	173-340-320	NEW-P	9002098	173-400-141	NEW-P	90-05-052

WAC #		WSR #	WAC #		WSR #	WAC #		WSR #
173-400-151	NEW-P	90-05-052	173-490-080	AMD-P	90-05-052	174–136–012	REP	90-04-011
173-400-161	NEW-P	90-05-052	173-490-090	AMD-P	90-05-052	174-136-013	REP	90-04-011
173-400-171	NEW-P	90-05-052	173-490-120	REP-P	90-05-052	174-136-014	REP	90-04-011
173-400-180	NEW-P	90-05-052	173-490-130	REP-P	90-05-052	174–136–015	REP	90-04-011
173-400-190	NEW-P	90-05-052	173-490-135	REP-P	90-05-052	174–136–016	REP	90-04-011
173-400-200	NEW-P	90-05-052	173-490-140	REP-P	90-05-052	174-136-017	REP	90-04-011
173-400-205	NEW-P	90-05-052	173-490-150	REP-P	90-05-052	174-136-018	REP	90-04-011
173-400-210	NEW-P	90-05-052	173-490-200	AMD-P	90-05-052	174-136-019 174-136-02001	REP REP	90-04-011 90-04-011
173-400-220	NEW-P NEW-P	90-05-052 90-05-052	173-490-201 173-490-202	AMD-P AMD-P	90-05-052 90-05-052	174-136-0201	REP	90-04-011
173–400–230 173–400–240	NEW-P	90-05-052	173-490-202	AMD-P	90-05-052	174-136-022	REP	90-04-011
173-400-250	NEW-P	90-05-052	173-490-204	AMD-P	90-05-052	174-136-060	REP	90-04-011
173-400-260	NEW-P	90-05-052	173-490-205	AMD-P	90-05-052	174-136-080	REP	90-04-011
173-403-010	REP-P	90-05-052	173-490-207	AMD-P	90-05-052	174-136-090	REP	90-04-011
173-403-020	REP-P	90-05-052	173-490-208	AMD-P	90-05-052	174-136-100	REP	90-04-011
173-403-030	REP-P	90-05-052	174–108	AMD	90-04-011	174-136-110	REP	90-04-011
173-403-050	REP-P	90-05-052	174-108-170	REP	90-04-011	174-136-120	REP	90-04-011
173-403-060	REP-P	90-05-052	174-108-180	REP	90-04-011	174-136-130	REP	90-04-011
173-403-070	REP-P	90-05-052	174-108-190 174-108-200	REP REP	90-04-011 90-04-011	174-136-140 174-136-160	REP REP	90-04-011 90-04-011
173-403-075	REP-P REP-P	90–05–052 90–05–052	174-108-200	REP	90-04-011	174–136–170	REP	90-04-011
173–403–080 173–403–090	REP-P	90-05-052	174-108-210	REP	90-04-011	174-136-210	REP	90-04-011
173-403-100	REP-P	90-05-052	174-108-230	REP	90-04-011	174-136-220	REP	90-04-011
173-403-110	REP-P	90-05-052	174-108-240	REP	90-04-011	174-136-230	REP	90-04-011
173-403-120	REP-P	90-05-052	174-108-250	REP	90-04-011	174-136-240	REP	90-04-011
173-403-130	REP-P	90-05-052	174-108-260	REP	90-04-011	174–136–250	REP	90-04-011
173-403-141	REP-P	90-05-052	174-108-900	REP	90-04-011	174–136–300	REP	90-04-011
173-403-145	REP-P	90-05-052	174-108-90001	REP	90-04-011	174-136-310	REP REP	90-04-011 90-04-011
173-403-150	REP-P	90-05-052	174-108-90002 174-108-910	REP NEW	90-04-011 90-04-011	174–136–320 174–136–330	REP	90-04-011
173–403–160 173–403–170	REP-P REP-P	90-05-052 90-05-052	174-108-910	REP	90-04-011	174-157-600	REP	90-04-011
173-403-170	REP-P	90-05-052	174-112-140	REP	90-04-011	174-157-610	REP	90-04-011
173-403-190	REP-P	90-05-052	174-112-150	REP	90-04-011	174-157-620	REP	90-04-011
173-405-012	AMD-P	90-05-052	174-122-010	NEW	90-04-011	174-157-990	REP	90-04-011
173-405-021	AMD-P	90-05-052	174-122-020	NEW	90-04-011	174–160–010	REP	90-04-011
173-405-033	AMD-P	90-05-052	174-122-030	NEW	90-04-011	174–160–020	REP	90-04-011
173-405-035	AMD-P	90-05-052	174-122-040	NEW	90-04-011	174–160–030	REP REP	90–04–011 90–04–011
173-405-040	AMD-P REP-P	90–05–052 90–05–052	174-126-010 174-126-020	REP REP	90-04-011 90-04-011	174–160–040 174–162–010	REP	90-04-011
173–405–041 173–405–045	AMD-P	90-05-052	174-126-030	REP	90-04-011	174-162-015	REP	90-04-011
173-405-061	AMD-P	90-05-052	174-128-010	REP	90-04-011	174-162-020	REP	90-04-011
173-405-072	AMD-P	90-05-052	174-128-020	REP	90-04-011	174-162-025	REP	90-04-011
173-405-077	AMD-P	90-05-052	174-128-030	REP	90-04-011	174-162-030	REP	90-04-011
173-405-078	AMD-P	90-05-052	174-128-040	REP	90-04-011	174–162–035	REP	90-04-011
173-405-086	AMD-P	90-05-052	174-128-042	REP	90-04-011	174-162-040	REP	90-04-011
173-405-087	AMD-P	90-05-052	174-128-044	REP REP	90-04-011 90-04-011	174-162-045 174-168-010	REP NEW-W	90-04-011 90-03-037
173-405-091	AMD–P AMD–P	90-05-052 90-05-052	174-128-046 174-128-050	REP	90-04-011	174-168-010	NEW-P	90-04-028
173-410-012 173-410-021	AMD-P	90-05-052	174-128-060	REP	90-04-011	174-168-020	NEW-W	90-03-037
173-410-021	AMD-P	90-05-052	174-128-062	REP	90-04-011	174-168-020	NEW-P	90-04-028
173-410-040	AMD-P	90-05-052	174-128-064	REP	90-04-011	174-168-030	NEW-P	90-04-028
173-410-042	REP-P	90-05-052	174-128-066	REP	90-04-011	174-168-040	NEW-P	90-04-028
173-410-045	AMD-P	90-05-052	174-128-070	REP	90-04-011	174-168-050	NEW-P	90-04-028
173-410-062	AMD-P	90-05-052	174-128-080	REP	90-04-011	174-168-060	NEW-P NEW-P	90-04-028
173-410-067	AMD-P	90-05-052	174-128-090	REP	90-04-011 90-04-011	174-168-070 174-168-080	NEW-P NEW-P	90-04-028 90-04-028
173-410-071	AMD-P AMD-P	90–05–052 90–05–052	174-128-990 174-130-010	REP NEW	90-04-011 90-04-011	174-276-010	NEW-P	90-04-028
173-410-086 173-410-087	AMD-P	90–05–052 90–05–052	174-130-010	NEW	90-04-011	174-276-020	NEW	90-04-011
173-410-087	NEW-P	90-05-052	174-131-010	NEW	90-04-011	174-276-030	NEW	90-04-011
173-415-010	AMD-P	90-05-052	174–132	AMD	90-04-011	174-276-040	NEW	90-04-011
173-415-020	AMD-P	90-05-052	174-132-010	AMD	90-04-011	174-276-050	NEW	90-04-011
173-415-030	AMD-P	90-05-052	174-132-020	REP	90-04-011	174-276-060	NEW	90-04-011
173-415-040	AMD-P	90-05-052	174-132-030	REP	90-04-011	174-276-070	NEW	90-04-011
173-415-041	REP-P	90-05-052	174-132-040	REP	90-04-011	174-276-080 174-276-090	NEW NEW	90-04-011 90-04-011
173-415-045	AMD-P	90-05-052	174-132-050 174-132-060	REP REP	90-04-011 90-04-011	174-276-100	NEW	90-04-011
173–415–050 173–415–051	AMD–P AMD–P	90–05–052 90–05–052	174-132-000	REP	90-04-011	174-276-110	NEW	90-04-011
173-415-051	AMD-P	90-05-052	174-132-080	REP	90-04-011	174-276-120	NEW	90-04-011
173-415-000	AMD-P	90-05-052	174-132-090	REP	90-04-011	174-280-010	NEW	90-04-011
173-415-080	AMD-P	90-05-052	174-132-100	REP	90-04-011	174-280-015	NEW	90-04-011
173-490-010	AMD-P	90-05-052	174-132-110	REP	90-04-011	174-280-020	NEW	90-04-011
173-490-020	AMD-P	90-05-052	174-132-120	REP	90-04-011	174-280-025	NEW	90-04-011
173-490-025	AMD-P	90-05-052	174-133-010	NEW NEW	90-04-011 90-04-011	174–280–030 174–280–035	NEW NEW	90-04-011 90-04-011
173-490-030	AMD-P AMD-P	90-05-052 90-05-052	174–133–020 174–135–010	NEW NEW	90-04-011	174-280-033	NEW NEW	90-04-011
173-490-040 173-490-070	REP-P	90-05-052	174-135-010	REP	90-04-011	174-280-045	NEW	90-04-011
173-490-070	REP-P	90-05-052	174-136-011	REP	90-04-011	174-400-010	NEW	90-05-031
			1			•		

WAC #		WSR #	WAC #		WSR #	WAC #		WSR #
180-25-025	AMD	90-04-031	180–86–175	NEW	90-02-076	220-56-230	NEW-P	90-02-112
180-25-300	REP	90-04-032	180-86-180	NEW	90-02-076	220-56-235	AMD-P	90-02-112
180-27-050	AMD	90-04-031	180-86-185	NEW	90-02-076	220–56–240	AMD-P	90-02-112
180-27-058	AMD	90-04-031	180-86-200	NEW	90-02-076	220-56-282	AMD-P	90-02-112
180-27-425	NEW	90-04-031	180-87-001	NEW	90-02-075	220-56-307	NEW-P	90-02-112
180-29-300	REP	90-04-032	180-87-003	NEW	90-02-075	220-56-310	AMD-P	90-02-112
180-75-005	AMD	90-02-073	180-87-005	NEW	90-02-075	220-56-320	AMD-P	90-02-112
180-75-018	REP	90-02-073	180-87-010	NEW	90-02-075	220-56-330	AMD-P	90-02-112
180-75-019	REP	90-02-073	180-87-015	NEW	90-02-075	220-56-350	AMD-P	90-02-112
180-75-020 180-75-025	REP REP	90-02-073	180-87-020	NEW	90-02-075	220-56-380	AMD-P	90-02-112
180-75-026	REP	90-02-073 90-02-073	180-87-025	NEW	90-02-075	220-56-38000F	NEW-E	90-03-007
180-75-027	REP	90-02-073	180–87–030 180–87–035	NEW NEW	90-02-075 90-02-075	220–56–38000F	RÉP-E	90-03-027
180-75-030	REP	90-02-073	180-87-040	NEW	90-02-075	220–56–38000G 220–56–38000G	NEW-E REP-E	90-03-027 90-04-041
180-75-033	REP	90-02-073	180-87-045	NEW	90-02-075	220–56–38000H	NEW-E	90-04-041
180-75-034	REP	90-02-073	180-87-050	NEW	90-02-075	220-56-400	AMD-P	90-02-112
180-75-035	REP	90-02-073	180–87–055	NEW	90-02-075	220-57-140	AMD-P	90-02-112
180-75-037	REP	90-02-073	180-87-060	NEW	90-02-075	220-57-160	AMD-P	90-02-112
180-75-038	REP	90-02-073	180-87-065	NEW	90-02-075	220-57-220	AMD-P	90-02-112
180-75-039 180-75-040	REP REP	90-02-073	180-87-070	NEW	90-02-075	220-57-242	NEW-P	90-02-112
180-75-042	REP	90-02-073 90-02-073	180–87–080 180–87–085	NEW NEW	90–02–075 90–02–075	220–57–260 220–57–270	AMD-P	90-02-112
180-75-043	REP	90-02-073	180-87-083	NEW	90-02-075	220-57-290	AMD-P AMD-P	90-02-112 90-02-112
180-75-044	REP	90-02-073	180-87-095	NEW	90-02-075	220-57-315	AMD-P	90-02-112
180-75-045	AMD	90-02-073	182-12-115	AMD-P	90-04-087	220-57-328	NEW-P	90-02-112
180-75-081	AMD	90-02-073	196-08-030	REP	90-06-071	220-57-465	AMD-P	90-02-112
180-75-084	REP	90-02-073	196–24–090	AMD	90-05-071	220-57-497	NEW-P	90-02-112
180-75-086	REP	90-02-073	196-24-092	NEW	90-05-071	220-57-505	AMD-P	90-02-112
180-75-199 180-78-191	REP AMD	90-02-073 90-02-074	196-26-020	AMD	90-03-028	220-57-515	AMD-P	90-02-112
180-78-191	AMD	90-02-074	196–26–020 196–27–020	AMD-E AMD	90-04-010 90-05-071	220-57-530	NEW-P	90-02-112
180-78-192	REP	90-02-074	204-36-030	AMD-P	90-04-023	220-57A-080 220-57A-180	AMD-P AMD-P	90-02-112 90-02-112
180-78-192	REP	90-02-104	204-36-040	AMD-P	90-04-023	220-69-220	AMD	90-03-068
180-78-193	REP	90-02-074	204-36-050	AMD-P	90-04-023	220-69-237	AMD	90-03-068
180-78-193	REP	90-02-104	204-36-060	AMD-P	90-04-023	220-69-238	AMD	90-03-068
180-78-194	REP	90-02-074	212-17-300	AMD-P	90-04-097	220-69-260	AMD	90-03-068
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180-78-195	REP	90-02-104	212-17-310 212-17-315	AMD-P AMD-P	90-04-097 90-04-097	220-140-001 220-140-010	NEW NEW	90-04-026 90-04-026
180-78-197	REP	90-02-074	212-17-317	NEW-P	90-04-097	220-140-010	NEW	90-04-026
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284-66-190 284-66-200	NEW-P	90-04-089 90-04-089	296-24-20700 296-24-550	AMD-P AMD	90–03–093 90–03–029	308-20-140	AMD-P AMD-P	90–03–018 90–03–018
284-66-210	NEW-P	90-04-089	296-24-58513	AMD	90-03-029	308-20-210	AMD-P	90-03-018
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